

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 238

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 9/24
DATE FOR REVIEW 10/3
DATE DUE 10/8

Adopted w/a hearing ____
Adopted w/o a hearing X
Temporary rule ____

Approved 10/7 Disapproved ____ Returned to Agency ____

Resubmitted ____ Due ____
Approved ____ Disapproved ____ Returned to Agency 10/8

Date filed w/Secretary of State 10/8 Revisor approved 9/28/81
disapproved ____

- ✓ Rule as Adopted
- ✓ Rule as Proposed see SR
- ✓ Order Adopting 9.23.81 Date
- ✓ Notice of Intent to Solicit Outside Opinion
- ✓ Order for rulemaking
  ____ Date of Hearing
- ✓ Certificate of Board's Authorizing Resolution see Bd Minutes 6/24/81
- ✓ Notice of rulemaking
  ✓ Sufficiency
- ✓ Affidavit of Mailing Notice or rulemaking
  ✓ 8.17.81 At least 30 days prior to ~~hearing~~/adoption
- ✓ Mailing list Certificate
- ✓ Publication in State Register
  9.13.81 At least 30/~~20~~ days prior to ~~hearing~~/adoption
  9.7.81
- N/A Hearing Examiner's Report
- ✓ Chief Hearing Examiner's Report(s)
  ____ Approving H.E.'s Report
  ____ Approving agency action
- ✓ Agency's Findings of Fact combined with Order Adopting
- N/A LCRAR Report or agency Affidavit
- ✓ Certificate of Board's Resolution Adopting Rules see Bd. Minutes of 9.23.81
- N/A Order Approving Incorporation by Reference
- ✓ Statement of Need and Reasonableness
- N/A Petition for Adoption of a Rule
- ✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials) + response of Commission staff dated 10/5/81
- ✓ Certificate of Compliance w/Rulemaking Procedures
- ✓ Affidavit of Mailing Notice of Submission to Attorney General
- ✓ Notice of Submission to the Attorney General

HG copy

Public Utilities Commission

Adopted Rule Governing Rule Variances

Rule as Adopted

4 MCAR S 3.0600 Variances.

The Public Utilities Commission upon written application or upon its own motion ~~may~~ shall grant a variance to any of its rules in an instance where it appears to the satisfaction of the commission that:

~~1.~~ A. Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;

~~2.~~ B. Granting of the variance would not adversely affect the public interest; and

~~3.~~ C. Granting of the variance would not conflict with standards imposed by law.

The commission shall, within 30 days after receipt of an application, notify the applicant ~~in writing~~ by written order of the granting or denial of the variance and the reasons therefor. A variance may be conditioned upon alternative practices proposed by the applicant or imposed by the commission.

Variances may be of limited duration, and may be revoked if a material change occurs in the circumstances which justified the variance, or if the applicant fails to comply with the specified alternative practices.

APPROVED AS TO LEGALITY

October 7 19 81

WARREN SPANNAUS, ATTORNEY GENERAL

BY Ted A. Mathews

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
OCT 8 - 1981
Joan Anderson Growe
Secretary of State

10:05

The Public Utilities Commission upon written application or upon its own motion shall ~~may~~ grant a variance to any of its rules in an instance where it appears to the satisfaction of the commission that:

1. Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;

2. Granting of the variance would not adversely affect the public interest; and

3. Granting of the variance would not conflict with standards imposed by law.

The commission shall, within 30 days after receipt of an application, notify the applicant by written order ~~in writing~~ of the granting or denial of the variance and the reasons therefor. A variance may be conditioned upon alternative practices proposed by the applicant or imposed by the commission.

Variances may be of limited duration, and may be revoked if a material change occurs in the circumstances which justified the variance, or if the applicant fails to comply with the specified alternative practices.

September 28, 1981 RD6

OFFICE OF THE REVISOR OF STATUTES
Disapproval of Form of Rules

X The form of the attached rules is not approved. The revisor requests the changes described below before the rules will be approved.

Insert the rule number, along with a headnote, at the beginning of the rule

Insert new material after stricken material

Strike the "1.", "2.", and "3." and insert "A.", "B.", and "C." respectively

Steven C. Cross
Revisor of Statutes

Name: Ann L. Bateson

Title: Ann L. Bateson
Deputy Revisor

Phone: 296-1536

- -

____ The changes requested by the revisor are approved by the agency.

____ The changes requested by the revisor are not approved by the agency

Agency's Representative

- -

____ The attorney general agrees that the changes requested by the revisor are form changes, not substantive changes.

Assistant Attorney General

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : RANDALL D. YOUNG
Executive Secretary
MN. Public Utilities Commission

DATE: October 7, 1981

ATTN : James E. Lackner
Special Assistant Attorney General

FROM : Ted A. Martinez
Special Assistant
Attorney General

PHONE: 296-0315

SUBJECT: In the Matter fo the Proposed Adoption of Rules of the State Public Utilities Commission Governing Rule Variances

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set

If you have any questions in this regard, please contact me.

TAM/cae

Enc.

cc: Kathy Burek
Duane Harves

MINNESOTA public utilities COMMISSION

September 24, 1981

Warren Spannaus
Attorney General
Room 102 Capitol Building
Aurora Avenue
St. Paul, MN 55155

Dear Mr. Spannaus:

Subject: Non-controversial Rules Hearing
MPUC Docket No. U-999/R-81-331

Pursuant to M.S. § 15.0412, subd 4h, the Minnesota Public Utilities Commission hereby submits its proposed Rule on Rule Variances in final form, the proposed Rule and Notice as published, Statement of Need and Reasonableness, and the comments received from interested persons, for your review as to legality and form.

Notice of this submission is being given to all persons who have so requested.

Sincerely,

Randall D. Young
Executive Secretary

RDY:lp

Enc.

RECEIVED
SEP 24 1981
ATTORNEY GENERAL
102 STATE CAPITOL
ST. PAUL, MINN. 55155

AMERICAN CENTER building • kellogg AND ROBERT STS • SAINT PAUL, MN 55101

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Roger L. Hanson	Chairman
Leo G. Adams	Commissioner
Terry Hoffman	Commissioner
Juanita R. Satterlee	Commissioner
Lillian Warren-Lazenberry	Commissioner

In the Matter of the Proposed Adoption of Rules of the State Public Utilities Commission Governing Rule Variances	DOCKET NO. U-999/R-81-331 CONCLUSIONS, AND ORDER ADOPTING RULES

Notice of the Public Utilities Commission's (the Commission) intent to adopt the above-captioned rules without a public hearing was published in the State Register on July 13, 1981, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 15.0412, subdivision 4 on August 17, 1981. A Notice of extension of time for comments was published in the State Register on September 7, 1981. Affected and interested persons were given an opportunity to submit comments for 30 days after Notice, until September 17, 1981.

The Commission received fewer than seven written requests for a public hearing within the comment period.

The Commission has reviewed the comments and suggestions submitted in response to notice and finds as follows:

Minnesota Gas Company objected to the language of the rule stating the Commission "may grant a variance...where it appears to the satisfaction of the Commission...", arguing that M.S. § 15.0412, Subd 1a requires certainty. The Commission finds that additional certainty of decision is appropriate under M.S. § 15.0412, subd 1a, and concludes the rule should be amended to state the Commission "shall grant a variance...where it appears to the satisfaction of the Commission..."

Minnesota Power and Light Company recommended the rule specify that the response by the Commission to an application for a variance be by written Order, to clearly indicate that procedural recourse was available. The Commission finds the recommendation to be reasonable and

concludes the recommended change should be made.

The Commission has determined the need for and reasonableness of the above-captioned rules.

ORDER

1. The rules identified as Rules of the Public Utilities Commission, 4MCAR 3.0600, are hereby adopted as amended herein.

2. This Order shall be effective immediately.

BY ORDER OF THE COMMISSION

Randall D. Young
Executive Secretary

SERVICE DATE: September 23, 1981

(S E A L)

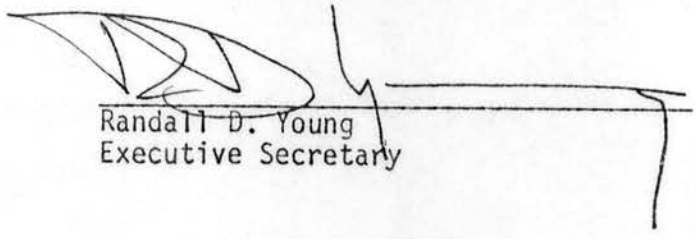
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Roger L. Hanson	Chairman
Leo G. Adams	Commissioner
Terry Hoffman	Commissioner
Juanita R. Satterlee	Commissioner
Lillian Warren-Lazenberry	Commissioner

In the Matter of the Proposed Adoption of Rules of the State Public Utilities Commission Governing Rule Variances	DOCKET NO. U-999/R-81-331 ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 24th day of June, 1981, that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the State Public Utilities Commission for that purpose and be published in the State Register.

BY ORDER OF THE COMMISSION



Randall D. Young
Executive Secretary

SERVICE DATE: 24 June 1981

(S E A L)

OFFICE - June 24, 1981

The commission met on June 24, 1981 with Chairman Hanson, and Commissioners Adams, Hoffman and Warren-Lazenberry present.

The following items were passed unanimously.

~~Variances Rule~~
U-999/R-81-331

Motion to approve draft rule as revised.

Motion passed 4-0.

There being no further business, the meeting was adjourned.

APPROVED BY THE COMMISSION:

Roger L. Hanson, Chairman

Leo G. Adams

Terry Hoffman

Juanita R. Satterlee

Lillian Warren-Lazenberry

APPROVAL DATE:

6/30/81

~~ATTEST:~~

Randall D. Young
Executive Secretary

In the Matter of the Proposed Adoption
of Rules of the State Public Utilities Commission
Governing Rule Variances

AFFIDAVIT OF
MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Lorraine Pelton, being first duly sworn deposes and says:

That on the 17th day of August, 1981, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the State Public Utilities Commission for the purpose of receiving notice of the proposed adoption of rules by this Commission.

Lorraine Pelton

Subscribed and sworn to before me
this 6th day of October, 1981.

Cecilia J Loughrey

CECILIA J. LOUGHREY
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Comm. Expires July 18, 1987

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption
of Rules of the State Public Utilities Commission
Governing Rule Variances

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statute § 15.0412, subd. 4, that their names be placed on file with and maintained by the State Public Utilities Commission for the purpose of receiving notice of the proposed adoption of rules by this Commission is accurate and complete as of 8:00 A. M., this 17th day of August, 1981.

Christopher K. Sandberg

477 copies sent to all lobs : 8.178

MINNESOTA PUBLIC UTILITIES COMMISSION

Proposed Rule Governing Rule Variances

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Public Utilities Commission proposes to adopt the above-entitled rule without a public hearing. The Public Utilities Commission has determined that the proposed adoption of this rule will be non-controversial in nature and has elected to follow the procedures set forth in M.S. § 15.0412, subd. 4h (1980). 2

Persons interested in this rule shall have 30 days to submit comments on the proposed rule. The proposed rule may be modified if the modifications are supported by the data and views submitted to the Commission and do not result in a substantial change. 3 4

Unless seven or more persons submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the Commission will proceed according to the provisions of M.S. § 15.0412, subds. 4 - 4f. 5 7

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to: 6

Randall Young, Executive Secretary
Public Utilities Commission
780 American Center Building
160 East Kellogg Boulevard
St. Paul, Minnesota 55101

Authority for the adoption of this rule is contained in M.S. § 15.0412, subd. 1a (1980). Additionally, a Statement of Need and Reasonableness that describes the need for and the reasonableness of each provision of the proposed rule has been prepared and is available to the public at the Public Utilities Commission. 9

Upon adoption of the final rule without a public hearing, the proposed rule, this notice, the Statement of Need and Reasonableness, all written comments received, and the final rule as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rule as proposed for adoption, should submit a written request for notice to Randall Young. A copy of the proposed rule is attached to this notice. 8 10

Randall Young
Executive Secretary

Rule as Proposed (all new material)

4 MCAR § 3.0600

The Public Utilities Commission upon written application or upon its own motion may grant a variance to any of its rules in an instance where it appears to the satisfaction of the commission that:

1. Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;

2. Granting of the variance would not adversely affect the public interest; and

3. Granting of the variance would not conflict with standards imposed by law.

The commission shall, within 30 days after receipt of an application, notify the applicant in writing of the granting or denial of the variance and the reasons therefor. A variance may be conditioned upon alternative practices proposed by the applicant or imposed by the commission.

Variances may be of limited duration, and may be revoked if a material change occurs in the circumstances which justified the variance, or if the applicant fails to comply with the specified alternative practices.

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing. Along with the full text of the proposed rules. (If the agency has followed the procedures of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Public Utilities Commission

Proposed Rule Governing Rule Variances

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Public Utilities Commission proposes to adopt the above-entitled rule without a public hearing. The Public Utilities Commission has determined that the proposed adoption of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, subd. 4 (1980). 2

Persons interested in this rule shall have 30 days to submit comments on the proposed rule. The proposed rule may be modified if the modifications are supported by the data and views submitted to the Commission and do not result in a substantial change. 3 4

Unless seven or more persons submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the commission will proceed according to the provisions of Minn. Stat. § 15.0412, subds. 4-4f. 5 7

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to: 6

Randall Young, Executive Secretary
Public Utilities Commission
780 American Center Building
160 East Kellogg Boulevard
St. Paul, Minnesota 55101

Authority for the adoption of this rule is contained in Minn. Stat. § 15.0412, subd. 1a (1980). Additionally, a statement of need and reasonableness that describes the need for and the reasonableness of each provision of the proposed rule has been prepared and is available to the public at the Public Utilities Commission. 9

Upon adoption of the final rule without a public hearing, the proposed rule, this notice, the statement of need and reasonableness, all written comments received, and the final rule as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rule as proposed for adoption, should submit a written request for notice to Randall Young. A copy of the proposed rule is attached to this notice. 8

Randall Young
Executive Secretary

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Rule as Proposed (all new material)

4 MCAR § 3.0600

The Public Utilities Commission upon written application or upon its own motion may grant a variance to any of its rules in an instance where it appears to the satisfaction of the commission that:

1. Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;

2. Granting of the variance would not adversely affect the public interest; and

3. Granting of the variance would not conflict with standards imposed by law.

The commission shall, within 30 days after receipt of an application, notify the applicant in writing of the granting or denial of the variance and the reasons therefor. A variance may be conditioned upon alternative practices proposed by the applicant or imposed by the commission.

Variances may be of limited duration, and may be revoked if a material change occurs in the circumstances which justified the variance, or if the applicant fails to comply with the specified alternative practices.

Department of Transportation

Notice of Withdrawal of Proposed Rules Governing Weight Limitations on Interstate Highways and Designated Routes

The above proposed amended rules came on for hearing on December 5, 1980, at 10:00 a.m., in a proceeding captioned, In the Matter of the Proposed Adoption of Amended Rules of the Department of Transportation Governing Weight Limitations on Interstate Highways and Designated Routes. The Hearing Examiner, Harry Seymour Crump, in that proceeding, issued his report on December 30, 1980.

By virtue of the passage of Laws 1981, ch. 81, and after a review of the record herein, the commissioner hereby orders that the proposed amended rules governing weight limitations on interstate highways and designated routes, as published in 5 S.R. 723, November 3, 1980, and reviewed in the hearing of December 5, 1980, are withdrawn.

Please be advised pursuant to Laws 1980, ch. 81, that the Commissioner of Transportation on this date by separate order has designated certain street and highway routes, or segments of those routes, to carry the gross weights allowed by Minnesota Statutes § 169.832.

June 29, 1981

Richard P. Braun
Commissioner of Transportation

Order and Notice of Street and Highway Routes Designated and Permitted to Carry the Gross Weights Allowed under Minn. Stat. § 169.832.

Order No. 65851

The Commissioner of Transportation hereby orders and gives notice that, pursuant to Minnesota Statutes § 169.832 (1980), as amended by Laws 1981, ch. 81, the following street and highway routes, or segments of those routes, are designated and permitted to carry the gross weights allowed under Minnesota Statutes § 169.832. Those routes or their segments are as follows:

Explanatory Note: Both the 12 month and seasonal routes are listed together. The 12 month routes are all in capital letters. The seasonal routes are in small letters. The routes are listed in numerical order and read geographically from west to east and from south to north.

Trunk Highways

T.H. 1—From west state border to Jct. T.H. 32
From Jct. T.H. 32 to Jct. T.H. 219
(Effective August 3, 1981).

T.H. 2—In its entirety from west state border to Jct. T.H. 61 (I-35).
FROM JCT. I-35 IN DULUTH TO ARROWHEAD BRIDGE.

T.H. 3—From Jct. T.H. 21 to Jct. T.H. 55.
FROM JCT. 110 TO T.H. 5.

Hennepin County Libraries:

St. Bonifacius Library
St. Bonifacius, MN 55375

Rogers Library
21300 John Milles Dr.
Rogers, MN 55374

Osseo Library
415 Central Ave.
Osseo, MN 55369

Hennepin County Public
Information Library
Government Center
300 S. 6th St.
Minneapolis, MN 55487

Maple Plain Library
Maple Plain, MN 55359

Champlin Library
230 Curtis Rd.
Champlin, MN 55316

Brooklyn Park Library
8600 Zane Ave. N.
Brooklyn Park, MN 55001

In addition, a report containing the basis for the director's recommendation will be available at the above locations by September 14, 1981. To the extent feasible, such documents may be copied.

Questions concerning the procedures to be followed at the hearing may be directed to Special Assistant Attorney General Marlene Senechal at the MPCA address above, telephone: (612) 296-7346. Questions concerning the director's recommendation may be directed to Dale Wikre at the MPCA address above, telephone: (612) 297-2735.

August 31, 1981

Louis J. Breimhurst
Executive Director

Public Utilities Commission

Proposed Rule Governing Rule Variances

Notice of Extension of Time for Comments

On July 13, 1981, the Public Utilities Commission published a Notice of Intent to Adopt Rules without a Public Hearing in the *State Register*. That notice stated that persons interested in the rule would have 30 days to submit comments on the proposed rule.

Notice is hereby given that the commission will accept comments on the proposed rule until September 17, 1981.

Randall Young
Executive Secretary

Department of Transportation

Petition of the City of Fairmont for a Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of the City of Fairmont has made a written request to the Commissioner of Transportation for a variance from minimum design standards for street width along Woodland Avenue between Fairlakes Avenue and Lake Park Boulevard.

The request is for a variance from 14 MCAR § 1.5032 H.1.c., Rules for State Aid Operations under Minnesota Statute, Chapters 162 and 163 (1978) as amended, so as to permit a minimum roadway width of 44 feet with parking permitted instead of a roadway width of 46' feet.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 31st day of August, 1981.

Richard P. Braun
Commissioner of Transportation

OFFICE - September 23, 1981

The Commission met on September 23, 1981 with Chairman Hanson, and Commissioners Adams, Hoffman and Warren-Lazenberry present.

The following items were passed unanimously by those commissioners present.

~~Variance Rule~~

Commissioner Leo Adams moved to approve the proposed rule as published in The State Register, and amended by staff and that the proposed rule be submitted to the Attorney General and the Revisor of Statutes for review and approval.

Motion passed 4-0.

Cold Weather Rule

Commissioner Leo Adams moved to approve the staff draft of the Inability to Pay form.

Motion passed 4-0.

Commissioner Leo Adams moved to order all utilities subject to the cold weather rule to use the language from this form for its Inability to Pay Forms.

Motion Passed 4-0.

Chairman Hanson moved to have staff work with the Office of Consumer Services to conduct educational sessions for service agencies, fuel-aid deliverers, local welfare services; and to develop an informational booklet on the Cold Weather Rule.

Motion passed 4-0.

There being no further business, the meeting was adjourned.

APPROVED BY THE COMMISSION:

Roger L. Hanson

Leo G. Adams

Terry Hoffman

Juanita R. Satterlee

Lillian Warren-Lazenberry

APPROVAL DATE:

9/29/81

ATTEST:

Randall D. Young
Executive Secretary

approved 8-18-81

STATEMENT OF NEED AND REASONABLENESS

Under M.S. § 15.0412, subd. 1a, an agency, before it grants a variance to a rule, shall have promulgated rules setting forth procedures and standards by which variances shall be granted and denied. This proposed rule is designed to comply with the requirements of M.S. 15.0412, subd. 1a, by establishing the procedures and standards for granting variances to the Commission's rules.

Variance authority is necessary to permit the efficient functioning of the Commission in the administration of its rules. For example, many of the Commission's rules contain time deadlines, specifying when certain actions must be taken. The Commission, and parties subject to its rules, are at times unable to meet the deadlines of those rules for good cause. The ability to vary its rules would allow the Commission, where it had been shown to be appropriate, to adjust a time deadline.

Further, the Commission at times needs the ability to vary its rules to prevent hardship or economic waste. The Commission's activities, and thus its rules, concern rates, charges, and practices of public utilities. Those rates and practices have a direct and substantial effect upon the citizens of the State. Reasonable protection of those citizens requires the ability of the Commission to vary its rules when circumstances show that harm would otherwise result. In addition, the prudent protection of the investment made in the regulated utilities of the State necessitates the freedom to allow variances where a showing is made of economic loss beyond the reasonable value of the blind application of the rule.

The rule as proposed provides a reasonable framework for the Commission to judge whether a rule should be varied or enforced in its normal fashion. Any such judgement requires the careful balancing of competing factors, and the Commission's proposed rule establishes which factors the Commission may consider. It contains, by its selection of those factors, reasonable limits on the Commission's authority to vary its rules and is sufficient to prevent abuse of the variance ability.

In the Matter of the Proposed
Adoption of Rules of the
State Public Utilities Commission
Governing Rule Variances.

STATEMENT OF
COMPLIANCE
WITH
RULEMAKING
PROCEDURES

I, James E. Lackner, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

James E. Lackner
Special Assistant
Attorney General

Dated: 10/6/81

Minnesota Gas Company
LEGAL DIVISION
300 peavey building, minneapolis, minnesota 55402

George C. Mastor, General Counsel
James B. Proman, Attorney
Patricia Ann Burke, Attorney

September 28, 1981

Jerry Anderson, Esq.
Office of the Attorney General
G-25, Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

RECEIVED
SEP 29 1981
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Rule Governing Rule Variances
Docket No. U-999/RI-81-331

Dear Mr. Anderson:

On September 28, 1981, Minnesota Gas Company ("Minnegasco") was advised that the proposed rule governing rule variances of the Public Utilities Commission ("Commission") was forwarded to you for review. Minnegasco filed Comments in this docket on September 17, 1981 objecting to the rule as proposed. A copy of those Comments is enclosed.

The final form of the proposed rule is changed only slightly from the proposal as it appeared in the State Register. Minnegasco continues to object to this rule for the following reasons:

- The final form of the rule, while correcting one drafting defect, is still written to give the Commission unbridled discretion in the grant or denial of a variance. For example, the duration of a variance (last paragraph of the rule) continues to use the word "may" and the clause "appears to the satisfaction of the commission" (first paragraph of the rule) is an unknown standard.

- The final form of the rule exceeds statutory authority (see Comments, pages 4-5).

- The final form of the rule is overly broad and unconstitutionally vague (see Comments pages 2-4). This one rule is to govern rule variances for the hundreds of the Commission rules. The "need for flexibility" supported by the Minnesota Supreme Court in Can Manufacturers Institute, Inc. v. State of Minnesota ____ Minn. ____,289 NW2d 416 (1979) is clearly exceeded by this proposal.

All of Minnegasco's objections are more specifically set out in the enclosed Comments. Upon review of these Comments and the record in this docket, Minnegasco requests that this rule be returned to the Commission for redrafting to more specifically state the standards and procedures which must be met in obtaining a rule variance.

Very truly yours,

MINNESOTA GAS COMPANY
Legal Department

Patricia Ann Burke

By
Patricia Ann Burke

Telephone: 612/372-4828

mah

cc: Randy Young
Executive Secretary
Minnesota Public Utilities Commission

RECEIVED
SEP 29 1981
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

STATE OF MINNESOTA

PUBLIC UTILITIES COMMISSION

In the Matter of the Proposed Adoption of a Rule Governing Rule Variances

Docket No. U-999/R-81-331

COMMENTS OF
MINNESOTA GAS COMPANY

George C. Mastor, Esq.
Patricia Ann Burke, Esq.

MINNESOTA GAS COMPANY
Legal Department
300 Peavey Building
Minneapolis, Minnesota 55402

September 17, 1981

STATE OF MINNESOTA

PUBLIC UTILITIES COMMISSION

In the Matter of the Proposed Adoption of a Rule Governing Rule Variances

Docket No. U-999/R-81-331

COMMENTS OF
MINNESOTA GAS COMPANY

On July 13, 1981, the Minnesota Public Utilities Commission ("Commission" or "PUC") published a Notice of Intent to Adopt Rules without a Public Hearing in the State Register (6 S.R. 37) allowing interested persons 30 days to submit comments on its proposed rule governing rule variances. On September 7, 1981, the Commission published a Notice of Extension of Time for Comments in the State Register (6 S.R. 425) extending the comment period to September 17, 1981.

Minnesota Gas Company ("Minnegasco") is the largest retail gas distributor in Minnesota, providing service to over 409,000 customers. Minnegasco's rates, tariffs and rules are regulated by the Commission.

Minnegasco is vitally interested in and would be seriously affected by the Commission's action in this docket.

Minnegasco has reviewed the Commission's Statement of Need and Reasonableness ("Statement") for this rule. While the Statement pursuasively argues the need for the Commission to vary its rules in certain circumstances, the Commission's method of meeting the need is unreasonable.

The options available to the Commission are (1) promulgating amendments to existing rules which create variance procedures within specific rules or (2) promulgating variances rules for subject areas which logically would be governed by the same standards in determining the grant of a variance. Any attempted shortcutting of this method fails to meet the statutory requirements of the Minnesota Administrative Procedures Act ("APA") and constitutional due process standards.

Although Minnegasco is not requesting a formal hearing, it reserves the right to participate in a hearing, if one is held, and to take such position as may be necessary to protect its interests and those of its customers.

1. The proposed rule is overly broad and unconstitutionally vague.

The APA in Minn. Stat. §15.0411, Subd. 3 defines a "rule" as "every agency statement of general applicability and future effect." The Commission's proposed variance rule is ambiguous in its applicability and future effect. It is almost totally lacking in procedures for application for a

variance and unclear in standards to determine when a variance will be granted.

With this one general variance rule, the Commission is attempting to establish variance standards applicable to all of the hundreds of Commission rules governing such diverse areas as service standards, regulatory requirements and rules of procedure. The PUC's rules affect the regulation of transportation (buses and trucks), utilities (gas, electric and telephone) and all of their customers. Because of the differences in the subject areas and the entities regulated, the standards for granting variances must also be different. The three general standards contained in this proposed variance rule are overly broad and vague, violating both the United States and Minnesota Constitutions. A general variance which would apply to all PUC rules, therefore, is legally insufficient.

Under the proposal, a variance is to be discretionary with the Commission <u>even if the applicant has satisfactorily met the criteria set out in the proposed rule</u>. The duration of the variance is indefinite and the Commission retains the ability to revoke or change the variance <u>without notice to any affected person</u>. The Commission may also impose conditions on the variance, even if the applicant has met the criteria set out in the proposed rule. Under this proposal

there is no way for Minnegasco or any other utility, bus or truck company to know how to direct its conduct to conform with the rule. Regardless of the sufficiency of an applicant's showing, the variance might still not be granted. The rule as proposed is indefinite and vague, and is therefore unconstitutional.

2. The proposed rule fails to meet the statutory requirements of a variance rule.

Minn. Stat. §15.0412, Subd. 1a, states, in part (emphasis added):

> "Before an agency grants a variance, it shall have promulgated rules setting forth procedures and standards by which variances shall be granted and denied."

The Commission's proposed rule does not set out the procedures and standards required by the APA. Instead, it merely states three general standards which, if met, might allow the Commission to grant a variance. No procedures are set out. Because appropriate general procedures and general standards cannot be set out, a general variance rule will not meet the APA requirements.

To comply with the APA, any variance rule must permit the applicant to make a showing sufficient to allow affirmative findings based on the standards of the rule. Once this is done, the variance must be granted. If the showing is insufficient, the variance must be denied.

The proposed rule would permit the Commission to use this one variance rule to circumvent APA rulemaking procedures. Clearly that was not the intent of the Legislature in permitting rule variances. Both the procedures and the standards must be more specific.

3. Variance provisions with specific standards and procedures are the method to provide for a variance.

Minnegasco is aware of the Commission's need to vary its rules in certain cases (e.g., cases of economic hardship, unreasonable filing deadlines or notice requirements) and sympathizes with that need. In view of the difficulty in creating a general variance rule which complies with the APA requirements, Minnegasco suggests that a more appropriate and workable way to achieve this goal of variance is to fashion variance provisons for individual Commission rules or for subject areas of the rules logically governed by the same standards. In this way, the standards can be specific enough to provide guidance on the showing needed to obtain a favorable ruling. It will also permit the Commission to be more specific on time periods for a variance. This method of providing for a variance will more effectively and equitably meet the needs of entities regulated by the Commission and their customers. It will also minimize, if not eliminate, the potential for misuse and abuse of variances.

Conclusion

The proposed variance rule should be amended by providing for variance provisions within specific Commission rules or subject areas of the Commission's rules governed by the same variance standards. This more specific approach will better serve the Commission, regulated utilities, motor carriers and the public.

Respectfully submitted,

Patricia Ann Burke

Patricia Ann Burke

Minnesota Gas Company
Legal Department
300 Peavey Building
Minneapolis, Minnesota 55402

Telephone: 612/372-4828

September 17, 1981

MINNESOTA public UTILITIES COMMISSION

(612) 296-7526

RECEIVED
OCT 5 1981
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

October 5, 1981

Hon. Warren Spannaus
Attorney General
102 State Capitol
St. Paul, Minnesota 55155

Re: Proposed Rule on Rule Variances
Docket No. U-999/R-81-331

Response to Comments of Minnesota Gas Company

Dear Mr. Spannaus:

On September 24, 1981, the Minnesota Public Utilities Commission (the Commission) submitted to you for review the above referenced rule in final form. Minnesota Gas Company (Minnegasco), by letter dated September 28, 1981, objected to the rule as proposed, and referred to an earlier set of comments, filed with the Commission on September 17, 1981. The Commission hereby responds to Minnegasco's comments.

As the Commission understands them, Minnegasco's objections may be divided into three parts:

1. The rule exceeds statutory authority;

2. The rule grants the Commission unnecessary discretion;

3. The rule should be replaced with a number of variance provisions placed within existing rules or subject areas thereof.

1. The rule exceeds statutory authority.

In its September 17 comments, at pages 4-5, Minnegasco objected that the rule set forth "three general standards which, if met, might allow the Commission to grant a variance." (emphasis in original.) Minnegasco asserted that, to comply with the Administrative Procedures Act, a variance rule must permit an applicant to make a showing sufficient to allow affirmative findings. Once an affirmative finding is made, Minnegasco argued, the variance must be granted; if the showing is insufficient to allow affirmative findings, the variance must be denied.

The rule as originally proposed stated that the Commission "may grant a variance...where it appears to the satisfaction of the Commission..."

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The final form of the rule states the Commission "shall grant a variance...where it appears to the satisfaction of the Commission..." The rule in final form thus provides the certainty of decision which Minnegasco has sought. An applicant who produces a basis upon which the Commission concludes the three standards have been met will be granted a variance; one who fails will not be granted a variance.

2. The rule grants the Commission unnecessary discretion.

Minnegasco's September 17 comments state the rule is ambiguous in its applicability and future effect. This is not, in fact, the case: the rule by its own terms applies to all the Commission rules; it will be the sole basis for granting or denying variances from the day it is effective until modified or withdrawn through further APA process.

Minnegasco's September 17 comments state the rule is almost totally lacking in procedures for application for a variance and unclear in standards to determine when a variance will be granted. The rule states that the Commission will act, within 30 days, upon a written application for a variance. No specific form is required within the Rule; this choice to avoid unnecessary formality recognizes the broad range of potential applicants, from regulated utilities with professional legal staff to individual consumers with no formal legal training. The avoidance of unnecessary formality may also be seen in the Commission's Rules of Practices, specifically Minn. Reg. PSC 507(a) and 508(a), where no form of formal or informal Complaint is specified, but rather the necessary content of a Complaint is listed, as is done in this proposed rule.

The Commission has addressed the issue of uncertainty of decision above. The three standards set forth in the rule form a clear and easily understood balancing test for Commission decision: on the one side must be measured the excessive burden which applying the rule in question without variance would cause; on the other side must be measured the potential harm of the variance and the potential conflict with the law underlying the rule in question. It may be useful to compare the standards in this proposed rule with those in 14 MCAR § 1.7013, adopted by the Department of Transportation. 5 S.R. 1783. (Copy attached) Two of the three standards are essentially identical; the third is directly congruent in effect.

Minnegasco's comments of September 28 object to the use of the word "may" in the final paragraph of the rule, speaking to duration of a variance. It is logically necessary for this portion of the rule to use "may": certain variances, such as in the Commission's rate change filing requirements (Minn. Reg. PSC 400-408) would be of severely limited duration; other variances might well be of significantly longer duration.

Minnegasco's September 28 comments also object to the phrase "appears

to the satisfaction of the Commission" as being an unknown standard. Reference may be made to M.S. § 216B.21, subd. 2, which states, "If...the Commission becomes satisfied that sufficient grounds exist...", or to M.S. § 216B.16, subd. 2, which states in part, "If the Commission finds that all significant issues raised have not been resolved to its satisfaction..." The Commission submits that the standard used in the rule is in fact cognizable in the law.

Minnesota v. Lane et al, 126 Minn. 78 (1914), included a claim that the phrase, "to the satisfaction of the Court" rendered the law involved invalid. The Court held to the contrary, describing the word "satisfaction" as being practically equivalent to the phrase "satisfaction by a preponderance of the evidence." The Commission believes the same definition can be reasonably applied here.

3. The rule should be replaced with a number of variance provisions placed within existing rules or subject areas thereof.

Both comments by Minnegasco recommend the proposed rule be replaced with a collection of rules, to be sprinkled among existing Commission rules, so as to obtain standards "specific" enough to provide guidance." The Commission urges rejection of this recommendation on three grounds.

First, as discussed above, the standards of the rule are specific enough to provide guidance to any applicant for a variance. Merely creating more variance provisions will not increase the content of each.

Second, nothing in the law underpinning the proposed rule requires the approach Minnegasco recommends. M.S. § 15.0412, subd. 1a, merely states, "Before an agency grants a variance, it shall have promulgated rules setting forth procedures and standards by which variances shall be granted and denied." The proposed rule does so, and is clearly sufficient on its own to meet the statutory requirements.

Third, Minnegasco's recommendation would be unreasonably burdensome on the Commission. The Commission has over 225 separately identifiable rules, which may be classified into approximately 32 subject areas. There can be no persuasive reasoning for requiring such a degree of unwarrented duplication of effort and expense, when the rule as proposed reasonably meets the requirements of the law.

Minnegasco asserts the proposed rule exceeds the scope of Can Manufacturers Institute, Inc. v. State of Minnesota, ___ Minn. ___, 289 NW 2d 416 (1979). A review of the opinion at 289 NW 2d 422, 423 reveals the administrative rules in question contained in one part six criteria to be reviewed, in a second part a balancing test between

new and existing packaging, and in a third part a ten-standard assessment. Yet the Court found a need for flexibility in the agency's review process under the challenged rules. The Court found the criteria established by the rules to be broad, but upheld the review scheme. The proposed rule here is by comparison simple and straightforward. It requires review of only three criteria, and mandates rejection if all three are not met. It is sufficiently narrow and precise to allow its adoption as proposed in final form.

The Commission submits that the comments and objections made by Minnegasco are without substance and do not warrant rejection or modification of the proposed rule.

Sincerely,

Randall D. Young
Executive Secretary

sj

2. Accident report forms;

3. A card showing local emergency telephone numbers.

14 MCAR § 1.7012 Certification of training courses.

A. All training courses shall be approved by the commissioner prior to being offered to fulfill the requirements of these rules.

B. The application for approval of a training course shall be made on a form prescribed by the commissioner. A course shall be approved if it meets the following minimum standards:

1. It shall include instruction in the elements required by these standards;

2. The application shall specify when and where the instructor has previously taught the course;

3. The name, address, employment and relevant training of the instructor must be shown;

4. The name and address of any institution which is sponsoring the course must be shown.

C. Instructors.

1. A first aid course shall be taught by any person who is a licensed physician, registered nurse, licensed practical nurse, a paramedic, an emergency medical technician, ~~or~~ a certified first aid instructor or a physician's assistant.

2. Passenger assistance technique training shall be taught by any person who is a licensed physician, registered nurse, registered physical therapist, registered occupational therapist, public health nurse or other health professional who has had work experience with physical disabilities, aging and communication disorders or by a team which includes one of those persons.

D. Applications for approval of training courses shall be granted or denied in writing by the commissioner within thirty days of receipt of the complete application.

14 MCAR § 1.7013 Variance.

A. The commissioner may grant a variance from any of these rules except 14 MCAR § 1.7004.

1. A variance shall be granted if the applicant shows that:

a. the rationale for the rule or rules in question can be met or exceeded by the specific alternative practice which the applicant proposes to substitute:

b. the application of the rule in question would impose an excessive burden on the applicant; and

c. the granting of the variance will not adversely affect the public health and safety.

2. The commissioner shall set forth in writing the reasons for granting or denying the variance, within thirty days of receiving the application. If the variance is denied, the applicant may, within thirty days of receiving notice of the denial, request a contested case hearing.

3. Any special transportation service provider that is granted a variance shall comply with the alternative practice specified in its successful application for a variance.

B. ~~4.~~ Any special transportation service provider that has been granted a variance shall immediately notify the Department of Transportation if any material change occurs in the circumstances which justified granting the variance.

C. ~~5.~~ A variance shall be revoked if a material change occurs in the circumstances which justified granting the variance, or if the applicant fails to comply with the alternative practice specified in the application for a variance.

14 MCAR § 1.7014 to 1.7050 [Reserved for future use.]

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

PRESIDENT
Warren E. Maul

VICE PRESIDENTS
Laura Cooper
Bernard Becker

TREASURER
Felino de la Pena

EXECUTIVE DIRECTOR
Seymour J. Mansfield

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of the

LEGAL AID SOCIETY OF MINNEAPOLIS, INC.

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222 GRAIN EXCHANGE BUILDING
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August 20, 1981

Randall Young
Executive Secretary
Public Utilities Commission
780 American Center Building
160 East Kellogg Blvd.
St. Paul, MN 55101

Re: Proposed Rule Governing Rule Variances

Dear Mr. Young:

If it is not already implicit in the rules as proposed, I would suggest that the proposed rule be amended to provide that there be some sort of public notice of a proposed rule variance and an opportunity to comment. My concern is that people who may be affected by the granting of a variance may not have an opportunity to comment prior to its granting. I would think a public notice and comment period would help the Commission in making a decision regarding whether or not in fact the granting of a variance in a given case would adversely affect the public interest.

Thank you for your consideration of this matter.

Very truly yours,

LEGAL AID SOCIETY, INC.

Jeremy Lane
Attorney at Law

mn

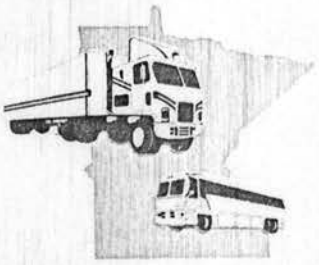
RECEIVED
AUG 21 1981
MINNESOTA PUBLIC
UTILITIES COMMISSION

United Way
Agency

LEGAL SERVICES CORPORATION
JUSTICE

MINNESOTA MOTOR TRANSPORT ASSOCIATION

– TRUCKS SERVE EVERYONE IN EVERY COMMUNITY –



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AUG 21 1981
MINNESOTA PUBLIC UTILITIES COMMISSION

August 20, 1981

Mr. Randall Young, Executive Secretary
MN Public Utilities Commission
780 American Center Building
160 East Kellogg Boulevard
St. Paul, MN 55101

Subject: Proposed Rule Governing Rule Variances

Dear Mr. Young

On behalf of the Minnesota Motor Transport Association I wish to express our comments on the proposed rule governing rule variances.

It is our understanding that the Public Utilities Commission does not intend to use the proposed rule as a vehicle to make substantive change to existing rules. If this understanding is correct we would have no opposition to the intent of the proposed rule. However, it is our recommendation that the language of the proposed rule be revised to clearly state that the rule shall not apply in cases of substantive change to other governing rules, and that proposals for such substantive change must be the subject of public hearing. We also reserve the right to raise future objection, if, at any time we feel substantive change has in fact been effected under the variance rule.

On the other hand if it is the Commission's intent to allow substantive change through the proposed variance rule, then we respectfully request that a public hearing be held.

Sincerely

James N. Denn
President

JD/ska

cc: Commissioner Leo Adams

LA & RY

☐ All Commissioners Rec'd ☐ Copied ☐ Routed
☐ No Action or Reply Anticipated
☑ Action or Reply Needed. Assigned to:

Chris Sandberg

1821 UNIVERSITY AVENUE · GRIGGS-MIDWAY BLDG. · ST. PAUL, MINN. 55104 · AREA CODE: 612 646-7351

AFFILIATE

Roy M. Weir
General Manager-Regulatory/Public Affairs-Minnesota

Northwestern Bell
200 South 5th Street
Minneapolis, Minnesota 55402
Phone (612) 344-5814

August 13, 1981

Mr. Randall D. Young
Executive Secretary
Public Utilities Commission
Seventh Floor
American Center Building
160 East Kellogg Boulevard
St. Paul, Minnesota 55101

RECEIVED
AUG 13 1981
MINNESOTA PUBLIC
UTILITIES COMMISSION

Re: Proposed Rule Governing Rule Variances

Dear Mr. Young:

Northwestern Bell Telephone Company wishes to comment on this proposed rule which was published in the State Register of July 13, 1981. We believe that the proposed rule should be adopted as published. We recognize the need for this rule, both from our dealings with the Commission and from our observations of other utilities and their dealings with the Commission.

Sincerely,

for R. M. Weir
General Manager - Regulatory/
Public Affairs - Minnesota

cc: Mr. R. Hanson, Chairperson
Mr. L. Adams, Commissioner
Ms. T. Hoffman, Commissioner
Ms. L. Lazenberry, Commissioner
Ms. J. Satterlee, Commissioner

Otter Tail
POWER COMPANY

215 South Cascade Street
Fergus Falls, Minnesota 56537
Phone 218-736-5411

August 13, 1981

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AUG 17 1981
MINNESOTA PUBLIC
UTILITIES COMMISSION

Mr. Randall Young, Executive Secretary
Minnesota Public Utilities Commission
780 American Center Building
160 East Kellogg Boulevard
St. Paul, MN 55101

Re: PROPOSED RULE GOVERNING VARIANCE

Dear Mr. Young:

Otter Tail Power Company is opposed to the adoption of proposed rule 4 MCAR § 3.0600 for the following reasons:

(1) An inclusive variance rule raises a threat of instability in the application of Commission rules;

(2) The uniform and impartial treatment of all parties subject to rules adopted after hearing pursuant to Minn. Laws sections 15.0411-15.052 could be changed by the Commission without the same safeguards set forth in Minn. Laws 15.0412 under which the rule was adopted.

(3) Past rule procedures wherein a variance has been contemplated for a specific rule have been accommodated within the rule provision itself, e.g. see PSC 407. This appears to be the most appropriate approach.

I trust these comments will be of assistance to the Commission in evaluating the proposed rule.

Sincerely yours,

Jay D. Myster
General Attorney
skv

Minnesota Rural Electric Association
4901 WEST 77th STREET MINNEAPOLIS, MINNESOTA 55435 (612) 835-2614

August 27, 1981

Mr. Randall Young, Executive Secretary
PUBLIC UTILITIES COMMISSION
780 American Center Building
160 East Kellogg Boulevard
Saint Paul, MN 55101

RE: 4 MCAR § 3.0600

Dear Mr. Young:

We have discussed the proposed rule and have no objection to it. Such a rule, if fairly used, could help expedite the operation of organizations regulated by the PUC.

Sincerely,

Leon Barnier

Leon Barnier
General Manager

LB:dd

RECEIVED
AUG 28 1981
MINNESOTA PUBLIC
UTILITIES COMMISSION

minnesota power

James R. Habicht
General Attorney
Assistant Secretary

RECEIVED
AUG 5 1981
MINNESOTA PUBLIC
UTILITIES COMMISSION

July 31, 1981

Mr. Randall Young
Executive Secretary
Minnesota Public Service Commission
7th Floor American Center Building
160 East Kellogg Boulevard
St. Paul, Minnesota 55101

Re: Proposed Rule Governing
Rule Variances
4MCAR §3.0600

Dear Mr. Young:

This letter is in response to the opportunity to submit written comments concerning the proposed rule governing rule variances as published at page 37 of the State Register, dated July 13, 1981 (6 S.R. 37).

Minnesota Power recognizes the need for the Commission to have the authority to grant variances from rules under certain limited circumstances. Certainly, it must be virtually undisputed that the literal application of a specific rule in certain situations may not be consistent either with the underlying intent of the rule and/or the broader intent embodied in the regulatory process.

We do not specifically request that this matter become the subject of a public hearing pursuant to Section 15.0412 of the Administrative Procedures Act.

We believe however, that the rule would better serve its' intended purposes through the inclusion of two additional "safeguards".

First, we would propose that the rule specify that the response by the Commission to an application for a variance be by written Order. Even though the Order may be captioned as "informal", it would clearly indicate that procedural

recourse was available to either the variance applicant, or an aggrieved person if their were disagreement over whether the Commission's decision on the requested variance was in accordance with the three enumerated criteria for determing variances.

Secondly, while the standards contained in the criteria for assessing an application for a variance assure that the interests of individual consumers may not be adversely affected by the granting of the variance, there may be an occasion when a request for a variance by a party other than a utility may affect the interests of a utility. To avoid the possibility that a utility would have to seek some form of extraordinary relief, it would be desirable to assure that notice of such variance applications are received by the utility.

We would propose that these two comments be incorporated in the final Rule Governing Rule Variances by changing the first paragraph under the three enumerated criteria to read as follows:

> "The commission shall notify an affected public utility, which is not the applicant, of the requested variance at least 5 days prior to making a decision on such an application, and within 30 days after receipt of an application, notify the applicant by written order of the granting or denial of the variance and the reasons therefore. A variance may be conditioned on alternative practices proposed by the applicant or imposed by the Commission." (Underlining indicates new material).

Finally, as a point of clarification, it should be understood that the learning of information previously unknown would constitute a material change in circumstances, thus allowing for Commission revocation of a variance.

Very truly yours,

James R. Habicht

JRH:lao

In the Matter of the Proposed Addoption
of Rules of the State Public Utilities Commission
Governing Rule Variances

AFFIDAVIT OF
MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY

Christopher K. Sandberg, being first duly sworn deposes and says:

That on the 24th day of September, 1981 at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Submission to Attorney General by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that they be notified of such submission for review.

Christopher K. Sandberg

Subscribed and sworn to before me
this 6th day of October, 1981.

Cecilia J. Loughrey

CECILIA J. LOUGHREY
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Comm. Expires July 13, 1987

MINNESOTA PUBLIC UTILITIES COMMISSION

September 24, 1981

Patricia A. Burke
Minnesota Gas Company
Legal Division
300 Peavey Building
Minneapolis, MN 55402

Dear Ms. Burke:

Subject: Variances Rule, Docket No. U-999/R-81-331

As you requested in your letter of August 4, 1981, this is notice that the Commission has today submitted the rule as proposed in final form to the Attorney General.

Enclosed is a copy of the rule in its final form.

Sincerely,

Christopher K. Sandberg
Administrative Assistant

CKS:lp

Enc.

AMERICAN CENTER building • kellogg AND ROBERT STS • SAINT PAUL, MN 55101