

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

MSM
6/24/92

RULE REVIEW CHECKLIST

File No. 1924
DATE RECEIVED ~~1-28-92~~ 6-22-92
REVIEW DATE ~~6-22-92~~ 7-1-92
DUE DATE 7-8-92
~~DIS~~APPROVED 7-8-92 CBE
WITHDRAWN _____

Docket No. 05 0009 0729
ADOPTED W/O HEARING _____
EMERGENCY RULE _____
TO REVISOR ON 6-24-92
REVISOR (DIS)APPROVED 6/25/92
FILED W/SEC. OF STATE 7-9-92
RETURNED TO AGENCY 7-9-92

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
March 31, 1986 Date published in State Register
_____ Comments

✓ Petition for Adoption of a Rule

✓ Board's Authorizing Resolution
Nov 19, 1992 Date adopted missing - sent

✓ Proposed Rule
_____ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
216A.05 subd 1 and 3 Statutory Authority
✓ Small Business Statement
_____ Expenditure of public money statement
undated by Signature signed

✓ Statement of Need and Reasonableness (if applicable)
✓ Small Business Statement
_____ Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
~~Feb 4~~ Feb 10, 1992 Dated 30/25 days before adoption
✓ Notice attached indicates it is attached
_____ Copy of rule or summary attached

✓ Publication in State Register
Feb 10, 1992 Date 30/25 days before adoption

✓ 180-day deadline from: read language - may - statute attached
✓ Effective date of law requiring rule (14.12) (both rules) amendments don't apply
_____ end of comment period (§ 14.26) (rules without hearing)
_____ effective date of statutory authority (§ 14.29) (emergency rules)

✓ Resolution Adopting
~~undated~~ Date adopted June 11, 1992

✓ Findings of Fact, Conclusions & Order Adopting
~~May 27, 1992~~ Date
June 11, 1992 ~~no date~~ also on Issuing date stated of June 11, 1992

✓ Written Requests, Submissions or Comments

✓ Declaration of Attorney
Mazie Hendricks Name of SAAG representing agency

_____ Notice of Submission to Attorney General (if applicable)

_____ Affidavit of Mailing Notice to Attorney General (if applicable)

Rules adl

STATE OF MINNESOTA

Office of the Attorney General

TO : MARY ELLEN HENNEN
Executive Secretary
Minnesota Public Utilities Commission
780 American Center Building
160 East Kellogg Boulevard
St. Paul

DATE : July 9, 1992

FROM : CHRISTIE B. ELLER CBE
Assistant Attorney General

PHONE : 296-9421

SUBJECT : In the Matter of the Adopted Rule Relating to Practice and Procedure

The above-referenced rule has been approved as to its legality by the Attorney General on July 8, 1992.

Enclosed is your copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

Enclosures

cc: Margie Hendriksen
William Brown, Chief Judge
MaryAnn Hruby

CBE:jj

Public Utilities Commission

Adopted Permanent Rules Relating to Practice and Procedure

Rules as Adopted

7829.0100 DEFINITIONS.

Subpart 1. **Scope.** The terms used in this chapter have the meanings given them in this part.

Subp. 2. **Classification petition.** "Classification petition" means a petition filed by a telephone company to classify a telephone service as subject to emerging or effective competition under Minnesota Statutes, section 237.59.

Subp. 3. **Commission.** "Commission" means the Minnesota Public Utilities Commission.

Subp. 4. **Complainant.** "Complainant" means a person who complains formally or informally of an alleged violation of a statute or rule within the commission's jurisdiction, a utility tariff, or a commission order.

Subp. 5. **Cost increase filing.** "Cost increase filing" means a miscellaneous tariff filing under Minnesota Statutes, section 237.63, proposing a rate increase for a particular telephone service on grounds that the actual costs of providing that particular service have increased. It does not include cost increases that are part of overall cost increases and cost increases that have been discovered as a result of new cost studies.

Subp. 6. **Department.** "Department" means the Minnesota Department of Public Service.

Subp. 7. **Expedited proceeding.** "Expedited proceeding" means an informal proceeding described in Minnesota Statutes, section 237.61, and subject to specific procedural requirements such as verification of pleadings.

Subp. 8. **Informal proceeding.** "Informal proceeding" means a proceeding that addresses and resolves issues of public policy, fact, or law without a formal contested case proceeding

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before the Office of Administrative Hearings.

Subp. 9. **Intervenor.** "Intervenor" means a person permitted to intervene as a party in a proceeding under this chapter.

Subp. 10. **Language change filing.** "Language change filing" means a miscellaneous tariff filing under Minnesota Statutes, section 237.63, changing descriptive language in a telephone utility tariff without changing the meaning or operation of the tariff.

Subp. 11. **Miscellaneous tariff filing.** "Miscellaneous tariff filing" means a request or notice that does not require determination of the utility's revenue requirement.

A miscellaneous tariff filing includes a filing involving a new service offering; a change in a utility's rates, services, terms, or conditions of service; a change in a utility's corporate structure, assigned service area, or capital structure, when conducted separately from a general rate proceeding; or any related matter. The term also includes a language change filing, cost increase filing, and rate reduction filing.

The inclusion of a particular type of filing in this list does not require a filing that would not otherwise be required or confer jurisdiction that would not otherwise be present.

Subp. 12. **Municipality.** "Municipality" includes a town, statutory city, and home rule charter city.

Subp. 13. **Participant.** "Participant" means a person who files comments or appears in a proceeding, other than public hearings held in contested cases and other commission proceedings conducted to receive general public comments, to present views without becoming a party.

Subp. 14. **Party.** "Party" means a person by or against whom a proceeding before the commission is commenced or a person permitted to intervene in a proceeding under this chapter. A party to a proceeding is styled a "petitioner," "complainant," "intervenor," or "respondent," according to the nature of the proceeding and the relationship of the party to the proceeding.

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Subp. 15. **Person.** "Person" means a natural person, corporation, municipal corporation, public corporation, utility, governmental entity, government agency, association, partnership, receiver, joint venture, trustee at common law or statutory trust guardian, or executor.

Subp. 16. **Petitioner.** "Petitioner" means a person who requests the commission's permission, authorization, or approval or a person who notifies the commission of a proposed change in a rate, service, or term or condition of service.

Subp. 17. **Price list filing.** "Price list filing" means a filing under Minnesota Statutes, section 237.60, pertaining to telephone services claimed to be subject to emerging or effective competition.

Subp. 18. **Proceeding.** "Proceeding" means a formal or informal undertaking of the commission, in which it seeks to resolve a question or issue taken up on its own motion or presented to it in a complaint, petition, or notice of a proposed change in a rate, service, or term or condition of service.

Subp. 19. **Proof of service.** "Proof of service" means a certificate of service stating the facts of service, including the time and manner of service and the parties served.

Subp. 20. **Rate reduction filing.** "Rate reduction filing" means a miscellaneous tariff filing under Minnesota Statutes, section 237.63, proposing a reduction in a rate for telephone service.

Subp. 21. **Respondent.** "Respondent" means a person against whom a complaint is filed or against whom an investigation or other proceeding on commission motion is addressed.

Subp. 22. **Suspend.** "Suspend" means to hold in abeyance or to delay the effective date of.

Subp. 23. **Utility.** "Utility" means a gas, electric, or telephone company subject to the jurisdiction of the commission.

7829.0200 SCOPE AND CONSTRUCTION.

Subpart 1. **Construction.** This chapter must be construed

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to secure the just, speedy, and economical determination of issues before the commission. This chapter must be construed in light of the commission's statutory authority and responsibilities.

Subp. 2. **Conflicting statutes and substantive rules to control.** This chapter governs practice and procedure in matters before the commission except when a statute or a rule on a specific topic contains procedural requirements in direct conflict with this chapter. Then, the statute or rule on a specific topic controls insofar as it is in direct conflict with this chapter.

7829.0300 COMPUTATION OF TIME.

In computing a period of time prescribed by this chapter, the commission shall exclude the first and include the last day of the designated period of time. When the last day of the time period falls on Saturday, Sunday, or a legal holiday, that day must be omitted from the computation.

7829.0400 SERVICE AND FILING REQUIREMENTS.

Subpart 1. **Filing.** Documents are filed with the commission when they are received in the commission offices during regular business hours. Specific documents may be filed by facsimile transmission or filed when mailed ~~or delivered in person, if the executive secretary so directs~~, with the consent of the executive secretary. Documents must be directed to the attention of the executive secretary.

Subp. 2. **Number of copies.** Parties and participants shall file an original and 15 copies of each document filed with the commission, unless otherwise directed by the executive secretary.

Subp. 3. **Proof of service.** Filings must be accompanied by proof of service on the persons on the appropriate service list.

Subp. 4. **Format.** Filings must identify the nature of the filing as briefly as possible, for example, "Replies to Exceptions to Report of Administrative Law Judge," and indicate that the matter is before the Minnesota Public Utilities Commission. Filings after the original filing must include the

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title and docket number of the matter. Filings must be on 8-1/2 by 11-inch paper, unless the executive secretary authorizes a nonconforming filing for good cause shown.

Subp. 5. **Service.** A document filed with the commission must be served the same day on the persons listed on the appropriate service list, except when this chapter permits service of a summary of the filing. Service may be accomplished by first class mail or by delivery in person, unless otherwise provided by law or commission order. Service may also be accomplished by facsimile transmission, followed by first class mail. Service on the department is complete upon receipt by the department. For all other persons, service by mail or facsimile transmission plus mail is complete upon mailing, unless the executive secretary directs otherwise for specific documents. When a party or participant is represented by an attorney, service upon the attorney is considered service upon the party or participant.

Subp. 6. **Proceeding before administrative law judge.** During the time that a matter is before an administrative law judge, service and filing requirements are controlled by the rules of the Office of Administrative Hearings and by any orders issued under those rules by the administrative law judge.

7829.0500 TRADE SECRET AND PROPRIETARY INFORMATION.

Subpart 1. **Confidentiality protected.** Nothing in this chapter requires the public disclosure of privileged proprietary information, trade secrets, or other privileged information.

Subp. 2. **Procedure for excision.** Persons filing documents containing proprietary information, trade secrets, or other privileged information shall excise this information in all copies but the original and six copies.

Subp. 3. **Identification of excised material.** When a person classifies an entire document, or a substantial part of a document, as protected information, the person shall file a description of the excised material that includes at least the following information: the nature of the material, its authors,

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its general import, and the date on which it was prepared.

Subp. 4. **Document containing protected information.** The first page or cover page of a document containing protected information must be clearly marked in bold print "TRADE SECRET INFORMATION -- NOT FOR PUBLIC DISCLOSURE" or with words of similar import. Every page on which protected information appears must be similarly marked and the protected information must be underlined, placed in brackets, or otherwise clearly identified as the information which is to be protected from disclosure.

7829.0600 GENERAL SERVICE LIST.

Subpart 1. **Establishing list.** Persons desiring to receive notice of particular types of filings and who are qualified to intervene under part 7829.0800 shall file with the utility a written list of the types of filings they wish to receive. The utility shall maintain general service lists of persons who have filed these requests. The utility shall add to each list the persons who intervened in its last general rate case and persons on the official service list for its last filing of the same type.

Subp. 2. **Annual updating.** The utility may delete from its general service list a person who fails to respond within 30 days to an annual mailing inquiring whether that person wishes to continue receiving the filings requested.

Subp. 3. **Periodic addition.** A person may be added to the utility's general service list at any time by filing a request under subpart 1, even if the person failed to respond to an annual mailing as described in subpart 2.

Subp. 4. **Jurisdiction unaffected.** The service lists established in this part are intended to provide the earliest possible notice to persons who may be interested in a particular filing. The requirements of this part do not displace or add to legal notice requirements, and a utility's failure to comply with this part does not deprive the commission of jurisdiction over a matter of which it would otherwise have jurisdiction,

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require dismissal of a filing, or invalidate any determination made by the commission in the matter.

Subp. 5. **Party or participant status unaffected.** Inclusion on a general service list does not confer party or participant status on persons included on the list.

7829.0700 OFFICIAL SERVICE LIST.

Subpart 1. **Content.** The official service list for each proceeding consists of the names of the parties and the names of participants who have filed a written request for inclusion on the service list with the executive secretary.

Subp. 2. **Establishment and updating.** The commission shall establish the official service list at the conclusion of the initial comment period and shall mail a copy of the list to the parties and to participants who have filed written requests for inclusion. A list established before commission action on a petition for intervention must include those persons whose intervention petitions are pending. The commission shall mail an updated official service list to the parties and participants if the official service list is later expanded or reduced. The commission need not mail the official service list in proceedings when the only parties are the department and a petitioner, complainant, or respondent.

Subp. 3. **Limiting service list.** On its own motion or at the request of a party, the commission shall limit the service list to parties to the proceeding if it finds that requiring service on participants is unduly burdensome.

Subp. 4. **Name and address change.** A party or participant who wishes to change the name or address of a person receiving service on behalf of the party or participant shall provide written notice of the change to the executive secretary and to persons on the official service list.

Subp. 5. **Proceeding before administrative law judge.** In proceedings before an administrative law judge in which the judge establishes a service list, the names on that service list must remain on the official service list for the remainder of

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the proceeding.

7829.0800 PETITION TO INTERVENE.

Subpart 1. **Filing and service.** A person who desires to become a party to a proceeding shall file a petition to intervene within the time set in this chapter. The petition must be served on known parties and those persons on the utility's general service list for the matter, if applicable.

Subp. 2. **Grounds for intervention.** The petition must allege the grounds for intervention and must be granted upon a showing that: the person is specifically considered by statute to be interested in the particular type of matter at issue; the person is specifically declared by statute to be an interested party; or the outcome of the proceeding will bind or affect the person with respect to an interest peculiar to that person, as distinguished from an interest common to the public or other ratepayers in general, or the person's interests are not adequately represented by one or more other parties participating in the case.

Subp. 3. **Intervention as of right.** The department and the Office of the Attorney General, through its Residential Utilities Division, may intervene as of right in any proceeding before the commission. They become parties upon filing comments under this chapter and need not file petitions to intervene, except when the rules of the Office of Administrative Hearings require it.

Subp. 4. **Objection to intervention.** An objection to intervention must be filed within ten days of service of the petition to intervene.

Subp. 5. **Disposition of petition.** If there is no objection to intervention and a petition to intervene is not denied or suspended within 15 days of filing, the petition to intervene must be considered granted, unless the matter is referred to the Office of Administrative Hearings for contested case proceedings before the expiration of the 15-day period.

Subp. 6. **Proceeding before administrative law judge.**

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During the time that a matter is before an administrative law judge, intervention procedures are governed by the rules of the Office of Administrative Hearings and by orders issued under those rules by the administrative law judge.

7829.0900 PARTICIPANT.

A person may file comments in a proceeding before the commission without requesting or obtaining party status. A participant may also be granted an opportunity for oral presentations.

7829.1000 REFERRAL FOR CONTESTED CASE PROCEEDING.

If a proceeding involves contested material facts and there is a right to a hearing under statute or rule, or if the commission finds that all significant issues have not been resolved to its satisfaction, the commission shall refer the matter to the Office of Administrative Hearings for contested case proceedings, unless:

A. all parties waive their rights to contested case proceedings and instead request informal or expedited proceedings, and the commission finds that informal or expedited proceedings would be in the public interest; or

B. a different procedural treatment is required by statute.

7829.1100 PUBLIC HEARING.

When a public hearing is held in connection with a contested case proceeding, the commission shall, whenever possible, schedule the public hearing to be held before the evidentiary hearings.

7829.1200 INFORMAL OR EXPEDITED PROCEEDING.

Subpart 1. **When appropriate.** Informal or expedited proceedings may be used when contested case proceedings are not required, for example, when:

A. there are no material facts in dispute;

B. the parties and the commission have agreed to informal or expedited proceedings; or

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C. informal or expedited proceedings are authorized or required by statute.

Subp. 2. **Presentation of facts.** Written submissions are the preferred method of introducing facts. The commission shall allow oral presentation of facts when that can be done without compromising the rights of any person or the integrity of the proceeding. In informal proceedings, the commission shall require that factual allegations be made under oath or by affirmation when facts appear to be in dispute. In expedited proceedings, the commission shall require that factual allegations be made under oath or by affirmation and that documents filed in the proceeding be verified.

Subp. 3. **Notice.** The commission shall notify the persons on the official service list at least ten days before a meeting at which it may act on the basis of informal or expedited proceedings. Under exigent circumstances the executive secretary shall reduce the ten-day notice period.

7829.1300 MISCELLANEOUS TARIFF AND PRICE LIST FILINGS.

Subpart 1. **Summary.** A miscellaneous tariff filing and price list filing must include, on a separate page, a one-paragraph summary of the filing, sufficient to apprise potentially interested parties of its nature and general content.

Subp. 2. **Service.** The filing utility shall serve copies of each miscellaneous tariff filing on which commission action is required within 60 days, and each price list filing increasing the price of a competitive service, on the persons on the applicable general service list, on the department, and on the Residential Utilities Division of the Office of the Attorney General. For other filings, the utility may serve the summary described in subpart 1 on persons on the applicable general service list. The utility shall serve with the filing or the summary a copy of its general service list for the filing.

Subp. 3. **Content of filing subject to specific requirements.** In addition to complying with specific requirements imposed by statute or rule, miscellaneous tariff

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and price filings subject to specific filing rules must contain at least the following information:

A. the name, address, and telephone number of the utility, without abbreviation;

B. the name, address, and telephone number of the attorney for the utility, if the utility is using an attorney;

C. the date of the filing and the date the proposed rate or service change will go into effect;

D. the statute that the utility believes controls the time frame for processing the filing; and

E. the signature and title of the utility employee responsible for the filing.

Subp. 4. **Content of filing not subject to specific filing rules.** In addition to complying with any specific requirements imposed by statute, miscellaneous tariff and price list filings not subject to specific filing rules must contain at least the following information:

A. the name, address, and telephone number of the utility, without abbreviation;

B. the name, address, and telephone number of the attorney for the utility, if the utility is using an attorney;

C. the date of the filing and the date the proposed rate or service change will go into effect;

D. the statute that the utility believes controls the time frame for processing the filing;

E. the signature and title of the utility employee responsible for the filing; and

F. a description of the filing, its impact on rates and services, its impact on the utility and affected ratepayers, and the reasons for the filing.

Subp. 5. **Rejection of filing.** The commission shall reject a filing found to be substantially out of compliance with this chapter or applicable statutory requirements. ~~A miscellaneous tariff filing or price list filing not rejected within 20 days of filing must be considered accepted as to form.~~

~~Subp. 6. Initial comments. A person wishing to comment on~~

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~~a-miscellaneous-tariff-or-price-list-filing-shall-do-so-within 30-days-of-its-filing-with-the-commission.--A-person-wishing-to comment-on-one-of-the-following-noncompetitive-rate-change filings-shall-do-so-within-20-days-of-its-filing-with-the commission:--a-rate-reduction-filing,-a-cost-increase-filing,-or a-request-for-a-significant-change-in-a-condition-of-telephone service.--A-person-wishing-to-comment-on-a-new-telephone service,-competitive-or-noncompetitive,-shall-do-so-within-ten days-of-its-filing-with-the-commission.--Comments-must-be-served on-the-persons-on-the-utility's-general-service-list-for-the filing,-as-well-as-on-the-filing-utility.~

~~Subp.-7.--Petition-to-intervene.--If-a-person-who-files initial-or-reply-comments-is-not-entitled-to-intervene-in commission-proceedings-as-of-right-and-desires-full-party status,-the-person-shall-file-a-petition-to-intervene-before-the initial-or-reply-comment-period-expires.--The-intervention petition-may-be-combined-with-the-comments-on-the-filing.~

7829.1400 COMMENTS ON MISCELLANEOUS TARIFF OR PRICE LIST FILING.

Subpart 1. **Initial comments.** A person wishing to comment on a miscellaneous tariff or price list filing shall do so within 30 days of its filing with the commission. A person wishing to comment on one of the following noncompetitive rate change filings shall do so within 20 days of its filing with the commission: a rate reduction filing, a cost increase filing, or a request for a significant change in a condition of telephone service. A person wishing to comment on a new telephone service, competitive or noncompetitive, shall do so within ten days of its filing with the commission. Comments must be served on the persons on the utility's general service list for the filing, as well as on the filing utility.

Subp. 2. **Petition to intervene.** If a person who files initial or reply comments is not entitled to intervene in commission proceedings as of right and desires full party status, the person shall file a petition to intervene before the initial or reply comment period expires. The intervention

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petition may be combined with the comments on the filing.

~~Subpart 1.~~ Subp. 3. **Comments to include procedural recommendation.** A person commenting on a miscellaneous tariff or price list filing and recommending its rejection, denial, or modification shall specify whether the person believes the filing requires a contested case proceeding, informal proceeding, expedited proceeding, or some other procedural treatment, together with the person's reasons for recommending a particular procedural treatment.

Subp. ~~2.~~ 4. **Reply comments.** The utility and other persons have ten days from the expiration of the original comment period to file reply comments. Reply comments must be served on the utility and persons who have filed comments on the miscellaneous tariff filing. Reply comments must be limited in scope to the issues raised in the initial comments.

Subp. ~~3.~~ 5. **Additional comments.** If further information is required to make a fully informed decision, the commission shall require additional comments and identify specific issues requiring further development.

Subp. ~~4.~~ 6. **Comments on supplemental or corrected filings.** The commission shall provide opportunity for other parties to respond to supplemental or corrected filings when those filings raise new issues.

Subp. ~~5.~~ 7. **Comment periods varied.** Except for comment periods set by statute, the commission may vary the comment periods set by this chapter on its own motion or at the request of a person for good cause shown. The commission may delegate the authority to vary time periods to the executive secretary.

Subp. ~~6.~~ 8. **Comment periods extended at department's request.** At the request of the department, the commission shall extend the comment periods in parts 7829.1300 and 7829.1400 up to an additional 30 days, except for comment periods established by statute and except when the commission must act within 60 days to prevent proposed rate changes from going into effect.

Subp. 9. **Requests for contested case proceedings.** Upon receipt of initial comments requesting a contested case

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proceeding on a miscellaneous tariff filing or price list filing, the commission shall immediately set the matter for consideration on a date after the time period for reply comments has run. If the commission finds a contested case proceeding is required, the commission shall refer the matter to the Office of Administrative Hearings pursuant to part 7829.1000, and the utility shall file its direct testimony in question and answer form within 20 days of the commission's notice and order for hearing.

7829.1500 INFORMAL COMPLAINT.

Persons engaged in disputes with utilities may submit informal complaints by letter or other writing, by telephone, or in person. Commission staff shall accept these complaints and shall prepare a memorandum setting forth the substance of each complaint and identifying the customer, the service address, and the utility.

7829.1600 TREATMENT OF INFORMAL COMPLAINT.

Commission staff shall try to help resolve informal complaints by correspondence, mediation, arbitration, and other informal means. If the complainant desires formal action by the commission, a formal complaint must be ~~filed~~ initiated by the commission, or filed by a qualified complainant.

7829.1700 FORMAL COMPLAINT.

Subpart 1. **Content.** A formal complaint must include the following information: the name and address of the complainant; the name and address of complainant's counsel, if any; the name and address of respondent; the name and address of respondent's counsel, if known; the statute, rule, tariff, or commission order alleged to have been violated; the facts constituting the alleged violation; and the relief sought by complainant.

Subp. 2. **~~Service~~ Mailing and filing.** A formal complaint must be ~~served on~~ mailed to the respondent, the department, and the Residential Utilities Division of the Office of the Attorney General, as well as filed with the commission.

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7829.1800 INITIAL CONSIDERATION OF FORMAL COMPLAINT.

Subpart 1. **Initial commission review.** The commission shall review a formal complaint as soon as practicable to determine whether the commission has jurisdiction over the matter and to determine whether there are reasonable grounds to investigate the allegation. On concluding that it lacks jurisdiction or that there is no reasonable basis to investigate the matter, the commission shall dismiss the complaint.

Subp. 2. **Answer.** On concluding that it has jurisdiction over the matter and that investigation is warranted, the commission shall serve the complaint on the respondent, together with an order requiring the respondent to ~~grant the relief complainant requests or to show cause by answer why respondent should not be ordered to do so~~ file an answer either stating that it has granted the relief the complainant requests, or responding to the allegations of the complaint. The answer must be filed with the commission and served on the complainant, the department, and the Residential Utilities Division of the Office of the Attorney General within 20 days of service of the complaint and order.

Subp. 3. **Reply.** Replies are not required unless the answer alleges that respondent has granted the relief sought by complainant. In that case, the complainant shall file a reply within 20 days admitting or denying that relief has been granted. If the complainant fails to file the reply, the commission shall dismiss the complaint. Copies of the reply must be served on respondents, the department, and the Residential Utilities Division of the Office of the Attorney General.

Subp. 4. **Failure to answer.** If the respondent fails to answer a complaint served by the commission under subpart 2, the commission shall consider the allegations of the complaint denied~~, and issue is joined~~.

7829.1900 COMMISSION ACTION ON FORMAL COMPLAINT.

Subpart 1. **Nature of proceedings.** The commission shall deal with a formal complaint through a contested case

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proceeding, informal proceeding, or expedited proceeding.

Subp. 2. **Initial comments.** A person wishing to comment on a formal complaint shall do so within 30 days of the date of a commission order requiring an answer to the complaint. Comments must be served on the complainant, respondent, department, Residential Utilities Division of the Office of the Attorney General, and any other known parties.

Subp. 3. **Reply comments.** A commenting party has ten days from the expiration of the original comment period to file reply comments. Reply comments must be limited in scope to the issues raised in the initial comments and must be served on the complainant, respondent, department, Residential Utilities Division Of the Office of the Attorney General, and any other known parties.

Subp. 4. **Petition to intervene.** If a person who files initial or reply comments is not entitled to intervene in commission proceedings as of right and desires full party status, the person shall file a petition to intervene before the initial or reply comment period expires. The intervention petition may be combined with the comments on the complaint.

Subp. 5. **Comments to include procedural recommendation.** A person commenting on a complaint shall specify whether the person believes the matter requires a contested case proceeding, informal proceeding, expedited proceeding, or some other procedural treatment, together with the reasons for recommending a particular procedural treatment.

Subp. 6. **Additional comments.** If further information is required to make a fully informed decision, the commission shall require additional comments and identify specific issues requiring further development.

Subp. 7. **Comments on supplemental or corrected filings.** The commission shall provide opportunity for other parties to respond to supplemental or corrected filings when those filings raise new issues.

Subp. 8. **Comment periods varied.** Except for time periods set by statute, the commission may vary the comment periods

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established in this part at the request of a person for good cause shown. The commission may delegate the authority to vary time periods to the executive secretary.

Subp. 9. **Comment periods extended at department's request.** At the request of the department, the commission shall extend the comment periods established in this part up to an additional 30 days, except for comment periods set by statute.

7829.2000 ELECTRIC SERVICE AREA COMPLAINT.

Subpart 1. **Content.** A complaint alleging violation of an electric utility's assigned service area must include a map that the complainant reasonably believes to be a copy of the official service area map of an area at issue, with the area of the alleged violation clearly marked.

Subp. 2. **Service and filing.** A service area complaint must be served on the respondent, department, and Residential Utilities Division of the Office of the Attorney General, as well as filed with the commission.

7829.2100 COMMISSION ACTION ON SERVICE AREA COMPLAINT.

Subpart 1. **Answer.** Within ten days of service of a service area complaint, a respondent shall file an answer with the commission and serve it on the complainant, department, and Residential Utilities Division of the Office of the Attorney General.

Subp. 2. **Initial comments.** A person wishing to comment on a service area complaint shall do so within ten days of the date the person was served. Comments must be served on the complainant, respondent, department, Residential Utilities Division of the Office of the Attorney General, and any other known parties.

Subp. 3. **Petition to intervene.** If a person who files comments is not entitled to intervene in a commission proceeding as of right and desires full party status, the person shall file a petition to intervene before the initial comment period expires. The intervention petition may be combined with the comments on the complaint and must be served on those persons

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entitled to service of the comments.

Subp. 4. **Additional comments.** If further information is required to make a fully informed decision, the commission shall require additional comments and identify specific issues requiring further development.

Subp. 5. **Comments on supplemental or corrected filing.** The commission shall provide opportunity for other parties to respond to supplemental or corrected filings when those filings raise new issues.

Subp. 6. **Time for disposition.** Service area complaints must come before the commission within 15 days of filing. The commission shall issue its order within 30 days after the hearing.

7829.2200 TELEPHONE INCENTIVE PLAN FILING.

Subpart 1. **Summary.** A telephone utility filing an incentive plan under Minnesota Statutes, section 237.625, shall include, on a separate page, a brief summary of the filing, sufficient to apprise potentially interested parties of its nature and general content.

Subp. 2. **Service.** A utility filing an incentive plan under Minnesota Statutes, section 237.625, shall serve copies of the incentive plan filing on the department and the Residential Utilities Division of the Office of the Attorney General. The utility shall serve the filing or the summary described in subpart 1 on those persons on the applicable general service list and on persons who were parties to its last general rate case or incentive plan proceeding.

Subp. 3. **Challenge to form and completeness.** A person wishing to challenge the form or completeness of an incentive plan filing shall do so within ten days of its filing. The filing utility shall reply to the challenge within five days of its filing. These challenges and responses must be served on the utility, the department, the Residential Utilities Division of the Office of the Attorney General, persons on the general service list for the filing, and any other known parties.

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Subp. 4. **Rejection of filing.** The commission shall reject a filing that it finds to be substantially out of compliance with Minnesota Statutes, section 237.625, or with any other filing requirement imposed by rule or statute. An incentive plan filing not rejected within 45 days of filing is considered accepted as in substantial compliance with applicable filing requirements.

Subp. 5. **Procedural comments.** A person wishing to comment on a proposed incentive plan shall file comments within 20 days of its filing, recommending a specific procedural framework for examining the filing, including time frames for substantive comments and commission action. Procedural comments must be served on the utility, department, Residential Utilities Division of the Office of the Attorney General, persons on the general service list for the filing, and any other known parties.

Subp. 6. **Petition to intervene.** If a person desires full party status, but is not entitled to intervene in a commission proceeding as of right, the person shall file a petition to intervene before the procedural comment period expires. The intervention petition may be combined with procedural comments on the filing and must be served on those persons entitled to receive service of procedural comments.

Subp. 7. **Notice to public and ratepayers.** The utility shall give notice of the proposed incentive plan to its ratepayers and shall publish notice of the proposed plan in all newspapers of general circulation in all county seats in its service area.

Subp. 8. **Notice of public meeting.** The utility shall notify its ratepayers of public meetings on the proposed incentive plan scheduled by the commission and shall publish notice of the public meetings in all newspapers of general circulation in all county seats in its service area.

Subp. 9. **Nature of proceeding.** The commission shall deal with incentive plan filings by conducting an expedited proceeding under Minnesota Statutes, section 237.61. Following review of the procedural comments, the commission shall

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establish by order, time frames for submitting testimony and comments.

Subp. 10. **Time frame for disposition.** The commission shall approve, reject, or modify a proposed incentive plan within six months of filing. If the commission does not act within that time, the plan is considered withdrawn, unless the commission and the utility agree to extend the six-month period.

7829.2300 CLASSIFICATION PETITION.

Subpart 1. **Summary.** A telephone utility filing a classification petition under Minnesota Statutes, section 237.59, shall include on a separate page a brief summary of the filing, sufficient to apprise potentially interested parties of its nature and general content.

Subp. 2. **Service.** A utility filing a classification petition shall serve copies of the petition on the department and Residential Utilities Division of the Office of the Attorney General. The utility shall serve the petition or the summary described in subpart 1 on those persons on the applicable general service list and on those persons who were parties to its last general rate case or incentive plan proceeding, if applicable.

Subp. 3. **Challenges to form and completeness.** A person wishing to challenge the form or completeness of a classification petition shall do so within ten days of its filing. The filing utility shall reply to the challenge within five days of its filing. Challenges and responses must be served on the department, Residential Utilities Division of the Office of the Attorney General, persons on the general service list for the filing, and any other known parties.

Subp. 4. **Rejection of filings.** The commission shall reject a classification petition found to be substantially out of compliance with Minnesota Statutes, section 237.59, or with any other filing requirement imposed by rule or statute. A filing under this section not rejected within 45 days of filing is considered accepted as in substantial compliance with

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applicable filing requirements.

Subp. 5. **Initial comments.** A person wishing to comment on a classification petition shall file initial comments within 20 days of the filing. Initial comments must include a recommendation on whether the filing requires a contested case proceeding, expedited proceeding, or some other procedural treatment, together with reasons for recommending a particular procedural treatment. Initial comments must be served on the utility, department, Residential Utilities Division of the Office of the Attorney General, persons on the general service list for the filing, and any other known parties.

Subp. 6. **Petition to intervene.** If a person who files initial comments is not entitled to intervene in a commission proceeding as of right and desires full party status, the person shall file a petition to intervene before the reply comment period expires. The intervention petition may be combined with comments on the filing and must be served on those persons entitled to receive service during the comment period when the intervention petition is filed.

Subp. 7. **Reply comments.** Commenting parties have ten days from the expiration of the original comment period to file reply comments. Reply comments must be limited in scope to the issues raised in the initial comments. Reply comments must be served on the utility and on those persons who have filed initial comments.

Subp. 8. **Additional comments.** If further information is required to make a fully informed decision, the commission shall require additional comments and identify specific issues requiring further development.

Subp. 9. **Comments on supplemental or corrected filing.** The commission shall provide opportunity for other parties to respond to a supplemental or corrected filing when the filing raises new issues.

Subp. 10. **Nature of proceeding.** The commission shall deal with a classification petition by conducting an expedited proceeding under Minnesota Statutes, section 237.61, or by

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referring the matter for a contested case proceeding.

Subp. 11. **Time frame for disposition; expedited proceeding.** When the filing utility requests an expedited proceeding on its classification petition, the commission shall take final action within 60 days of the date on which the utility provides the substantive information required by statute, unless the commission finds at least one issue of material fact in dispute and refers the matter for a contested case proceeding within the same 60-day period.

Subp. 12. **Time frame for disposition; contested case proceeding.** When the commission conducts a contested case proceeding, it shall take final action within eight months of the utility's request for a contested case proceeding or the commission's order that contested case proceedings be held, whichever occurs earlier.

Subp. 13. **Extending disposition period.** The commission may extend the eight-month time frame set forth in subpart 12 with the agreement of all parties or upon a finding that the case cannot be completed within the required time and that there is a substantial probability that the public interest would be harmed by enforcing the eight-month time frame.

7829.2400 FILINGS REQUIRING DETERMINATION OF GROSS REVENUE REQUIREMENT.

Subpart 1. **Summary.** A utility filing a general rate case or other filing that requires determination of its gross revenue requirement shall include, on a separate page, a brief summary of the filing, sufficient to apprise potentially interested parties of its nature and general content.

Subp. 2. **Service.** A utility filing a general rate change request shall serve copies of the filing on the department and Residential Utilities Division of the office of the Attorney General. The utility shall serve the filing or the summary described in subpart 1 on the persons on the applicable general service list and persons who were parties to its last general rate case or incentive plan proceeding.

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Subp. 3. **Notice to public and governing bodies.** A utility seeking a general rate change shall give notice of the proposed change to the governing body of each municipality and county in its service area and to its ratepayers. The utility shall also publish notice of the proposed change in newspapers of general circulation in all county seats in its service area.

Subp. 4. **Challenge to form and completeness.** A party wishing to challenge the form or completeness of a general rate case filing shall do so within ten days of its filing. The filing utility shall reply to the challenge within five days of its filing. Challenges and responses must be served on the department, Residential Utilities Division of the Office of the Attorney General, persons on the general service list for the filing, and any other known parties.

Subp. 5. **Rejection of filing.** The commission shall reject a filing under this part that is found to be substantially out of compliance with Minnesota Statutes, section 216B.16 or 237.075, or other requirement imposed by rule, statute, or previous commission order. A filing under this part not rejected within 60 days of filing is considered accepted as in substantial compliance with applicable filing requirements.

Subp. 6. **Petition to intervene.** The commission shall entertain a petition to intervene until the matter is referred to the Office of Administrative Hearings for a contested case proceeding or until the commission issues a notice under part 7829.1200, subpart 3, stating its intention to decide the matter on the basis of an informal or expedited proceeding. Once a filing is referred for a contested case proceeding, the rules of the Office of Administrative Hearings control intervention rights.

Subp. 7. **Notice of hearing.** The utility shall notify its ratepayers of hearings held in connection with its rate change request in the manner directed by the commission. The utility shall publish notice of hearings on its rate change request in newspapers of general circulation in all county seats in its service area, as directed by the commission.

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7829.2500 CERTIFICATE OF NEED FILING.

Subpart 1. **Compliance.** Certificate of need applications must comply with the requirements of Minnesota Statutes, sections 216B.2421 and 216B.243; Minnesota Rules, chapters 7849, 7851, 7853, and 7855; and any other requirements imposed by rule or statute.

Subp. 2. **Summary.** A person filing a certificate of need application shall include, on a separate page, a brief summary of the filing, sufficient to apprise potentially interested parties of its nature and general content.

Subp. 3. **Service.** A certificate of need applicant shall serve copies of the filing on the department and Residential Utilities Division of the Office of the Attorney General. The applicant shall serve the filing or the summary described in subpart 2 on those persons on an applicable general service list and on those persons who were parties to its last general rate case or incentive plan proceeding, if applicable.

Subp. 4. **Publication in State Register.** The commission shall publish notice of the certificate of need filing in the State Register and shall solicit public comment on the application.

Subp. 5. **Publication in newspapers.** The applicant shall publish notice of the filing in newspapers of general circulation throughout the state.

Subp. 6. **Solicitation of comments on filing compliance.** The commission shall request comments on the filing's compliance with Minnesota Statutes, sections 216B.2421 to 216B.243, and Minnesota Rules, chapters 7849, 7851, 7853, and 7855, when it determines that comments would be helpful in evaluating the filing's substantial compliance with the requirements of those statutes and rules. The commission may delegate the authority to request these comments to the executive secretary.

Subp. 7. **Rejection of filing.** The commission shall reject a filing under this part that is found to be substantially out of compliance with Minnesota Statutes, sections 216B.2421 to

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216B.243; Minnesota Rules, chapters 7849, 7851, 7853, and 7855; and any other requirements imposed by rule or statute. A filing under this section not rejected within 15 days of filing must be considered accepted as in substantial compliance with applicable filing requirements.

Subp. 8. **Petition to intervene.** The commission shall entertain a petition to intervene until the matter is referred to the Office of Administrative Hearings for a contested case proceeding or until the commission issues a notice under part 7829.1200, subpart 3, stating its intention to decide the matter on the basis of an informal or expedited proceeding. Once a filing is referred for a contested case proceeding, the rules of the Office of Administrative Hearings shall control intervention rights.

Subp. 9. **Public hearing.** If the commission decides to act on the application through an informal proceeding, the commission shall hold a public hearing designed to encourage members of the public to express their views on the application, as required under Minnesota Statutes, section 216B.243, subdivision 4. If the commission refers the application to the Office of Administrative ~~Proceedings~~ Hearings for a contested case proceeding, the commission shall ensure that at least one public hearing is held.

7829.2600 STAFF COMMENTS.

Written comments on a filing by commission staff must be made available to those persons on the service list at the same time they are provided to the commission. If commission staff recommend action not advocated by any party, all parties must be granted oral ~~argument~~ comment at the request of any party.

7829.2700 PROCEDURE FOLLOWING REPORT OF ADMINISTRATIVE LAW JUDGE.

Subpart 1. **Exceptions to administrative law judge's report.** Except in cases subject to statutory deadlines, parties shall file and serve on the other parties any exceptions to an administrative law judge's report within 20 days of its filing. In cases subject to statutory deadlines, exceptions must be

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filed and served within 15 days of the filing of the report.

Subp. 2. **Replies to exceptions.** Except in cases subject to statutory deadlines, a party shall file and serve on all other parties any replies to exceptions within ten days of the due date for exceptions. In cases subject to statutory deadlines, replies are not permitted.

Subp. 3. **Oral argument.** Parties must be granted an opportunity for oral argument before the commission as required under Minnesota Statutes, section 14.61.

7829.2800 GENERAL NOTICE REQUIREMENT.

Matters may come before the commission only on ten days notice to the parties and those persons on the official service list. Under exigent circumstances the executive secretary shall reduce the ten-day notice period.

7829.2900 DECISION AND ORDER.

The executive secretary shall serve a decision and order of the commission on all parties and participants in the proceeding.

7829.3000 PETITION FOR REHEARING, AMENDMENT, VACATION, RECONSIDERATION, REARGUMENT.

Subpart 1. **Time for request.** A party or a person aggrieved and directly affected by a commission decision or order may file a petition for rehearing, amendment, vacation, reconsideration, or reargument within 20 days of the date the decision or order is served by the executive secretary.

Subp. 2. **Content of request.** A petition for rehearing, amendment, vacation, reconsideration, or reargument must set forth specifically the grounds relied upon or errors claimed. A request for amendment must set forth the specific amendments desired and the reasons for the amendments.

Subp. 3. **Service.** A petition for rehearing, amendment, vacation, reconsideration, or reargument, and an answer, reply, or comment, must be served on the parties and participants in the proceeding to which they relate.

Subp. 4. **Answers.** Other parties to the proceeding shall

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file answers to a petition for rehearing, amendment, vacation, reconsideration, or reargument within ten days of service of the petition.

Subp. 5. **Replies.** Replies are not permitted unless specifically authorized by the commission.

Subp. 6. **Commission action.** The commission shall decide a petition for rehearing, amendment, vacation, reconsideration, or reargument with or without a hearing or oral argument. The commission may vacate or stay the order, or part of the order, that is the subject of the petition, pending action on the petition.

Subp. 7. **Second petition not entertained.** A second petition for rehearing, amendment, vacation, reconsideration, or reargument of a commission decision or order by the same party or parties and upon the same grounds as a former petition that has been considered and denied, will not be entertained.

7829.3100 TIME PERIODS VARIED.

Except for time periods set by statute, the commission may vary the time periods established by this chapter on its own motion or at the request of a person for good cause shown. The commission may delegate the authority to vary time periods to the executive secretary.

7829.3200 OTHER VARIANCES.

Subpart 1. **When granted.** The commission shall grant a variance to its rules when it determines that the following requirements are met:

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

B. granting the variance would not adversely affect the public interest; and

C. granting the variance would not conflict with standards imposed by law.

Subp. 2. **Conditions.** A variance may be granted contingent upon compliance with conditions imposed by the commission.

Subp. 3. **Duration.** Unless the commission orders

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otherwise, variances automatically expire in one year. They may be revoked sooner due to changes in circumstances or due to failure to comply with requirements imposed as a condition of receiving a variance.

REPEALER. Minnesota Rules, parts 7830.0100; 7830.0200; 7830.0300; 7830.0400; 7830.0500; 7830.0600; 7830.0700; 7830.0800; 7830.0900; 7830.1000; 7830.1100; 7830.1200; 7830.1300; 7830.1400; 7830.1500; 7830.1600; 7830.1700; 7830.1800; 7830.1900; 7830.2000; 7830.2100; 7830.2200; 7830.2300; 7830.2400; 7830.2500; 7830.2600; 7830.2700; 7830.2800; 7830.2900; 7830.3000; 7830.3100; 7830.3200; 7830.3300; 7830.3400; 7830.3500; 7830.3600; 7830.3700; 7830.3800; 7830.3900; 7830.4000; 7830.4100; 7830.4200; 7830.4300; 7830.4400; 7847.0010; 7847.0020; 7847.0100; 7847.0110; 7847.0120; 7847.0130; 7847.0140; 7847.0150; 7847.0200; 7847.0210; 7847.0220; 7847.0230; 7847.0240; 7847.0250; 7847.0260; 7847.0270; 7847.0280; 7847.0290; 7847.0300; 7847.0310; and 7847.0320, are repealed.

Approved
by Revisor _____

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JUL 9 1992

Joan Anderson Growe
Secretary of State

11:05 AM
PRB

APPROVED AS TO FORM AND LEGALITY

July 8 1992

HUBERT H. HUMPHREY III
ATTORNEY GENERAL
BY Christine B Eller
ASSISTANT ATTORNEY GENERAL

Metropolitan Council of the Twin Cities

Preliminary Review Schedule of an Amendment to the Metropolitan Development Guide Transportation Policy Plan: Addition of Shepard Road and ECBD Bypass to the Metropolitan Highway System

The Metropolitan Council proposes to amend its Transportation Policy Plan by adding Shepard Rd. and the East Central Business District Bypass to the Metropolitan Highway System as major arterials. In accordance with Council procedures for amending regional system plans, the following tentative schedule is proposed:

June 3, 1986	Metropolitan Systems Committee approves the draft amendment for public hearing and recommends public hearing date
June 12, 1986	Metropolitan Council adopts public hearing draft amendment and sets public hearing date
July 22, 1986	Public hearing
Aug. 1, 1986	Hearing record closes
Aug. 12, 1986	Systems Committee considers amendment for adoption
Aug. 28, 1986	Council adopts the policy plan amendment

A notice of public hearing will be published. If you have questions regarding the schedule or the draft amendment, call Ann Braden of the Council's Transportation Division at 291-6525.

Public Utilities Commission

Outside Opinion Sought Regarding Amendments to the Minnesota Public Utilities Commission's Rules of General Practice and Procedure

Notice is hereby given that the Minnesota Public Utilities Commission (the Commission) is seeking information or opinions from sources outside the agency in preparing to propose the amendment of the rules governing the Commission's general practice and procedure. The amendment of the rules is authorized by Minnesota Statutes § 14.06 (1984) which requires the agency to adopt rules covering practices and procedures that apply to or affect persons outside the agency and Minnesota Statutes §§ 216A.05, subd. 1, 216B.08, and 237.10 (1984) which authorize it to adopt rules for the regulation of utilities and telephone companies.

The Commission desires to amend its rules of practice and procedure to incorporate existing practices and procedures used for the regulation of utilities and telephone companies under the Commission's jurisdiction into the rules and to state clearly and completely the procedural stages of a case as it progresses before the Commission. In order to begin the process of amending the rules, the Commission has prepared an outline of new rules. It invites interested persons to submit comments on whether this outline adequately covers the scope of procedural rules as well as on possible descriptive language for specific rules.

The Commission is considering the following topics for inclusion in its rules of practice and procedure:

- Definitions
- Scope and Construction
- Filing and Notice Requirements
  - Service
  - Filing with Commission
  - Public notice of filings
  - Public access to filings
  - Time
- Commencement of Proceedings
  - Petitions (general rate, miscellaneous rate, advisory, etc.)
  - Informal complaints
  - Formal complaints
  - Investigation on Commission's own motion
- Pleadings
  - Protests or objections to petitions
  - Answers to complaints
  - Amendments
  - Motions
  - Briefs, comments, and replies

Form of Pleadings, Briefs, Complaints, and Petitions
Accept or Reject Filing
Informal investigation procedures
  Settlements and Stipulations
  Non-contested cases
  Consumer complaint cases
Contested Case Hearings
Commission Deliberations
Written Decisions
Petitions for Rehearing or Reconsideration
Compliance Filings
Variances

Where appropriate, the existing rules of practice and procedure may be incorporated into this outline. No other draft of rule language has yet been prepared.

The Commission may negotiate the language for specific rules under this outline following the deadline for submitting comments in response to this notice. If any person wishes to be notified of negotiations in order to participate, please notify the Executive Secretary.

Written statements should be referenced to Docket No. U-999/R-86-147 and addressed to:

Mary Ellen Hennen, Executive Secretary
Minnesota Public Utilities Commission
780 American Center Building
160 East Kellogg Boulevard
St. Paul, MN 55101

Oral statements will be received during regular business hours over the telephone by Rosellen Condon at (612) 296-2357 and in person at the above address.

All statements of information and opinion shall be accepted until May 15, 1986. Any written material received by the Commission shall become part of the rulemaking record to be submitted to the Attorney General or Administrative Law Judge in the event that the rules are adopted.

March 31, 1986

Mary Ellen Hennen
Executive Secretary

Department of Transportation

Street and Highway Routes Designated and Permitted to Carry the Gross Weights Allowed under Minnesota Statutes § 169.825

Whereas, the Commissioner of Transportation has made his Order No. 68884 as amended by Orders Nos. 69226, 69269, 69270, 69344, 69353, 69595, 69770, 69796, 70006, 70031, 70152, 70455, 70520, 70580, 70652, 70698, 70747, 70749, and 70765 designating and permitting certain street and highway routes, or segments of those routes, to carry the gross weights allowed under Minnesota Statutes § 169.825, and

Whereas, the Commissioner has determined that the additional following routes, or segment of routes, should be designated to carry the gross weights allowed under Minnesota Statutes § 169.825.

IT IS HEREBY ORDERED that Commissioner of Transportation Order No. 68884 is amended this date by adding the following designated streets and highway routes, or segment of routes, as follows:

COUNTY ROADS

Nobles—C.S.A.H. 33 from South Jct. T.H. 60 to North Jct. T.H. 60 (12 month).
[Note: The effective date of 5-15 established by Order 69344 has been removed.]

March 17, 1986

Richard P. Braun
Commissioner

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
PUBLIC UTILITIES COMMISSION

In the Matter of a Proposal to Adopt New Rules of Practice and Procedure	DOCKET NO. P-999/R-86-147 DECLARATION OF COUNSEL

I, Margie Hendriksen, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rules and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, ch. 2010 have been followed. For Attorney General billing purposes, the four-digit docket client code is 0729.

Margie Hendriksen
Special Assistant
Attorney General

Statutory Authority 216A.05
Legislative and quasi judicial
nature of functions shall prescribe such
rules and issue such orders
subd 5 - Hearings upon petition
see authority attached

end of comment period March 11, 1992

no date on Notice of Intent - O.K
just states signed

~~Findings of fact - consigned~~ must be
signed

many changes to rules

7829.0600 subd 2 Commission may delete

MINNESOTA public utilities commission

June 22, 1992

Rules Review Division
Office of the Attorney General
Suite 200, Capitol Office Building
525 Park Street
St. Paul, MN 55103

Re: In the Matter of the Proposed Rules Governing Practice and Procedure, Minn. Rules, parts 7829.0100 through 7829.3200, Docket No. U-999/R-86-147

To Whom It May Concern:

On May 27, 1992 the Minnesota Public Utilities Commission adopted the above-captioned rules, repealed the old rules of practice and procedure, Minn. Rules, parts 7830.0100 through 7830.4400, and repealed the existing rles governing procedures for acting on applications for certificates of need for large energy facilities, Minn. Rules, parts 7847.0010 through 7847.0320. Enclosed for your review are the following:

1. Rules as adopted (original and three copies).

2. Findings of Fact, Conclusions, and Order Adopting Rules.

3. Resolution Adopting Rules and Certificate of Resolution Adopting Rules.

4. Notice of Intent to Solicit Outside Opinion

5. Authorization to Proceed with Adoption of Rules Without Public Hearing and Certificate of Authorizing Resolution.

6. Notice of Intent to Adopt Rules Without a Public Hearing and Notice of Intent to Adopt Rules With a Public Hearing if Twenty-five or More Persons Request a Hearing as published

7. Comments received in response to the solicitation of outside opinion and comments received during the comment period.

8. Notice of Intent to Adopt Rules Without a Public Hearing and Notice of Intent to Adopt Rules With a Public Hearing if Twenty-five or More Persons Request a Hearing, as mailed.

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MINNESOTA public utilities COMMISSION

9. Affidavit of Mailing the Notice of Intent to Adopt Rules Without a public Hearing and Certificate of Mailing List.

10. Rules as proposed with the Revisor of Statutes Certificate of Approval for publication.

11. Statement of Need and Reasonableness.

12. Declaration of Counsel.

Please note that the Commission did not receive any requests to be notified of submission of the rules to the Attorney General.

Very truly yours,

Carol Casebolt

Carol Casebolt
Staff Attorney
(612) 296-6029

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mission. The code of conduct must include standards to preserve the quasi-judicial function of the commission.

The commission shall adopt emergency rules to implement this subdivision.

History: *1986 c 409 s 5*

216A.04 EXECUTIVE SECRETARY; EMPLOYEES.

Subdivision 1. **Selection of executive secretary.** The commission shall appoint an executive secretary, not a member, who shall be in the unclassified service of the state and shall serve at the pleasure of the commission. The executive secretary shall take, subscribe and file an oath similar to that required of the commissioners, and shall be subject to the same disqualifications as commissioners.

Subd. 1a. **Powers and duties of the executive secretary.** The executive secretary shall:

(1) Cause to be kept full and correct records of all transactions and proceedings of the commission;

(2) Appoint, subject to chapter 43A and the approval of the commission, all other classified employees of the commission and supervise and direct their activities;

(3) Have custody of the seal of the commission;

(4) Serve as the administrative officer of the commission with responsibility for personnel, budget and other administrative details related to the work of the commission or as required by state law;

(5) Prepare orders, reports, and other materials as assigned by the commission and recommend to the commission such measures as may be appropriate to achieve the objectives of the commission;

(6) Advise the commission of its financial position and recommend a budget for its approval; and

(7) Perform other duties as the commission directs.

Subd. 2. **Acting secretary.** The commission may designate any responsible employee to serve as acting secretary in the absence of the secretary.

Subd. 3. **Officers and employees.** The commission may establish other positions in the unclassified service if the positions meet the criteria of section 43A.08, subdivision 1a, clauses (a) to (g). The commission may employ other persons as may be necessary to carry out its functions.

Hearing reporters may provide transcripts of proceedings before the commission to persons requesting transcripts who pay a reasonable charge therefor to the reporter. The amount of the charge shall be fixed by the commission and retained by the reporter, any other law to the contrary notwithstanding.

History: *1967 c 864 s 4; 1971 c 74 s 1; 1971 c 646 s 1; 1973 c 35 s 44; 1980 c 614 s 106-108; 1981 c 210 s 54; 1982 c 560 s 51*

216A.05 FUNCTIONS AND POWERS.

Subdivision 1. **Legislative and quasi-judicial nature of functions.** The functions of the commission shall be legislative and quasi-judicial in nature. It may make such investigations and determinations, hold such hearings, prescribe such rules and issue such orders with respect to the control and conduct of the businesses coming within its jurisdiction as the legislature itself might make but only as it shall from time to time authorize. It may adjudicate all proceedings brought before it in which the violation of any law or rule administered by the department is alleged.

Subd. 2. **Powers generally.** The commission shall, to the extent prescribed by law:

(1) Investigate the management of all warehouse operators and telegraph companies, the manner in which their businesses are conducted and the adequacies of the services which they are affording to the public, and make all appropriate orders relating to the continuation, termination or modification of all services and facilities with a view to properly promoting the security and convenience of the public.

(2) Review and ascertain the reasonableness of tariffs of rates, fares and charges, or any part or classification thereof, and prescribe the form and manner of filing, posting and publication thereof.

(3) Prescribe uniform systems of keeping and rendering accounts and the time within which such systems shall be adopted.

(4) Order the issuance of franchises, permits or certificates of convenience and necessity.

Subd. 3. **Manner of fact finding.** The commission may:

(1) Subpoena, in the same manner a district court summons is served, at such time and place as it may designate, any books, papers or accounts kept by any regulated business within or without the state, or compel production of verified copies in lieu thereof.

(2) Prepare all forms or blanks for the purpose of obtaining information which it may deem necessary or useful in the proper exercise of its authority and duties in connection with regulated businesses, and prescribe the time and manner within which such blanks and forms shall be completed and filed with it.

(3) Inspect, at all reasonable times, and copy the books, records, memoranda, correspondence or other documents and records of any business under its jurisdiction.

(4) Examine, under oath, any officer, agent or employee thereof in relation to its business and affairs.

Subd. 4. **Performance of functions of public utilities commission.** The commission shall exercise each and every legislative function imposed by law on it.

Subd. 5. **Hearings upon petitions.** With respect to those matters within its jurisdiction the commission shall receive, hear and determine all petitions filed with it in accordance with the rules of practice and procedure promulgated by the commission, and may investigate, hold hearings and make determinations upon its own motion to the same extent, and in every instance, in which it may do so upon petition.

Subd. 6. **Operation with regard to federal law.** The commission is authorized:

(1) To cooperate with all federal agencies for the purpose of harmonizing state and federal regulations within the state to the extent and in the manner deemed advisable.

(2) To conduct joint hearings with any federal agency or commission within or without the state and participate in any proceedings before any federal agency or commission when it considers such participation advisable and in the interest of the people of this state.

(3) To nominate members to any joint board as provided by federal acts.

History: *1967 c 864 s 5; 1969 c 1031 s 2; 1971 c 25 s 67; 1976 c 166 s 10; 1977 c 346 s 11; 1977 c 364 s 3; 1980 c 614 s 109,110; 1986 c 444; 1986 c 468 s 2*

216A.06 COMMISSIONER.

Subdivision 1. **Establishment of office, appointment.** The office of commissioner of the department of public service is hereby established. The commissioner shall be appointed by the governor under the provisions of section 15.06.

Subd. 2. [Repealed, 1977 c 305 s 46]

History: *1967 c 864 s 6; 1976 c 166 s 11; 1977 c 305 s 27; 1986 c 444; 1987 c 186 s 15*

216A.07 COMMISSIONER; POWERS AND DUTIES.

Subdivision 1. **Administrative duties.** The commissioner shall be the executive and administrative head of the public service department and shall have and possess all the rights and powers and perform all the duties relating to the administrative function of the department as set forth in this chapter. The commissioner may:

(1) Prepare all forms or blanks for the purpose of obtaining information which the commissioner may deem necessary or useful in the proper exercise of the authority and duties of the commissioner in connection with regulated businesses;

CERTIFICATE OF AUTHORIZING RESOLUTION
Docket No. U-999/R-86-147

I, Richard R. Lancaster, do hereby certify that I am the Executive Secretary of the Minnesota Public Utilities Commission (Commission), an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Commission duly and properly called and held on the 19th day of November, 1991, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified:

BE IT RESOLVED, that the Executive Secretary of the Minnesota Public Utilities Commission (Commission) is hereby granted the authority to sign and to give notice of the Commission's intent to repeal existing Minn. Rules, parts 7830.0100 through 7830.4400 and Minn. Rules, parts 7847.0010 through 7847.0320, and to adopt, without a public hearing, the attached rules governing Commission practice and procedure, Minn. Rules, part 7830.0100 through 7830.3200. The Executive Secretary is granted authority to give notice to all persons who have registered their names with the Commission for that purpose and to publish the notice and the rules in the State Register, and to perform any acts incidental thereto, including making any form changes in the rules that the Revisor of Statutes requires the Commission to make in order to obtain the Revisor's certification as required by Minn. Stat. § 14.07, subd. 2 (1990).

BE IT FURTHER RESOLVED, that in the event a public hearing becomes necessary, the Executive Secretary is hereby granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as to perform any and all acts incidental thereto, including but not limited to signing an Order for and Notice of Hearing, as well as acting as the Commission's representative at all hearings.

IN WITNESS WHEREOF, I have hereunto subscribed my name this day of November 1991.

Richard R. Lancaster
Executive Secretary

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To Patty Wolfe	From Carol Casbolt
Co.	Co. PUC
Dept.	Phone #
Fax # 297-2576	Fax #

AUTHORIZATION TO PROCEED WITH ADOPTION AND REPEAL OF RULES
WITHOUT A PUBLIC HEARING
Docket No. U-999/R-86-147

BE IT RESOLVED, that the Executive Secretary of the Minnesota Public Utilities Commission (Commission) is hereby granted the authority to sign and to give notice of the Commission's intent to repeal existing Minn. Rules, parts 7830.0100 through 7830.4400 and Minn. Rules, parts 7847.0010 through 7847.0320, and to adopt, without a public hearing, the attached rules governing Commission practice and procedure, Minn. Rules, part 7830.0100 through 7830.3200. The Executive Secretary is granted authority to give notice to all persons who have registered their names with the Commission for that purpose and to publish the notice and the rules in the State Register, and to perform any acts incidental thereto, including making any form changes in the rules that the Revisor of Statutes requires the Commission to make in order to obtain the Revisor's certification as required by Minn. Stat. § 14.07, subd. 2 (1990).

BE IT FURTHER RESOLVED, that in the event a public hearing becomes necessary, the Executive Secretary is hereby granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as to perform any and all acts incidental thereto, including but not limited to signing an Order for and Notice of Hearing, as well as acting as the Commission's representative at all hearings.

Darrel Peterson
Chair

RESOLUTION ADOPTING AND REPEALING RULES

Docket No. U-999/R-86-147

BE IT RESOLVED, that the Minnesota Public Utilities Commission (Commission) hereby approves and adopts new rules governing practice and procedure and repeals the existing rules governing practice and procedure, Minn. Rules, parts 7830.0100 through 7830.4400, and the existing rules governing procedures for acting on applications for certificates of need for large energy facilities, Minn. Rules, parts 7847.0010 through 7847.0320, pursuant to the authority vested in the Commission by Minn. Stat. §§ 14.06; 216A.05, subds. 1 and 5; and 237.10 (1990).

BE IT FURTHER RESOLVED, that prior to publishing the rules as adopted in the State Register, the Executive Secretary is authorized to make any form changes in the rules that the Revisor of Statutes requires the Commission to make in order to obtain the Revisor's Certificate as required by Minn. Stat. § 14.28 (1990).

BE IT FURTHER RESOLVED, that the Commission adopts the attached Findings of Fact, Conclusions, and Order Adopting Rules and Repealing Rules and that the Executive Secretary is hereby authorized to sign the above-mentioned document on behalf of the Commission and to perform the necessary acts to provide that the rule shall have the force and effect of law.

Donald A. Storm
Officer of the Commission
Chairman

Dee Knaak
Attest by one other Commission member

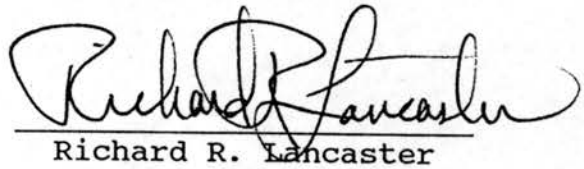
CERTIFICATE OF RESOLUTION ADOPTING AND REPEALING RULES

Docket No. U-999/R-86-147

I, Richard R. Lancaster, do hereby certify that I am the Executive Secretary of the Minnesota Public Utilities Commission (Commission), an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Commission duly and properly called and held on the 27th day of May, 1992, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified:

> BE IT RESOLVED, that the Minnesota Public Utilities Commission (Commission) hereby approves and adopts new rules governing practice and procedure and repeals the existing rules governing practice and procedure, Minn. Rules, parts 7830.0100 through 7830.4400, and the existing rules governing procedures for acting on applications for certificates of need for large energy facilities, Minn. Rules, parts 7847.0010 through 7847.0320, pursuant to the authority vested in the Commission by Minn. Stat. §§ 14.06; 216A.05, subds. 1 and 5; and 237.10 (1990).
>
> BE IT FURTHER RESOLVED, that prior to publishing the rules as adopted in the State Register, the Executive Secretary is authorized to make any form changes in the rules that the Revisor of Statutes requires the Commission to make in order to obtain the Revisor's Certificate as required by Minn. Stat. § 14.28 (1990).
>
> BE IT FURTHER RESOLVED, that the Commission adopts the attached Findings of Fact, Conclusions, and Order Adopting Rules and Repealing Rules and that the Executive Secretary is hereby authorized to sign the above-mentioned document on behalf of the Commission and to perform the necessary acts to provide that the rule shall have the force and effect of law.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 11th day of June, 1992.



Richard R. Lancaster
Executive Secretary

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner

In the Matter of the Proposed New Rules Governing Practice and Procedure

ISSUE DATE: June 11, 1992

DOCKET NO. U-999/R-86-147

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING AND REPEALING RULES

PROCEDURAL HISTORY

I. Proceedings to Date

The above-entitled matter came on for decision on the 27th day of May, 1992. After affording all interested persons the opportunity to present written and oral data, statements, and arguments to the Commission, in accordance with statutory requirements regarding the adoption of noncontroversial rules, after considering the Statement of Need and Reasonableness, after considering all of the evidence adduced upon the records, files and proceedings herein, the Commission, being fully advised in the premises, hereby adopts the following Findings of Fact, Conclusions, and Order:

FINDINGS AND CONCLUSIONS

II. Compliance with Formal Rulemaking Requirements

A notice of hearing, and a notice of intent to adopt the rules without hearing if no requests for hearing were received, were published in the State Register on February 10, 1992. Both notices were sent by mail to all persons on the list maintained by the Commission pursuant to Minn. Stat. §§ 14.14, subd. 1a and 14.22 (1992) on February 4, 1992.

The Statement of Need and Reasonableness was prepared prior to mailing and publication of the notices and was made available to the public. All persons were given the opportunity to submit comments on the rule for 30 days after notice of proposed rulemaking. The 30 day comment period, as set out in the notice, expired on March 11, 1992.

During the comment period the Commission received two requests for public hearing, both of which were subsequently withdrawn. Therefore, the Commission did not receive requests for a public hearing from 25 or more persons which were not withdrawn. No requests for notice of submission to the Attorney General were received by the Commission.

During the comment period the Commission received written comments from 10 persons. The Commission finds that modifications to the proposed rules are justified by the record in this proceeding, as set forth below.

III. Modifications to the Rules as Published

A. Limit Parties to One Request for Reconsideration

A commenting party argued that the proposed rules should limit parties to one request for reconsideration on the same issue. The Commission agrees. Second requests for reconsideration on the same issue undermine the finality of Commission decisions and misallocate resources.

Therefore, part 7829.3000 will be changed to include a new subpart, subpart 7, reading as follows:

> A second petition for rehearing, amendment, vacation, reconsideration, or reargument of a commission decision or order by the same party or parties and upon the same grounds as a former petition which has been considered and denied, will not be entertained.

B. Expedite Consideration of Filings on Which a Contested Case is Requested

One commenting party suggested adding a provision to the section on miscellaneous tariff and price list filings to ensure that complex or controversial filings are promptly identified and put on track for adequate development. The Commission believes this would increase efficiency and will therefore add a subpart 7 to part 7829.1400, providing as follows:

Upon receipt of initial comments requesting a contested case proceeding on a miscellaneous tariff filing or price list filing, the Commission shall immediately set the matter for consideration on a date after the time period for reply comments has run. If the Commission finds a contested case proceeding is required, the matter shall be referred to the Office of Administrative Hearings pursuant to Rule 7829.1000, and the utility shall file its direct testimony in question and answer form within 20 days of the Commission's notice and order for hearing.

C. Eliminate Automatic Acceptance as to Form for Miscellaneous Tariff and Price List Filings

The rules as published provide that miscellaneous tariff and price list filings are deemed accepted as to form if not rejected within 20 days of filing. Part 7829.1300, subp. 5. Since initial comments on most of these filings are not due for 30 days, however, the Commission would not have the benefit of parties' comments when the filings were deemed approved as to form.

Since the Commission receives some 1,000 miscellaneous tariff and price list filings a year, it is unrealistic to believe staff will invariably spot filing defects within 20 days. Shortening the initial comment period is unrealistic, since in many cases even 30 days will be a tight time frame for the parties. Adding a comment period on form would be too cumbersome, adding another layer to a process the rules are designed to streamline. The Commission will therefore retain the flexibility to reject these filings for failure to comply with applicable filing requirements after initial comments are received. The Commission will delete the following language from part 7829.1300, subp. 5:

A miscellaneous tariff or price list filing not rejected within 20 days of filing must be considered accepted as to form.

D. Clarify Standing to File Formal Complaint

A commenting party pointed out that the language in the proposed rules on informal complaints might lead people who did not have an absolute right to a Commission hearing to believe that they did. Under the Public Utilities Act and the Telecommunications Act, private individuals generally cannot file a complaint and receive a hearing as of right. They must either produce signatures from a specified number of additional customers or convince the Commission to take up the complaint on its own motion. Minn. Stat. §§ 216B.17; 237.081 (1990). To avoid

confusion, the Commission will change the last sentence in part 7829.1600 to read as follows:

> If the complainant desires formal action by the commission, a formal complaint must be (delete filed, and insert) initiated by the commission, or filed by a qualified complainant.

E. Clarify that Commission, Not Complainant, Serves Formal Complaint

A commenting party pointed out that the proposed rules could be confusing about when a utility is required to respond to a formal complaint. The rules talk about the complainant serving the complaint on the utility, but this is just courtesy service. The utility is not required to respond unless the Commission decides to require it. To avoid any confusion, the Commission will use the term mailing, rather than service, when requiring a complainant to provide a copy of the complaint to the utility. That change will appear in part 7829.1700, subp. 2, and in the heading of that subpart.

F. Eliminate "Show Cause" Language from Formal Complaint Provisions

A commenting party was concerned about the proposed language in part 7829.1700, subp. 2, requiring the respondent in a formal complaint proceeding to "grant the relief complainant requests or to show cause by answer why respondent should not be ordered to do so. . . ." The Company's concern was that the rule might somehow be read to compress to 20 days the 120-day period a utility is allowed to initiate a rate proceeding under Minn. Stat. § 216B.17, subd. 8 (1). To avoid confusion, the Commission will substitute the following language for that quoted above:

> file an answer either stating that it has granted the relief the complainant requests, or responding to the allegations of the complaint.

G. Clarify that Service Area Complainant Need Only File What Is Believed to be Official Service Area Map

A commenting party was concerned about part 7829.2000, subpart 1's requirement that complaints alleging assigned service area violations include a copy of the official service area map. The party pointed out that often parties are not sure maps in their possession are identical to official service area maps on file with the Commission. This is true. The Commission will therefore change the language of part 7829.2000 to read as follows:

A complaint alleging violation of an electric utility's assigned service area must include a map which the complainant reasonably believes to be a copy of the official service area map of the area at issue, with the area of the alleged violation clearly marked.

H. Clarify that Filings May be Delivered in Person Without Permission from the Executive Secretary

The new rules provide that documents are considered filed upon receipt, not upon mailing or deposit with a private delivery service. The new rules try to accommodate special needs by allowing the Executive Secretary to permit fax filings when necessary and to permit filing to date from mailing when time constraints permit it. That portion of the proposed rules reads as follows:

> Documents are filed with the commission when they are received in the commission offices during regular business hours. Specific documents may be filed by facsimile transmission or filed when mailed or delivered in person, if the executive secretary so directs.
>
> Part 7829.0400, subp. 1.

A commenting party noted that documents delivered in person would be considered filed upon receipt and that no special permission would be necessary. The Commission agrees, and will change the subpart quoted above to eliminate the words "or delivered in person."

I. Clarify that Parties May Ask for Specific Filings to be Considered Filed upon Mailing or Facsimile Transmission

Two commenting parties suggested changing the language which permits facsimile filings and allows specific filings to be considered filed upon mailing "if the executive secretary so directs" to make it clear that parties may ask the Executive Secretary to take these steps. To avoid confusion, the Commission will change the language quoted above to "with the consent of the Executive Secretary." Part 7829.0400, subp. 1.

J. Broaden Intervention Standard

The rules as noticed would allow a person to intervene in a proceeding upon showing that

> the person is specifically considered by statute to be interested in the particular type of matter at issue;

the person is specifically declared by statute to be an interested party; or the outcome of the proceeding will bind or affect the person with respect to an interest peculiar to that person, as distinguished from an interest common to the public or other ratepayers in general.

Part 7829.0800, subp. 2.

Two commenting parties argued that this standard was too stringent. The Commission agrees.

The Commission has traditionally taken an inclusive approach to intervention, granting petitions from groups representing senior citizens, environmentalists, low income persons, large business users, and others with special perspectives. The Commission has generally found that the specialized interests of these persons would not be adequately represented by other parties in the proceeding. The language in bold print will be added to codify existing practice:

the person is specifically considered by statute to be interested in the particular type of matter at issue; the person is specifically declared by statute to be an interested party; the outcome of the proceeding will bind or affect the person with respect to an interest peculiar to that person, as distinguished from an interest common to the public or other ratepayers in general, **or the person's interests are not adequately represented by one or more other parties participating in the case.**

K. Require Service on the Department of Public Service at the Same Time Documents are Filed with the Commission

The Department of Public Service asked that the service provisions of the proposed rules be changed to require that service on the Department means receipt. Under the rules, service is complete upon mailing, unless the Executive Secretary directs otherwise for a particular filing or a particular proceeding. Since the Department comments on every filing, it needs as much lead time as possible to manage its workload and produce quality comments in every case. The Commission will therefore add the language in bold print to part 7829.0400, subp. 5:

. . . . Service may be accomplished by first class mail or by delivery in person, unless otherwise provided by law or commission order. Service may also be accomplished by facsimile transmission, followed by first class mail. **Service on the Department is complete upon receipt by the Department. For all**

other persons, [s]ervice by mail or facsimile transmission plus mail is complete upon mailing, unless the Executive Secretary directs otherwise for specific documents. . . .

L. Clarify that Defective Service on General Service List Does Not Invalidate Commission Decision or Require Dismissal of the Filing

The new rules require utilities to serve copies of initial filings on general service lists made up of people who have requested copies of such filings. The purpose of this requirement is to provide the earliest possible notice to persons who may have an interest in a particular filing. The new rules already state that failing to serve the general service list does not affect Commission jurisdiction, part 7829.0600, subp. 4. Two commenting parties suggested adding language to make it even clearer that jurisdiction is unaffected, and that the Commission is not obligated to dismiss a filing for failure to comply with general service list requirements.

To eliminate any ambiguity, the Commission will add the language in bold print to part 7829.0600, subp.4.

. . . . The requirements of this part do not displace or add to legal notice requirements, and a utility's failure to comply with this part does not deprive the commission of jurisdiction over a matter of which it would otherwise have jurisdiction, **require dismissal of a filing, or invalidate any determination made by the commission in such a matter.**

M. Simplify Language on Answering Formal Complaints

The new rule, like the old one, provides that if a utility fails to answer a formal complaint, the Commission considers the allegations of the complaint denied. Part 7829.1800, subp. 4. The new rule uses the language "issue is joined." A commenting party pointed out that language adds nothing to the rule and is potentially confusing. The Commission will delete the phrase.

N. Move Two Subparts from 7829.1300 to 7829.1400

Two commenting parties thought the new rules did not require persons filing initial comments on miscellaneous tariff and price list filings to serve those comments on the utility. Part 7829.1300, subp. 6 does require service on the utility. The Commission believes the placement of that requirement is confusing, and will therefore move subparts 6 and 7 of part 7829.1300 to the next part, part 7829.1400, as subparts 1 and 2.

O. Clarify that Right to a Hearing Precedes Right to Contested Case Proceedings

One commenting party pointed out that the language of part 7829.1000 might be misread to create a right to a hearing whenever material facts were contested, even if the person requesting a hearing did not have an independent statutory right to a hearing. To remove any ambiguity, the Commission will add the language in bold print to the introductory clause of part 7829.1000:

> If a proceeding involves contested material facts, **and there is a right to a hearing under statute or rule,** or the commission finds that all significant issues have not been resolved to its satisfaction, the commission shall refer the matter to the Office of Administrative Hearings for contested case proceedings, unless: . . . .

P. Clarify that the "Oral Argument" Referred to in Part 7829.2600 Need not be Formal Legal Argument

The Commission finds that the use of the term "oral argument" in part 7829.2600 might be confusing to parties, who are accustomed to calling all but their most formal oral statements to the Commission "comments." The Commission will substitute "oral comments" for "oral argument" to avoid potential confusion.

IV. Finding of No Substantial Change

The Commission finds that none of the above changes constitute substantial changes because none of them will affect classes of persons who could not reasonably have been expected to comment on the proposed rules as originally noticed, none of them introduce significant new subject matter, and none of them are major substantive changes.

V. Proposed Changes Not Adopted

The Commission has considered and rejected the proposed changes set forth below.

A. Service of Assigned Service Area Complaints on the Residential Utilities Division of the Office of the Attorney General Still Required

One commenting party recommended eliminating the requirement to serve copies of assigned service area complaints on the Residential Utilities Division of the Office of the Attorney

General (RUD-OAG). Part 7829.2000, subp. 2. The party pointed out that service area disputes often involve commercial or industrial customers, not residential customers, and assumed the RUD-OAG would not be interested in those complaints.

The gain or loss of a major commercial or industrial customer, and the amount of compensation paid for such an account, can have a profound impact on residential and small business rates. The Commission will therefore retain the requirement that all assigned service area complaints be served on the RUD-OAG.

B. Service of Every Filing on Every County and Municipality in Utility's Service Area Not Required

One party suggested changing the rules to require that all filings be served on the governing body of each county and municipality in the filing utility's service area. The rules require such service only in general rate cases. Part 7829.2400, subp. 3. The Commission finds expanding the requirement to every filing would be onerous and unnecessary.

There are 87 counties and 856 municipalities in Minnesota. The Commission receives over 1,000 filings a year. Under the party's proposal local governments would be flooded with filings in which they had little or no interest, and utilities would be burdened with massive mailings every time they transacted business with the Commission. Local governments are adequately protected by the rule provisions requiring that they be notified of general rate cases and allowing them to place themselves on the general service list for specific types of filings. The Commission therefore will not adopt the proposed change.

C. Saturdays, Sundays, and Legal Holidays Not Excluded from 10-Day Notice Period

Two parties recommended that the 10-day standard notice of Commission meetings, part 7829.2800, be changed to exclude Saturdays, Sundays, and legal holidays. Given the short time frames within which the Commission must act and the need for scheduling flexibility, a longer notice period is unworkable. The Commission will therefore not adopt the proposed change, but will continue trying to provide as much advance notice of Commission meetings as possible.

D. Variances Not Automatically Extended upon Application for Extension

The proposed rules provide that variances expire automatically in one year, unless the Commission orders otherwise. Part 7829.3200, subp. 3. One party suggested changing the language to

provide that variances remain in effect while applications to extend them are pending, to avoid disrupting the operation of variances that are extended.

The Commission believes the same result can be accomplished by filing for a variance extension well in advance or by filing a request for an interim extension when requesting a variance extension. These two approaches are more consistent than automatic extensions with the purposes of the new rule, which are explained in the Statement of Need and Reasonableness as follows:

> It [the one year limit] reinforces the principle that variances should be the exception, not the rule, and ensures that no company will operate out of compliance with Commission rules inadvertently. . . ." The one-year limit will also help alert the Commission when its substantive rules should be changed. If variances to a particular rule are requested year after year, it will be clear that changing the rule should be considered.

The Commission therefore will not adopt the proposed change.

E. General Service List Requirement Retained

One commenter suggested deleting the requirement that utilities serve copies or summaries of their filings on a general service list made up of people who have requested notice of filings of particular types. Part 7829.0600. In the alternative, the party suggested deleting the requirement for filings relating to competitive services. The Commission finds that the broad, early notice of filings provided by the general service list requirement is the most practical and reasonable way to avoid the delays that occur when interested persons learn of a filing late in the process and attempt to participate. The Commission will therefore retain the requirement.

F. General Service List Requirement Not Scaled Down for Competitive Filings

One telephone company suggested scaling down the general service list requirement for competitive telephone filings to include only persons who intervened in the company's "last filing of the same type." The company particularly objected to including on the list its competitors and the intervenors in its last general rate case.

The Commission finds it would be premature to establish different general service list requirements for competitive and noncompetitive telephone filings at this time. The regulation of

competitive telephone services is currently in transition. The legislation establishing streamlined regulation for such services will be automatically repealed on August 1, 1994. Until the Commission has firm policy guidance from the legislature on the treatment of competitive telephone services, the Commission believes it should apply to those filings the same general service list requirements that apply to all other filings.

If a company electing streamlined regulation thinks the intervenors in its last general rate case are no longer interested in its filings, it can ask them, either in a special mailing or in an annual mailing for that purpose. Part 7829.0600, subp. 2. This is not an onerous undertaking, and it allows the company to trim its service list without compromising the goal of providing early notice of filings to potentially interested persons. Similarly, there is no apparent harm in allowing competitors to place themselves on one another's general service lists, and it does promote the overall goal of effective early notice to potentially interested persons.

G. Attorney Identification Requirement Retained

One commenting party suggested eliminating the requirement that miscellaneous tariff and price list filings give the name, address, and telephone number of the attorney for the utility, if the utility is using an attorney. Part 7829.1300, subp. 4. The commenter thought the utility should be able to use a single contact person for each filing, with that person referring any legal questions to the attorney handling the filing.

The Commission will retain the attorney identification requirement. If a utility is not using an attorney for a particular filing, the requirement does not apply. If the utility is using an attorney, it is more efficient for the filing itself to identify him or her than for the filing to point to a general contact person who will do so. This is especially true in light of the tight time frames that apply to most filings.

H. Initial Comment Period for Competitive Filings Not Shortened

One commenter found it odd that the comment periods for some competitive telephone filings are as long as those for noncompetitive filings and suggested reducing them to further the goal of streamlined regulation. Part 7829.1400. The Commission finds this is not practicable, given the time constraints that apply to competitive filings.

The statutory time frames for competitive filings are so short it is impossible to have a meaningful comment period before they go into effect. For example, the effective date for language change

filings is one day; for new services, ten days; for price decreases, ten days; for changes in terms and conditions of service, ten days. The statute assumes, and these rules assume, that most competitive filings will take effect before the Commission acts on them. (It is also assumed that egregious problems requiring immediate Commission action will be spotted and dealt with.)

The comment process is still important, though, since the Commission can make any price increase refundable by acting within 60 days and can reject any other price change or change in terms or conditions of service upon finding the change unfair, unjust, or unreasonable. Minn. Stat. § 237.60 (1990). It is therefore important for the comment periods on these filings to be long enough to allow meaningful comment. The Commission will therefore retain the longer comment periods of the proposed rules.

I. "Contested Material Facts" Standard Retained for Referral to Contested Case Proceeding

Three commenting parties suggested the Commission retain the discretion to resolve for itself contested issues of material fact, instead of referring them to the Office of Administrative Hearings. The new rules provide that the Commission will refer such cases for contested case proceedings, with two exceptions: 1) if all parties waive their rights to contested case proceedings and the Commission finds less formal proceedings to be in the public interest, or 2) if a different procedural treatment is required by statute. Part 7829.1000. Three commenting parties suggest that this gives the Commission less flexibility than it now has. The Commission disagrees.

The Commission currently refers cases for contested case proceedings whenever it is convinced that there are material facts in dispute, except when expedited proceedings are authorized by statute. Minn. Stat. § 237.61 (1990). Since contested case proceedings are expensive and time-consuming, the Commission first attempts to narrow the issues and clarify the facts, to avoid ordering a contested case when material facts only <u>appear</u> to be in dispute. If one or more material facts really are in dispute, however, the Commission believes contested case proceedings are required.

J. Provision Allowing Department to Extend Certain Comment Periods as of Right Retained

The new rules provide that the Commission will extend the initial comment periods on miscellaneous tariff/price list filings and formal complaints for up to an additional 30 days at the request

of the Department. The rule excepts situations in which the comment period is set by statute or in which the Commission must act within 60 days to keep a proposed rate change from going into effect. Part 7829.1400, subp. 6; part 7829.1900, subp. 9. Several telephone companies opposed this provision, suggesting that the Commission substitute a provision allowing the Commission to extend comment periods at the request of any party.

This provision was added because the Department is the only party that comments on every filing; it is therefore the party likely to need time extensions most often. Also, as the only party analyzing every filing, the Department is in a good position to recognize when standard comment periods will be inadequate. Time extensions are available to any party under parts 7829.1400, subp. 5, 7829.1900, subp. 8, and 7829.3100. The provision simply recognizes the special position and duties of the Department, for purposes of administrative convenience. The Commission will retain the provision.

K. Specific Notice Period Not Required When Department Extends Comment Period

One party suggested that the Commission require the Department to give a specified number of days' notice before it extends a comment period. The Commission believes the disadvantages of imposing a notice period outweigh the advantages.

It is true that allowing last minute extensions could occasionally give the Department the benefit of seeing other parties' comments. It could also sometimes result in other parties making sacrifices to meet comment deadlines, only to have them extended by the Department at the last minute. On the other hand, these problems will not arise often, since the Department is the only party to comment on most filings. When there are other parties, it is reasonable to assume they and the Department will talk about matters such as comment deadlines ahead of time. The Commission is therefore convinced the practical problems arising from lack of a notice requirement can be minimized.

On the other hand, setting a minimum notice period would almost certainly result in comment periods being extended more often. When in doubt about its ability to file comments on schedule, the Department would have to exercise its option to extend the comment period to meet the notice deadline. Without a notice deadline, Department would work up to the comment deadline, hoping to meet it.

The Commission concludes the most reasonable and efficient approach is not to impose a mandatory notice period on the Department.

L. Definition of "Miscellaneous Tariff Filing" Not Narrowed

Two commenting parties suggested narrowing the new rules' definition of "miscellaneous tariff filing" to refer to filings "commencing a required Commission proceeding." Part 7829.0100, subp. 11. This would leave the Commission without an orderly procedure for handling filings that do not necessarily require Commission proceedings, such as PGA filings. Although such filings do not necessarily require Commission action, they should be subject to established notice and comment procedures, to ensure that any issues the Commission should consider do not go unnoticed.

M. "Direct" Conflict Standard Retained

The new rules provide that they will control Commission practice and procedure except when a statute or rule on a specific topic contains procedural requirements in "direct conflict" with them. Part 7829.0200, subp. 2. Two commenting parties suggested eliminating the word "direct" to avoid ambiguity about how direct a conflict must be before the new rules are superseded. The Commission believes that the word "direct" makes it clear that these rules are not displaced by the mere existence of other rules imposing additional requirements; they are displaced only as to directly conflicting requirements. On balance, then, the Commission finds that the word "direct" serves a purpose and should be retained.

N. General Service Requirement Not Restricted to Filings "Within the Scope" of the New Rules

Two commenting parties suggested changing the language on the general service list requirement to limit the requirement to filings "within the scope of parts 7829.0100 through 7829.3200 [the new rules]." The Commission is uncertain that the proposed change would have any practical effect. Since all filings will be handled under the rules of practice and procedure, all filings should be "within the scope" of the new rules. The suggested change appears superfluous and confusing and will not be adopted.

O. Oral Argument Not Required Every Time Staff Makes a Recommendation

The new rules grant oral argument any time staff recommends action not advocated by any party. Part 7829.2600. Two commenting parties recommended allowing oral argument every time staff made any recommendation, on the theory that staff

recommendations may sometimes be based on rationales not put forward by the parties.

The Commission believes this change would unnecessarily complicate Commission deliberations. Commission staff is an institutional resource the Commission must be free to use without adding procedural steps to a case. In complex proceedings the Commission must be free to exchange ideas with staff, to illuminate the issues and different approaches to them, without creating delays in the deliberative process. The Commission will of course hold or reconvene oral argument if its discussions with staff reveal a need for further development of any issue by the parties.

VI. Commission Action

The Commission finds that the proposed rules of practice and procedure, Minn. Rules, parts 7829.0100 through 7829.3200, as modified above, are needed and reasonable. The Commission will adopt them, and will repeal the existing rules of practice and procedure and the existing rules governing procedures for acting on applications for certificates of need for large energy facilities. The Commission adopts and incorporates the Statement of Need and Reasonableness, as modified above, as the factual basis for the proposed rules.

ORDER

1. The Commission hereby adopts Minn. Rules, parts 7829.0100 through 7829.3200 governing practice and procedure, as proposed, except as modified herein.

2. The Commission hereby repeals the existing rules of practice and procedure, Minn. Rules, parts 7830.0100 through 7830.4400, and the existing rules governing procedures for acting on applications for certificates of need for large energy facilities, Minn. Rules, parts 7847.0010 through 7847.0320.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)

MINNESOTA PUBLIC UTILITIES COMMISSION

Proposed Rules Governing Practice and Procedure, Minn. Rules, parts 7829.0100 through 7829.3200, Docket No. U-999/R-86-147

Notice of Intent to Adopt Rules Without a Public Hearing and Notice of Intent to Adopt Rules With a Public Hearing if Twenty-five or More Persons Request a Hearing

(1) Notice is hereby given that the Minnesota Public Utilities Commission (Commission) intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minn. Stat. §§ 14.22 to 14.28 (1990). These rules will replace Minn. Rules, parts 7830.0100 through 7830.4400, which are being repealed. The Commission's authority to adopt the rule is set forth in Minn. Stat. §§ 216A.05, subd. 1 and 5 (1990).

(2) All persons have until 4:30 p.m. on Wednesday, March 11, 1992, to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. (3) Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. PLEASE USE DOCKET NO. U-999/R-86-147 ON ALL CORRESPONDENCE.

Any person may make a written request for a public hearing on the rules within the comment period. (4) If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. (6) Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed.

(7) If a public hearing is required, the Commission will proceed pursuant to Minn. Stat. §§ 14.131 to 14.20 (1990). PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON Wednesday, March 25, 1992, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING OF THESE SAME RULES PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE COMMISSION. To verify whether a hearing will be held, please call the Commission between

AMERICAN CENTER BUILDING • KELLOGG AND ROBERT STS • SAINT PAUL, MN 55101

March 12, 1992 and March 25, 1992 at (612) 296-7124.

Comments or written requests for a public hearing must be submitted to:

(6)

Carol Casebolt
Staff Attorney
Minnesota Public Utilities Commission
780 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 296-6029

(8) The proposed rules may be modified if the modifications are supported by data and views submitted to the Commission and do not result in a substantial change in the proposed rule as noticed.

(11) The proposed rules, if adopted, will govern Commission procedures for hearing and acting upon matters before it. The proposed rules are published below. One free copy of the rules is available upon request from the Commission by contacting the Commission's receptionist, Kris Kline, at the above address or by calling (612) 296-7124.

(12) A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from the Commission by contacting the Commission's receptionist, Kris Kline, at the above address or by calling (612) 296-7124.

(14) You are hereby advised, pursuant to Minn. Stat. § 14.115 (1990), "Small business considerations in rulemaking," that the proposed rules may affect small businesses. The small businesses that will be affected are small electric and gas utilities, small local telephone companies, small long distance providers, and small coin-operated telephone providers. The qualitative and quantitative effects of the new rules on small businesses will probably be prompter action on matters before the Commission and greater certainty about Commission procedures. It should be easier for small businesses to transact their business before the Commission once the new rules are in place.

(13) The adoption of these rules by the Commission will not require the expenditure of public money by local public bodies or have a direct impact on agricultural land. Therefore, Minn. Stat. § 14.11 (1990) is not applicable to this rulemaking proceeding.

(9)

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 rule submitted to the Attorney General, must submit a written request to Carol Casebolt at the above address.

Richard R. Lancaster
Executive Secretary

Public Utilities Commission

Proposed Permanent Rules Relating to Practice and Procedure

Rules as Proposed (all new material)

7829.0100 DEFINITIONS.

Subpart 1. Scope. The terms used in this chapter have the meanings given them in this part.

Subp. 2. Classification petition. "Classification petition" means a petition filed by a telephone company to classify a telephone service as subject to emerging or effective competition under Minnesota Statutes, section 237.59.

Subp. 3. Commission. "Commission" means the Minnesota Public Utilities Commission.

Subp. 4. Complainant. "Complainant" means a person who complains formally or informally of an alleged violation of a statute or rule within the commission's jurisdiction, a utility tariff, or a commission order.

Subp. 5. Cost increase filing. "Cost increase filing" means a miscellaneous tariff filing under Minnesota Statutes, section 237.63, proposing a rate increase for a particular telephone service on grounds that the actual costs of providing that particular service have increased. It does not include cost increases that are part of overall cost increases and cost increases that have been discovered as a result of new cost studies.

Subp. 6. Department. "Department" means the Minnesota Department of Public Service.

Subp. 7. Expedited proceeding. "Expedited proceeding" means an informal proceeding described in Minnesota Statutes, section 237.61, and subject to specific procedural requirements such as verification of pleadings.

Subp. 8. Informal proceeding. "Informal proceeding" means a proceeding that addresses and resolves issues of public policy, fact, or law without a formal contested case proceeding

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before the Office of Administrative Hearings.

Subp. 9. Intervenor. "Intervenor" means a person permitted to intervene as a party in a proceeding under this chapter.

Subp. 10. Language change filing. "Language change filing" means a miscellaneous tariff filing under Minnesota Statutes, section 237.63, changing descriptive language in a telephone utility tariff without changing the meaning or operation of the tariff.

Subp. 11. Miscellaneous tariff filing. "Miscellaneous tariff filing" means a request or notice that does not require determination of the utility's revenue requirement.

A miscellaneous tariff filing includes a filing involving a new service offering; a change in a utility's rates, services, terms, or conditions of service; a change in a utility's corporate structure, assigned service area, or capital structure, when conducted separately from a general rate proceeding; or any related matter. The term also includes a language change filing, cost increase filing, and rate reduction filing.

The inclusion of a particular type of filing in this list does not require a filing that would not otherwise be required or confer jurisdiction that would not otherwise be present.

Subp. 12. Municipality. "Municipality" includes a town, statutory city, and home rule charter city.

Subp. 13. Participant. "Participant" means a person who files comments or appears in a proceeding, other than public hearings held in contested cases and other commission proceedings conducted to receive general public comments, to present views without becoming a party.

Subp. 14. Party. "Party" means a person by or against whom a proceeding before the commission is commenced or a person permitted to intervene in a proceeding under this chapter. A party to a proceeding is styled a "petitioner," "complainant," "intervenor," or "respondent," according to the nature of the proceeding and the relationship of the party to the proceeding.

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Subp. 15. Person. "Person" means a natural person, corporation, municipal corporation, public corporation, utility, governmental entity, government agency, association, partnership, receiver, joint venture, trustee at common law or statutory trust guardian, or executor.

Subp. 16. Petitioner. "Petitioner" means a person who requests the commission's permission, authorization, or approval or a person who notifies the commission of a proposed change in a rate, service, or term or condition of service.

Subp. 17. Price list filing. "Price list filing" means a filing under Minnesota Statutes, section 237.60, pertaining to telephone services claimed to be subject to emerging or effective competition.

Subp. 18. Proceeding. "Proceeding" means a formal or informal undertaking of the commission, in which it seeks to resolve a question or issue taken up on its own motion or presented to it in a complaint, petition, or notice of a proposed change in a rate, service, or term or condition of service.

Subp. 19. Proof of service. "Proof of service" means a certificate of service stating the facts of service, including the time and manner of service and the parties served.

Subp. 20. Rate reduction filing. "Rate reduction filing" means a miscellaneous tariff filing under Minnesota Statutes, section 237.63, proposing a reduction in a rate for telephone service.

Subp. 21. Respondent. "Respondent" means a person against whom a complaint is filed or against whom an investigation or other proceeding on commission motion is addressed.

Subp. 22. Suspend. "Suspend" means to hold in abeyance or to delay the effective date of.

Subp. 23. Utility. "Utility" means a gas, electric, or telephone company subject to the jurisdiction of the commission.

7829.0200 SCOPE AND CONSTRUCTION.

Subpart 1. Construction. This chapter must be construed

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to secure the just, speedy, and economical determination of issues before the commission. This chapter must be construed in light of the commission's statutory authority and responsibilities.

Subp. 2. Conflicting statutes and substantive rules to control. This chapter governs practice and procedure in matters before the commission except when a statute or a rule on a specific topic contains procedural requirements in direct conflict with this chapter. Then, the statute or rule on a specific topic controls insofar as it is in direct conflict with this chapter.

7829.0300 COMPUTATION OF TIME.

In computing a period of time prescribed by this chapter, the commission shall exclude the first and include the last day of the designated period of time. When the last day of the time period falls on Saturday, Sunday, or a legal holiday, that day must be omitted from the computation.

7829.0400 SERVICE AND FILING REQUIREMENTS.

Subpart 1. Filing. Documents are filed with the commission when they are received in the commission offices during regular business hours. Specific documents may be filed by facsimile transmission or filed when mailed or delivered in person, if the executive secretary so directs. Documents must be directed to the attention of the executive secretary.

Subp. 2. Number of copies. Parties and participants shall file an original and 15 copies of each document filed with the commission, unless otherwise directed by the executive secretary.

Subp. 3. Proof of service. Filings must be accompanied by proof of service on the persons on the appropriate service list.

Subp. 4. Format. Filings must identify the nature of the filing as briefly as possible, for example, "Replies to Exceptions to Report of Administrative Law Judge," and indicate that the matter is before the Minnesota Public Utilities Commission. Filings after the original filing must include the title and docket number of the matter. Filings must be on 8-1/2

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by 11-inch paper, unless the executive secretary authorizes a nonconforming filing for good cause shown.

Subp. 5. Service. A document filed with the commission must be served the same day on the persons listed on the appropriate service list, except when this chapter permits service of a summary of the filing. Service may be accomplished by first class mail or by delivery in person, unless otherwise provided by law or commission order. Service may also be accomplished by facsimile transmission, followed by first class mail. Service by mail or facsimile transmission plus mail is complete upon mailing, unless the executive secretary directs otherwise for specific documents. When a party or participant is represented by an attorney, service upon the attorney is considered service upon the party or participant.

Subp. 6. Proceeding before administrative law judge. During the time that a matter is before an administrative law judge, service and filing requirements are controlled by the rules of the Office of Administrative Hearings and by any orders issued under those rules by the administrative law judge.

7829.0500 TRADE SECRET AND PROPRIETARY INFORMATION.

Subpart 1. Confidentiality protected. Nothing in this chapter requires the public disclosure of privileged proprietary information, trade secrets, or other privileged information.

Subp. 2. Procedure for excision. Persons filing documents containing proprietary information, trade secrets, or other privileged information shall excise this information in all copies but the original and six copies.

Subp. 3. Identification of excised material. When a person classifies an entire document, or a substantial part of a document, as protected information, the person shall file a description of the excised material that includes at least the following information: the nature of the material, its authors, its general import, and the date on which it was prepared.

Subp. 4. Document containing protected information. The first page or cover page of a document containing protected

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information must be clearly marked in bold print "TRADE SECRET INFORMATION -- NOT FOR PUBLIC DISCLOSURE" or with words of similar import. Every page on which protected information appears must be similarly marked and the protected information must be underlined, placed in brackets, or otherwise clearly identified as the information which is to be protected from disclosure.

7829.0600 GENERAL SERVICE LIST.

Subpart 1. Establishing list. Persons desiring to receive notice of particular types of filings and who are qualified to intervene under part 7829.0800 shall file with the utility a written list of the types of filings they wish to receive. The utility shall maintain general service lists of persons who have filed these requests. The utility shall add to each list the persons who intervened in its last general rate case and persons on the official service list for its last filing of the same type.

Subp. 2. Annual updating. The utility may delete from its general service list a person who fails to respond within 30 days to an annual mailing inquiring whether that person wishes to continue receiving the filings requested.

Subp. 3. Periodic addition. A person may be added to the utility's general service list at any time by filing a request under subpart 1, even if the person failed to respond to an annual mailing as described in subpart 2.

Subp. 4. Jurisdiction unaffected. The service lists established in this part are intended to provide the earliest possible notice to persons who may be interested in a particular filing. The requirements of this part do not displace or add to legal notice requirements, and a utility's failure to comply with this part does not deprive the commission of jurisdiction over a matter of which it would otherwise have jurisdiction.

Subp. 5. Party or participant status unaffected. Inclusion on a general service list does not confer party or participant status on persons included on the list.

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7829.0700 OFFICIAL SERVICE LIST.

Subpart 1. Content. The official service list for each proceeding consists of the names of the parties and the names of participants who have filed a written request for inclusion on the service list with the executive secretary.

Subp. 2. Establishment and updating. The commission shall establish the official service list at the conclusion of the initial comment period and shall mail a copy of the list to the parties and to participants who have filed written requests for inclusion. A list established before commission action on a petition for intervention must include those persons whose intervention petitions are pending. The commission shall mail an updated official service list to the parties and participants if the official service list is later expanded or reduced. The commission need not mail the official service list in proceedings when the only parties are the department and a petitioner, complainant, or respondent.

Subp. 3. Limiting service list. On its own motion or at the request of a party, the commission shall limit the service list to parties to the proceeding if it finds that requiring service on participants is unduly burdensome.

Subp. 4. Name and address change. A party or participant who wishes to change the name or address of a person receiving service on behalf of the party or participant shall provide written notice of the change to the executive secretary and to persons on the official service list.

Subp. 5. Proceeding before administrative law judge. In proceedings before an administrative law judge in which the judge establishes a service list, the names on that service list must remain on the official service list for the remainder of the proceeding.

7829.0800 PETITION TO INTERVENE.

Subpart 1. Filing and service. A person who desires to become a party to a proceeding shall file a petition to intervene within the time set in this chapter. The petition

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must be served on known parties and those persons on the utility's general service list for the matter, if applicable.

Subp. 2. Grounds for intervention. The petition must allege the grounds for intervention and must be granted upon a showing that: the person is specifically considered by statute to be interested in the particular type of matter at issue; the person is specifically declared by statute to be an interested party; or the outcome of the proceeding will bind or affect the person with respect to an interest peculiar to that person, as distinguished from an interest common to the public or other ratepayers in general.

Subp. 3. Intervention as of right. The department and the Office of the Attorney General, through its Residential Utilities Division, may intervene as of right in any proceeding before the commission. They become parties upon filing comments under this chapter and need not file petitions to intervene, except when the rules of the Office of Administrative Hearings require it.

Subp. 4. Objection to intervention. An objection to intervention must be filed within ten days of service of the petition to intervene.

Subp. 5. Disposition of petition. If there is no objection to intervention and a petition to intervene is not denied or suspended within 15 days of filing, the petition to intervene must be considered granted, unless the matter is referred to the Office of Administrative Hearings for contested case proceedings before the expiration of the 15-day period.

Subp. 6. Proceeding before administrative law judge. During the time that a matter is before an administrative law judge, intervention procedures are governed by the rules of the Office of Administrative Hearings and by orders issued under those rules by the administrative law judge.

7829.0900 PARTICIPANT.

A person may file comments in a proceeding before the commission without requesting or obtaining party status. A

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participant may also be granted an opportunity for oral presentations.

7829.1000 REFERRAL FOR CONTESTED CASE PROCEEDING.

If a proceeding involves contested material facts or the commission finds that all significant issues have not been resolved to its satisfaction, the commission shall refer the matter to the Office of Administrative Hearings for contested case proceedings, unless:

A. all parties waive their rights to contested case proceedings and instead request informal or expedited proceedings, and the commission finds that informal or expedited proceedings would be in the public interest; or

B. a different procedural treatment is required by statute.

7829.1100 PUBLIC HEARING.

When a public hearing is held in connection with a contested case proceeding, the commission shall, whenever possible, schedule the public hearing to be held before the evidentiary hearings.

7829.1200 INFORMAL OR EXPEDITED PROCEEDING.

Subpart 1. When appropriate. Informal or expedited proceedings may be used when contested case proceedings are not required, for example, when:

A. there are no material facts in dispute;

B. the parties and the commission have agreed to informal or expedited proceedings; or

C. informal or expedited proceedings are authorized or required by statute.

Subp. 2. Presentation of facts. Written submissions are the preferred method of introducing facts. The commission shall allow oral presentation of facts when that can be done without compromising the rights of any person or the integrity of the proceeding. In informal proceedings, the commission shall require that factual allegations be made under oath or by

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affirmation when facts appear to be in dispute. In expedited proceedings, the commission shall require that factual allegations be made under oath or by affirmation and that documents filed in the proceeding be verified.

Subp. 3. Notice. The commission shall notify the persons on the official service list at least ten days before a meeting at which it may act on the basis of informal or expedited proceedings. Under exigent circumstances the executive secretary shall reduce the ten-day notice period.

7829.1300 MISCELLANEOUS TARIFF AND PRICE LIST FILINGS.

Subpart 1. Summary. A miscellaneous tariff filing and price list filing must include, on a separate page, a one-paragraph summary of the filing, sufficient to apprise potentially interested parties of its nature and general content.

Subp. 2. Service. The filing utility shall serve copies of each miscellaneous tariff filing on which commission action is required within 60 days, and each price list filing increasing the price of a competitive service, on the persons on the applicable general service list, on the department, and on the Residential Utilities Division of the Office of the Attorney General. For other filings, the utility may serve the summary described in subpart 1 on persons on the applicable general service list. The utility shall serve with the filing or the summary a copy of its general service list for the filing.

Subp. 3. Content of filing subject to specific requirements. In addition to complying with specific requirements imposed by statute or rule, miscellaneous tariff and price filings subject to specific filing rules must contain at least the following information:

A. the name, address, and telephone number of the utility, without abbreviation;

B. the name, address, and telephone number of the attorney for the utility, if the utility is using an attorney;

C. the date of the filing and the date the proposed rate or service change will go into effect;

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D. the statute that the utility believes controls the time frame for processing the filing; and

E. the signature and title of the utility employee responsible for the filing.

Subp. 4. Content of filing not subject to specific filing rules. In addition to complying with any specific requirements imposed by statute, miscellaneous tariff and price list filings not subject to specific filing rules must contain at least the following information:

A. the name, address, and telephone number of the utility, without abbreviation;

B. the name, address, and telephone number of the attorney for the utility, if the utility is using an attorney;

C. the date of the filing and the date the proposed rate or service change will go into effect;

D. the statute that the utility believes controls the time frame for processing the filing;

E. the signature and title of the utility employee responsible for the filing; and

F. a description of the filing, its impact on rates and services, its impact on the utility and affected ratepayers, and the reasons for the filing.

Subp. 5. Rejection of filing. The commission shall reject a filing found to be substantially out of compliance with this chapter or applicable statutory requirements. A miscellaneous tariff filing or price list filing not rejected within 20 days of filing must be considered accepted as to form.

Subp. 6. Initial comments. A person wishing to comment on a miscellaneous tariff or price list filing shall do so within 30 days of its filing with the commission. A person wishing to comment on one of the following noncompetitive rate change filings shall do so within 20 days of its filing with the commission: a rate reduction filing, a cost increase filing, or a request for a significant change in a condition of telephone service. A person wishing to comment on a new telephone service, competitive or noncompetitive, shall do so within ten

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days of its filing with the commission. Comments must be served on the persons on the utility's general service list for the filing, as well as on the filing utility.

Subp. 7. Petition to intervene. If a person who files initial or reply comments is not entitled to intervene in commission proceedings as of right and desires full party status, the person shall file a petition to intervene before the initial or reply comment period expires. The intervention petition may be combined with the comments on the filing.

7829.1400 COMMENTS ON MISCELLANEOUS TARIFF OR PRICE LIST FILING.

Subpart 1. Comments to include procedural recommendation. A person commenting on a miscellaneous tariff or price list filing and recommending its rejection, denial, or modification shall specify whether the person believes the filing requires a contested case proceeding, informal proceeding, expedited proceeding, or some other procedural treatment, together with the person's reasons for recommending a particular procedural treatment.

Subp. 2. Reply comments. The utility and other persons have ten days from the expiration of the original comment period to file reply comments. Reply comments must be served on the utility and persons who have filed comments on the miscellaneous tariff filing. Reply comments must be limited in scope to the issues raised in the initial comments.

Subp. 3. Additional comments. If further information is required to make a fully informed decision, the commission shall require additional comments and identify specific issues requiring further development.

Subp. 4. Comments on supplemental or corrected filings. The commission shall provide opportunity for other parties to respond to supplemental or corrected filings when those filings raise new issues.

Subp. 5. Comment periods varied. Except for comment periods set by statute, the commission may vary the comment periods set by this chapter on its own motion or at the request

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of a person for good cause shown. The commission may delegate the authority to vary time periods to the executive secretary.

Subp. 6. Comment periods extended at department's request. At the request of the department, the commission shall extend the comment periods in parts 7829.1300 and 7829.1400 up to an additional 30 days, except for comment periods established by statute and except when the commission must act within 60 days to prevent proposed rate changes from going into effect.

7829.1500 INFORMAL COMPLAINT.

Persons engaged in disputes with utilities may submit informal complaints by letter or other writing, by telephone, or in person. Commission staff shall accept these complaints and shall prepare a memorandum setting forth the substance of each complaint and identifying the customer, the service address, and the utility.

7829.1600 TREATMENT OF INFORMAL COMPLAINT.

Commission staff shall try to help resolve informal complaints by correspondence, mediation, arbitration, and other informal means. If the complainant desires formal action by the commission, a formal complaint must be filed.

7829.1700 FORMAL COMPLAINT.

Subpart 1. Content. A formal complaint must include the following information: the name and address of the complainant; the name and address of complainant's counsel, if any; the name and address of respondent; the name and address of respondent's counsel, if known; the statute, rule, tariff, or commission order alleged to have been violated; the facts constituting the alleged violation; and the relief sought by complainant.

Subp. 2. Service and filing. A formal complaint must be served on the respondent, the department, and the Residential Utilities Division of the Office of the Attorney General, as well as filed with the commission.

7829.1800 INITIAL CONSIDERATION OF FORMAL COMPLAINT.

Subpart 1. Initial commission review. The commission

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shall review a formal complaint as soon as practicable to determine whether the commission has jurisdiction over the matter and to determine whether there are reasonable grounds to investigate the allegation. On concluding that it lacks jurisdiction or that there is no reasonable basis to investigate the matter, the commission shall dismiss the complaint.

Subp. 2. Answer. On concluding that it has jurisdiction over the matter and that investigation is warranted, the commission shall serve the complaint on the respondent, together with an order requiring the respondent to grant the relief complainant requests or to show cause by answer why respondent should not be ordered to do so. The answer must be filed with the commission and served on the complainant, the department, and the Residential Utilities Division of the Office of the Attorney General within 20 days of service of the complaint and order.

Subp. 3. Reply. Replies are not required unless the answer alleges that respondent has granted the relief sought by complainant. In that case, the complainant shall file a reply within 20 days admitting or denying that relief has been granted. If the complainant fails to file the reply, the commission shall dismiss the complaint. Copies of the reply must be served on respondents, the department, and the Residential Utilities Division of the Office of the Attorney General.

Subp. 4. Failure to answer. If the respondent fails to answer a complaint served by the commission under subpart 2, the commission shall consider the allegations of the complaint denied, and issue is joined.

7829.1900 COMMISSION ACTION ON FORMAL COMPLAINT.

Subpart 1. Nature of proceedings. The commission shall deal with a formal complaint through a contested case proceeding, informal proceeding, or expedited proceeding.

Subp. 2. Initial comments. A person wishing to comment on a formal complaint shall do so within 30 days of the date of a commission order requiring an answer to the complaint. Comments

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must be served on the complainant, respondent, department, Residential Utilities Division of the Office of the Attorney General, and any other known parties.

Subp. 3. **Reply comments.** A commenting party has ten days from the expiration of the original comment period to file reply comments. Reply comments must be limited in scope to the issues raised in the initial comments and must be served on the complainant, respondent, department, Residential Utilities Division Of the Office of the Attorney General, and any other known parties.

Subp. 4. **Petition to intervene.** If a person who files initial or reply comments is not entitled to intervene in commission proceedings as of right and desires full party status, the person shall file a petition to intervene before the initial or reply comment period expires. The intervention petition may be combined with the comments on the complaint.

Subp. 5. **Comments to include procedural recommendation.** A person commenting on a complaint shall specify whether the person believes the matter requires a contested case proceeding, informal proceeding, expedited proceeding, or some other procedural treatment, together with the reasons for recommending a particular procedural treatment.

Subp. 6. **Additional comments.** If further information is required to make a fully informed decision, the commission shall require additional comments and identify specific issues requiring further development.

Subp. 7. **Comments on supplemental or corrected filings.** The commission shall provide opportunity for other parties to respond to supplemental or corrected filings when those filings raise new issues.

Subp. 8. **Comment periods varied.** Except for time periods set by statute, the commission may vary the comment periods established in this part at the request of a person for good cause shown. The commission may delegate the authority to vary time periods to the executive secretary.

Subp. 9. **Comment periods extended at department's request.**

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At the request of the department, the commission shall extend the comment periods established in this part up to an additional 30 days, except for comment periods set by statute.

7829.2000 ELECTRIC SERVICE AREA COMPLAINT.

Subpart 1. Content. A complaint alleging violation of an electric utility's assigned service area must include a copy of the official service area map of an area at issue, with the area of the alleged violation clearly marked.

Subp. 2. Service and filing. A service area complaint must be served on the respondent, department, and Residential Utilities Division of the Office of the Attorney General, as well as filed with the commission.

7829.2100 COMMISSION ACTION ON SERVICE AREA COMPLAINT.

Subpart 1. Answer. Within ten days of service of a service area complaint, a respondent shall file an answer with the commission and serve it on the complainant, department, and Residential Utilities Division of the Office of the Attorney General.

Subp. 2. Initial comments. A person wishing to comment on a service area complaint shall do so within ten days of the date the person was served. Comments must be served on the complainant, respondent, department, Residential Utilities Division of the Office of the Attorney General, and any other known parties.

Subp. 3. Petition to intervene. If a person who files comments is not entitled to intervene in a commission proceeding as of right and desires full party status, the person shall file a petition to intervene before the initial comment period expires. The intervention petition may be combined with the comments on the complaint and must be served on those persons entitled to service of the comments.

Subp. 4. Additional comments. If further information is required to make a fully informed decision, the commission shall require additional comments and identify specific issues requiring further development.

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Subp. 5. **Comments on supplemental or corrected filing.** The commission shall provide opportunity for other parties to respond to supplemental or corrected filings when those filings raise new issues.

Subp. 6. **Time for disposition.** Service area complaints must come before the commission within 15 days of filing. The commission shall issue its order within 30 days after the hearing.

7829.2200 TELEPHONE INCENTIVE PLAN FILING.

Subpart 1. **Summary.** A telephone utility filing an incentive plan under Minnesota Statutes, section 237.625, shall include, on a separate page, a brief summary of the filing, sufficient to apprise potentially interested parties of its nature and general content.

Subp. 2. **Service.** A utility filing an incentive plan under Minnesota Statutes, section 237.625, shall serve copies of the incentive plan filing on the department and the Residential Utilities Division of the Office of the Attorney General. The utility shall serve the filing or the summary described in subpart 1 on those persons on the applicable general service list and on persons who were parties to its last general rate case or incentive plan proceeding.

Subp. 3. **Challenge to form and completeness.** A person wishing to challenge the form or completeness of an incentive plan filing shall do so within ten days of its filing. The filing utility shall reply to the challenge within five days of its filing. These challenges and responses must be served on the utility, the department, the Residential Utilities Division of the Office of the Attorney General, persons on the general service list for the filing, and any other known parties.

Subp. 4. **Rejection of filing.** The commission shall reject a filing that it finds to be substantially out of compliance with Minnesota Statutes, section 237.625, or with any other filing requirement imposed by rule or statute. An incentive plan filing not rejected within 45 days of filing is considered

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accepted as in substantial compliance with applicable filing requirements.

Subp. 5. Procedural comments. A person wishing to comment on a proposed incentive plan shall file comments within 20 days of its filing, recommending a specific procedural framework for examining the filing, including time frames for substantive comments and commission action. Procedural comments must be served on the utility, department, Residential Utilities Division of the Office of the Attorney General, persons on the general service list for the filing, and any other known parties.

Subp. 6. Petition to intervene. If a person desires full party status, but is not entitled to intervene in a commission proceeding as of right, the person shall file a petition to intervene before the procedural comment period expires. The intervention petition may be combined with procedural comments on the filing and must be served on those persons entitled to receive service of procedural comments.

Subp. 7. Notice to public and ratepayers. The utility shall give notice of the proposed incentive plan to its ratepayers and shall publish notice of the proposed plan in all newspapers of general circulation in all county seats in its service area.

Subp. 8. Notice of public meeting. The utility shall notify its ratepayers of public meetings on the proposed incentive plan scheduled by the commission and shall publish notice of the public meetings in all newspapers of general circulation in all county seats in its service area.

Subp. 9. Nature of proceeding. The commission shall deal with incentive plan filings by conducting an expedited proceeding under Minnesota Statutes, section 237.61. Following review of the procedural comments, the commission shall establish by order, time frames for submitting testimony and comments.

Subp. 10. Time frame for disposition. The commission shall approve, reject, or modify a proposed incentive plan within six months of filing. If the commission does not act

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within that time, the plan is considered withdrawn, unless the commission and the utility agree to extend the six-month period.

7829.2300 CLASSIFICATION PETITION.

Subpart 1. Summary. A telephone utility filing a classification petition under Minnesota Statutes, section 237.59, shall include on a separate page a brief summary of the filing, sufficient to apprise potentially interested parties of its nature and general content.

Subp. 2. Service. A utility filing a classification petition shall serve copies of the petition on the department and Residential Utilities Division of the Office of the Attorney General. The utility shall serve the petition or the summary described in subpart 1 on those persons on the applicable general service list and on those persons who were parties to its last general rate case or incentive plan proceeding, if applicable.

Subp. 3. Challenges to form and completeness. A person wishing to challenge the form or completeness of a classification petition shall do so within ten days of its filing. The filing utility shall reply to the challenge within five days of its filing. Challenges and responses must be served on the department, Residential Utilities Division of the Office of the Attorney General, persons on the general service list for the filing, and any other known parties.

Subp. 4. Rejection of filings. The commission shall reject a classification petition found to be substantially out of compliance with Minnesota Statutes, section 237.59, or with any other filing requirement imposed by rule or statute. A filing under this section not rejected within 45 days of filing is considered accepted as in substantial compliance with applicable filing requirements.

Subp. 5. Initial comments. A person wishing to comment on a classification petition shall file initial comments within 20 days of the filing. Initial comments must include a recommendation on whether the filing requires a contested case

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proceeding, expedited proceeding, or some other procedural treatment, together with reasons for recommending a particular procedural treatment. Initial comments must be served on the utility, department, Residential Utilities Division of the Office of the Attorney General, persons on the general service list for the filing, and any other known parties.

Subp. 6. Petition to intervene. If a person who files initial comments is not entitled to intervene in a commission proceeding as of right and desires full party status, the person shall file a petition to intervene before the reply comment period expires. The intervention petition may be combined with comments on the filing and must be served on those persons entitled to receive service during the comment period when the intervention petition is filed.

Subp. 7. Reply comments. Commenting parties have ten days from the expiration of the original comment period to file reply comments. Reply comments must be limited in scope to the issues raised in the initial comments. Reply comments must be served on the utility and on those persons who have filed initial comments.

Subp. 8. Additional comments. If further information is required to make a fully informed decision, the commission shall require additional comments and identify specific issues requiring further development.

Subp. 9. Comments on supplemental or corrected filing. The commission shall provide opportunity for other parties to respond to a supplemental or corrected filing when the filing raises new issues.

Subp. 10. Nature of proceeding. The commission shall deal with a classification petition by conducting an expedited proceeding under Minnesota Statutes, section 237.61, or by referring the matter for a contested case proceeding.

Subp. 11. Time frame for disposition; expedited proceeding. When the filing utility requests an expedited proceeding on its classification petition, the commission shall take final action within 60 days of the date on which the utility provides the

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substantive information required by statute, unless the commission finds at least one issue of material fact in dispute and refers the matter for a contested case proceeding within the same 60-day period.

Subp. 12. **Time frame for disposition; contested case proceeding.** When the commission conducts a contested case proceeding, it shall take final action within eight months of the utility's request for a contested case proceeding or the commission's order that contested case proceedings be held, whichever occurs earlier.

Subp. 13. **Extending disposition period.** The commission may extend the eight-month time frame set forth in subpart 12 with the agreement of all parties or upon a finding that the case cannot be completed within the required time and that there is a substantial probability that the public interest would be harmed by enforcing the eight-month time frame.

7829.2400 FILINGS REQUIRING DETERMINATION OF GROSS REVENUE REQUIREMENT.

Subpart 1. **Summary.** A utility filing a general rate case or other filing that requires determination of its gross revenue requirement shall include, on a separate page, a brief summary of the filing, sufficient to apprise potentially interested parties of its nature and general content.

Subp. 2. **Service.** A utility filing a general rate change request shall serve copies of the filing on the department and Residential Utilities Division of the office of the Attorney General. The utility shall serve the filing or the summary described in subpart 1 on the persons on the applicable general service list and persons who were parties to its last general rate case or incentive plan proceeding.

Subp. 3. **Notice to public and governing bodies.** A utility seeking a general rate change shall give notice of the proposed change to the governing body of each municipality and county in its service area and to its ratepayers. The utility shall also publish notice of the proposed change in newspapers of general

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circulation in all county seats in its service area.

Subp. 4. Challenge to form and completeness. A party wishing to challenge the form or completeness of a general rate case filing shall do so within ten days of its filing. The filing utility shall reply to the challenge within five days of its filing. Challenges and responses must be served on the department, Residential Utilities Division of the Office of the Attorney General, persons on the general service list for the filing, and any other known parties.

Subp. 5. Rejection of filing. The commission shall reject a filing under this part that is found to be substantially out of compliance with Minnesota Statutes, section 216B.16 or 237.075, or other requirement imposed by rule, statute, or previous commission order. A filing under this part not rejected within 60 days of filing is considered accepted as in substantial compliance with applicable filing requirements.

Subp. 6. Petition to intervene. The commission shall entertain a petition to intervene until the matter is referred to the Office of Administrative Hearings for a contested case proceeding or until the commission issues a notice under part 7829.1200, subpart 3, stating its intention to decide the matter on the basis of an informal or expedited proceeding. Once a filing is referred for a contested case proceeding, the rules of the Office of Administrative Hearings control intervention rights.

Subp. 7. Notice of hearing. The utility shall notify its ratepayers of hearings held in connection with its rate change request in the manner directed by the commission. The utility shall publish notice of hearings on its rate change request in newspapers of general circulation in all county seats in its service area, as directed by the commission.

7829.2500 CERTIFICATE OF NEED FILING.

Subpart 1. Compliance. Certificate of need applications must comply with the requirements of Minnesota Statutes, sections 216B.2421 and 216B.243; Minnesota Rules, chapters 7849,

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7851, 7853, and 7855; and any other requirements imposed by rule or statute.

Subp. 2. Summary. A person filing a certificate of need application shall include, on a separate page, a brief summary of the filing, sufficient to apprise potentially interested parties of its nature and general content.

Subp. 3. Service. A certificate of need applicant shall serve copies of the filing on the department and Residential Utilities Division of the Office of the Attorney General. The applicant shall serve the filing or the summary described in subpart 2 on those persons on an applicable general service list and on those persons who were parties to its last general rate case or incentive plan proceeding, if applicable.

Subp. 4. Publication in State Register. The commission shall publish notice of the certificate of need filing in the State Register and shall solicit public comment on the application.

Subp. 5. Publication in newspapers. The applicant shall publish notice of the filing in newspapers of general circulation throughout the state.

Subp. 6. Solicitation of comments on filing compliance. The commission shall request comments on the filing's compliance with Minnesota Statutes, sections 216B.2421 to 216B.243, and Minnesota Rules, chapters 7849, 7851, 7853, and 7855, when it determines that comments would be helpful in evaluating the filing's substantial compliance with the requirements of those statutes and rules. The commission may delegate the authority to request these comments to the executive secretary.

Subp. 7. Rejection of filing. The commission shall reject a filing under this part that is found to be substantially out of compliance with Minnesota Statutes, sections 216B.2421 to 216B.243; Minnesota Rules, chapters 7849, 7851, 7853, and 7855; and any other requirements imposed by rule or statute. A filing under this section not rejected within 15 days of filing must be considered accepted as in substantial compliance with applicable filing requirements.

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Subp. 8. Petition to intervene. The commission shall entertain a petition to intervene until the matter is referred to the Office of Administrative Hearings for a contested case proceeding or until the commission issues a notice under part 7829.1200, subpart 3, stating its intention to decide the matter on the basis of an informal or expedited proceeding. Once a filing is referred for a contested case proceeding, the rules of the Office of Administrative Hearings shall control intervention rights.

Subp. 9. Public hearing. If the commission decides to act on the application through an informal proceeding, the commission shall hold a public hearing designed to encourage members of the public to express their views on the application, as required under Minnesota Statutes, section 216B.243, subdivision 4. If the commission refers the application to the Office of Administrative Proceedings for a contested case proceeding, the commission shall ensure that at least one public hearing is held.

7829.2600 STAFF COMMENTS.

Written comments on a filing by commission staff must be made available to those persons on the service list at the same time they are provided to the commission. If commission staff recommend action not advocated by any party, all parties must be granted oral argument at the request of any party.

7829.2700 PROCEDURE FOLLOWING REPORT OF ADMINISTRATIVE LAW JUDGE.

Subpart 1. Exceptions to administrative law judge's report. Except in cases subject to statutory deadlines, parties shall file and serve on the other parties any exceptions to an administrative law judge's report within 20 days of its filing. In cases subject to statutory deadlines, exceptions must be filed and served within 15 days of the filing of the report.

Subp. 2. Replies to exceptions. Except in cases subject to statutory deadlines, a party shall file and serve on all other parties any replies to exceptions within ten days of the due date for exceptions. In cases subject to statutory

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deadlines, replies are not permitted.

Subp. 3. Oral argument. Parties must be granted an opportunity for oral argument before the commission as required under Minnesota Statutes, section 14.61.

7829.2800 GENERAL NOTICE REQUIREMENT.

Matters may come before the commission only on ten days notice to the parties and those persons on the official service list. Under exigent circumstances the executive secretary shall reduce the ten-day notice period.

7829.2900 DECISION AND ORDER.

The executive secretary shall serve a decision and order of the commission on all parties and participants in the proceeding.

7829.3000 PETITION FOR REHEARING, AMENDMENT, VACATION, RECONSIDERATION, REARGUMENT.

Subpart 1. Time for request. A party or a person aggrieved and directly affected by a commission decision or order may file a petition for rehearing, amendment, vacation, reconsideration, or reargument within 20 days of the date the decision or order is served by the executive secretary.

Subp. 2. Content of request. A petition for rehearing, amendment, vacation, reconsideration, or reargument must set forth specifically the grounds relied upon or errors claimed. A request for amendment must set forth the specific amendments desired and the reasons for the amendments.

Subp. 3. Service. A petition for rehearing, amendment, vacation, reconsideration, or reargument, and an answer, reply, or comment, must be served on the parties and participants in the proceeding to which they relate.

Subp. 4. Answers. Other parties to the proceeding shall file answers to a petition for rehearing, amendment, vacation, reconsideration, or reargument within ten days of service of the petition.

Subp. 5. Replies. Replies are not permitted unless specifically authorized by the commission.

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Subp. 6. Commission action. The commission shall decide a petition for rehearing, amendment, vacation, reconsideration, or reargument with or without a hearing or oral argument. The commission may vacate or stay the order, or part of the order, that is the subject of the petition, pending action on the petition.

7829.3100 TIME PERIODS VARIED.

Except for time periods set by statute, the commission may vary the time periods established by this chapter on its own motion or at the request of a person for good cause shown. The commission may delegate the authority to vary time periods to the executive secretary.

7829.3200 OTHER VARIANCES.

Subpart 1. When granted. The commission shall grant a variance to its rules when it determines that the following requirements are met:

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

B. granting the variance would not adversely affect the public interest; and

C. granting the variance would not conflict with standards imposed by law.

Subp. 2. Conditions. A variance may be granted contingent upon compliance with conditions imposed by the commission.

Subp. 3. Duration. Unless the commission orders otherwise, variances automatically expire in one year. They may be revoked sooner due to changes in circumstances or due to failure to comply with requirements imposed as a condition of receiving a variance.

REPEALER. Minnesota Rules, parts 7830.0100; 7830.0200; 7830.0300; 7830.0400; 7830.0500; 7830.0600; 7830.0700; 7830.0800; 7830.0900; 7830.1000; 7830.1100; 7830.1200; 7830.1300; 7830.1400; 7830.1500; 7830.1600; 7830.1700; 7830.1800; 7830.1900; 7830.2000; 7830.2100; 7830.2200;

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7830.2300; 7830.2400; 7830.2500; 7830.2600; 7830.2700;
7830.2800; 7830.2900; 7830.3000; 7830.3100; 7830.3200;
7830.3300; 7830.3400; 7830.3500; 7830.3600; 7830.3700;
7830.3800; 7830.3900; 7830.4000; 7830.4100; 7830.4200;
7830.4300; 7830.4400; 7847.0010; 7847.0020; 7847.0100;
7847.0110; 7847.0120; 7847.0130; 7847.0140; 7847.0150;
7847.0200; 7847.0210; 7847.0220; 7847.0230; 7847.0240;
7847.0250; 7847.0260; 7847.0270; 7847.0280; 7847.0290;
7847.0300; 7847.0310; and 7847.0320, are repealed.

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by Revisor _____

STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

In the Matter of the Proposed Rules Governing Practice and Procedure, Minn. Rules, parts 7829.0100 through 7829.3200	Docket No. P-999/R-86-147 CERTIFICATE OF RULEMAKING LIST

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 14.14 (1990) that their names be placed on file with the Minnesota Public Utilities Commission (Commission) for the purpose of receiving notice of the proposed adoption of rules by the Commission is accurate and complete as of this 26th day of February, 1992.

Kris Kline

STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

In the Matter of Proposed Amendments Governing Practice and Procedure, Minn. Rules, parts 7829.0100 through 7829.3200

Docket No. U-999/R-86-147

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) SS.
COUNTY OF RAMSEY)

Dawn Walker, being duly sworn, deposes and says:

That on the 4th day of February, 1992, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing and Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the State of Minnesota Central Mail System or in the United States mail for first class mailing at said City of St. Paul, copies thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Minnesota Public Utilities Commission for the purpose of receiving notice of the proposed adoption of rules by the Minnesota Public Utilities Commission.

Dawn M Walker

Dawn Walker

Subscribed and sworn to before me this 26th day of February, 1992.

Sharon L. Juen

Notary Public

SHARON L. JUEN
NOTARY PUBLIC—MINNESOTA
WASHINGTON COUNTY
My Comm. Expires May 21, 1997

Proposed Rules

Pursuant to Minn. Stat. §§ 14.22, 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 25 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 the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 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 §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Public Utilities Commission

Proposed Permanent Rules Relating to Practice and Procedure

Notice of Intent to Adopt Rules Without a Public Hearing and Notice of Intent to Adopt Rules With a Public Heaing if Twenty-five or More Persons Request a Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Public Utilities Commission (Commission) intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes* §§ 14.22 to 14.28 (1990). These rules will replace *Minnesota Rules*, parts 7830.0100 through 7830.4400, which are being repealed. The Commission's authority to adopt the rule is set forth in *Minnesota Statutes* §§ 216A.05, subd. 1 and 5 (1990).

All persons have until 4:30 p.m. on Wednesday, March 11, 1992, to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. PLEASE USE DOCKET NO. U-999/R-86-147 ON ALL CORRESPONDENCE.

Any person may make a written request for a public hearing on the rules within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed.

If a public hearing is required, the Commission will proceed pursuant to *Minnesota Statutes* §§ 14.131 to 14.20 (1990). PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON Wednesday, March 25, 1992, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING OF THESE SAME RULES PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE COMMISSION. To verify whether a hearing will be held, please call the Commission between March 12, 1992 and March 25, 1992 at (612) 296-7124.

Comments or written requests for a public hearing must be submitted to:

Carol Casebolt
Staff Attorney
Minnesota Public Utilities Commission
780 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 296-6029

The proposed rules may be modified if the modifications are supported by data and views submitted to the Commission and do not result in a substantial change in the proposed rule as noticed.

The proposed rules, if adopted, will govern Commission procedures for hearing and acting upon matters before it. The proposed rules are published below. One free copy of the rules is available upon request from the Commission by contacting the Commission's receptionist, Kris Kline, at the above address or by calling (612) 296-7124.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the

proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from the Commission by contacting the Commission's receptionist, Kris Kline, at the above address or by calling (612) 296-7124.

You are hereby advised, pursuant to *Minnesota Statutes* § 14.115 (1990), "Small business considerations in rulemaking," that the proposed rules may affect small businesses. The small businesses that will be affected are small electric and gas utilities, small local telephone companies, small long distance providers, and small coin-operated telephone providers. The qualitative and quantitative effects of the new rules on small businesses will probably be prompter action on matters before the Commission and greater certainty about Commission procedures. It should be easier for small businesses to transact their business before the Commission once the new rules are in place.

The adoption of these rules by the Commission will not require the expenditure of public money by local public bodies or have a direct impact on agricultural land. Therefore, *Minnesota Statutes* § 14.11 (1990) is not applicable to this rulemaking proceeding.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 rule submitted to the Attorney General, must submit a written request to Carol Casebolt at the above address.

Richard R. Lancaster
Executive Secretary

Notice of Hearing and Notice of Intent to Cancel Hearing if Fewer Than Twenty-Five Persons Request a Hearing In Response to Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Public Utilities Commission (Commission) will hold a public hearing in the above-entitled matter at the Commission Offices, Large Hearing Room, American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101, commencing at 9:00 a.m. on Wednesday, March 25, 1992, and continuing until all interested or affected persons have had an opportunity to participate by submitting either oral or written data, statements, or arguments. Statements or briefs may be submitted to the presiding Administrative Law Judge, as hereinafter indicated, without appearing at the hearing.

PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE COMMISSION. To verify whether a hearing will be held, please call the Commission between March 12, 1992 and March 25, 1992 at (612) 296-7124.

The matter will be heard before Administrative Law Judge Bruce D. Campbell, Office of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415, (612) 341-7602. The rule hearing procedure is governed by *Minnesota Statutes* sections 14.131 to 14.20 (1990) and by the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.0200 to 1400.1200 (1991). Questions concerning the rule hearing procedure should be directed to the Administrative Law Judge at the address and telephone number stated above.

The subject of the hearing will be the proposed rules governing Commission practice and procedure. The proposed rules are authorized by *Minnesota Statutes* § 216A.05, subd. 1 and 5 (1990). The proposed rules are published below. One free copy of the rules is available on request by contacting:

Kris Kline
Minnesota Public Utilities Commission
780 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 296-7124

NOTICE IS HEREBY GIVEN THAT A STATEMENT OF NEED AND REASONABLENESS is now available for review at the Commission offices and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the Commission anticipates presenting at the hearing justifying both the need for and

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.

reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the Commission offices or at the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Any person may present his or her views on the proposed rules in one or more of the following ways: by submitting written data to the Administrative Law Judge at any time before the close of the hearing; by submitting oral or written data at the hearing; and by submitting written data to the Administrative Law Judge during the comment period following the hearing. The comment period will be not less than five working days after the public hearing ends. The comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Administrative Law Judge at the hearing. In either case, the comment period ends at 4:30 on the final day, when the Office of Administrative Hearings closes its offices. The written material received during the comment period shall be available for review at the Office of Administrative Hearings. Within three business days after the expiration of the comment period, the Commission and interested persons may respond in writing to any new information received during the comment period; however, no additional evidence may be submitted during this three-day period. The three-day period ends at 4:30 on the final day, when the Office of Administrative Hearings closes its offices.

The Commission requests that any person submitting written views or data to the Administrative Law Judge prior to the hearing or during the comment period also submit a copy of the written data to Carol Casebolt at the Commission address stated above.

The proposed rules may be modified if the data and views received during the hearing process warrant modification and the modification does not result in a substantial change in the proposed rules.

Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the Commission may not take any final action on the rules for a period of five working days. If you desire to be so notified, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules are adopted and filed with the Secretary of State. The notice must be mailed on the same day that the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the Commission at any time prior to the filing of the rules with the Secretary of State.

Your are hereby advised, pursuant to *Minnesota Statutes* section 14.115 (1990), "Small business considerations in rulemaking," that the proposed rules have an effect on small business. The small businesses that will be affected are small electric and gas utilities, small local telephone companies, small long distance providers, and small coin-operated telephone providers. The qualitative and quantitative effects of the new rules on small businesses will probably be prompter action on matters before the Commission and greater certainty about Commission procedures. It should be easier for small businesses to transact their business before the Commission once the new rules are in place.

The adoption of these rules by the Commission will not require expenditure of public monies by local public bodies or have a direct impact on agricultural land. Therefore, *Minnesota Statutes* section 14.11 (1990) is inapplicable to this rulemaking proceeding.

Please be advised that *Minnesota Statutes* ch. 10A (1990) requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in *Minnesota Statutes* section 10A.01, subd. 11 (1990) as an individual:

(a) engaged for pay or other consideration, or authorized to spend money by another individual or association, political subdivision, or public higher education system, who spends more than five hours in any month or more than $250, not including the individual's own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials; or

(b) who spends more than $250, not including the individual's own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials.

The statute contains certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101-2520, telephone (612) 296-5148.

Richard R. Lancaster
Executive Secretary

Rules as Proposed (all new material)

7829.0100 DEFINITIONS.

Subpart 1. **Scope.** The terms used in this chapter have the meanings given them in this part.

Subp. 2. **Classification petition.** "Classification petition" means a petition filed by a telephone company to classify a telephone service as subject to emerging or effective competition under *Minnesota Statutes*, section 237.59.

Subp. 3. **Commission.** "Commission" means the Minnesota Public Utilities Commission.

Subp. 4. **Complainant.** "Complainant" means a person who complains formally or informally of an alleged violation of a statute or rule within the commission's jurisdiction, a utility tariff, or a commission order.

Subp. 5. **Cost increase filing.** "Cost increase filing" means a miscellaneous tariff filing under *Minnesota Statutes*, section 237.63, proposing a rate increase for a particular telephone service on grounds that the actual costs of providing that particular service have increased. It does not include cost increases that are part of overall cost increases and cost increases that have been discovered as a result of new cost studies.

Subp. 6. **Department.** "Department" means the Minnesota Department of Public Service.

Subp. 7. **Expedited proceeding.** "Expedited proceeding" means an informal proceeding described in *Minnesota Statutes*, section 237.61, and subject to specific procedural requirements such as verification of pleadings.

Subp. 8. **Informal proceeding.** "Informal proceeding" means a proceeding that addresses and resolves issues of public policy, fact, or law without a formal contested case proceeding before the Office of Administrative Hearings.

Subp. 9. **Intervenor.** "Intervenor" means a person permitted to intervene as a party in a proceeding under this chapter.

Subp. 10. **Language change filing.** "Language change filing"means a miscellaneous tariff filing under *Minnesota Statutes*, section 237.63, changing descriptive language in a telephone utility tariff without changing the meaning or operation of the tariff.

Subp. 11. **Miscellaneous tariff filing.** "Miscellaneous tariff filing" means a request or notice that does not require determination of the utility's revenue requirement.

A miscellaneous tariff filing includes a filing involving a new service offering; a change in a utility's rates, services, terms, or conditions of service; a change in a utility's corporate structure, assigned service area, or capital structure, when conducted separately from a general rate proceeding; or any related matter. The term also includes a language change filing, cost increase filing, and rate reduction filing.

The inclusion of a particular type of filing in this list does not require a filing that would not otherwise be required or confer jurisdiction that would not otherwise be present.

Subp. 12. **Municipality.** "Municipality" includes a town, statutory city, and home rule charter city.

Subp. 13. **Participant.** "Participant" means a person who files comments or appears in a proceeding, other than public hearings held in contested cases and other commission proceedings conducted to receive general public comments, to present views without becoming a party.

Subp. 14. **Party.** "Party" means a person by or against whom a proceeding before the commission is commenced or a person permitted to intervene in a proceeding under this chapter. A party to a proceeding is styled a "petitioner," "complainant," "intervenor," or "respondent," according to the nature of the proceeding and the relationship of the party to the proceeding.

Subp. 15. **Person.** "Person" means a natural person, corporation, municipal corporation, public corporation, utility, governmental entity, government agency, association, partnership, receiver, joint venture, trustee at common law or statutory trust guardian, or executor.

Subp. 16. **Petitioner.** "Petitioner" means a person who requests the commission's permission, authorization, or approval or a person who notifies the commission of a proposed change in a rate, service, or term or condition of service.

Subp. 17. **Price list filing.** "Price list filing" means a filing under *Minnesota Statutes*, section 237.60, pertaining to telephone services claimed to be subject to emerging or effective competition.

Subp. 18. **Proceeding.** "Proceeding" means a formal or informal undertaking of the commission, in which it seeks to resolve a question or issue taken up on its own motion or presented to it in a complaint, petition, or notice of a proposed change in a rate, service, or term or condition of service.

Subp. 19. **Proof of service.** "Proof of service" means a certificate of service stating the facts of service, including the time and manner of service and the parties served.

Subp. 20. **Rate reduction filing.** "Rate reduction filing" means a miscellaneous tariff filing under *Minnesota Statutes*, section 237.63, proposing a reduction in a rate for telephone service.

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Subp. 21. **Respondent.** "Respondent" means a person against whom a complaint is filed or against whom an investigation or other proceeding on commission motion is addressed.

Subp. 22. **Suspend.** "Suspend" means to hold in abeyance or to delay the effective date of.

Subp. 23. **Utility.** "Utility" means a gas, electric, or telephone company subject to the jurisdiction of the commission.

7829.0200 SCOPE AND CONSTRUCTION.

Subpart 1. **Construction.** This chapter must be construed to secure the just, speedy, and economical determination of issues before the commission. This chapter must be construed in light of the commission's statutory authority and responsibilities.

Subp. 2. **Conflicting statutes and substantive rules to control.** This chapter governs practice and procedure in matters before the commission except when a statute or a rule on a specific topic contains procedural requirements in direct conflict with this chapter. Then, the statute or rule on a specific topic controls insofar as it is in direct conflict with this chapter.

7829.0300 COMPUTATION OF TIME.

In computing a period of time prescribed by this chapter, the commission shall exclude the first and include the last day of the designated period of time. When the last day of the time period falls on Saturday, Sunday, or a legal holiday, that day must be omitted from the computation.

7829.0400 SERVICE AND FILING REQUIREMENTS.

Subpart 1. **Filing.** Documents are filed with the commission when they are received in the commission offices during regular business hours. Specific documents may be filed by facsimile transmission or filed when mailed or delivered in person, if the executive secretary so directs. Documents must be directed to the attention of the executive secretary.

Subp. 2. **Number of copies.** Parties and participants shall file an original and 15 copies of each document filed with the commission, unless otherwise directed by the executive secretary.

Subp. 3. **Proof of service.** Filings must be accompanied by proof of service on the persons on the appropriate service list.

Subp. 4. **Format.** Filings must identify the nature of the filing as briefly as possible, for example, "Replies to Exceptions to Report of Administrative Law Judge," and indicate that the matter is before the Minnesota Public Utilities Commission. Filings after the original filing must include the title and docket number of the matter. Filings must be on 8½ by 11-inch paper, unless the executive secretary authorizes a nonconforming filing for good cause shown.

Subp. 5. **Service.** A document filed with the commission must be served the same day on the persons listed on the appropriate service list, except when this chapter permits service of a summary of the filing. Service may be accomplished by first class mail or by delivery in person, unless otherwise provided by law or commission order. Service may also be accomplished by facsimile transmission, followed by first class mail. Service by mail or facsimile transmission plus mail is complete upon mailing, unless the executive secretary directs otherwise for specific documents. When a party or participant is represented by an attorney, service upon the attorney is considered service upon the party or participant.

Subp. 6. **Proceeding before administrative law judge.** During the time that a matter is before an administrative law judge, service and filing requirements are controlled by the rules of the Office of Administrative Hearings and by any orders issued under those rules by the administrative law judge.

7829.0500 TRADE SECRET AND PROPRIETARY INFORMATION.

Subpart 1. **Confidentiality protected.** Nothing in this chapter requires the public disclosure of privileged proprietary information, trade secrets, or other privileged information.

Subp. 2. **Procedure for excision.** Persons filing documents containing proprietary information, trade secrets, or other privileged information shall excise this information in all copies but the original and six copies.

Subp. 3. **Identification of excised material.** When a person classifies an entire document, or a substantial part of a document, as protected information, the person shall file a description of the excised material that includes at least the following information: the nature of the material, its authors, its general import, and the date on which it was prepared.

Subp. 4. **Document containing protected information.** The first page or cover page of a document containing protected information must be clearly marked in bold print "TRADE SECRET INFORMATION—NOT FOR PUBLIC DISCLOSURE" or with words of similar import. Every page on which protected information appears must be similarly marked and the protected information must be underlined, placed in brackets, or otherwise clearly identified as the information which is to be protected from disclosure.

7829.0600 GENERAL SERVICE LIST.

Subpart 1. **Establishing list.** Persons desiring to receive notice of particular types of filings and who are qualified to intervene under part 7829.0800 shall file with the utility a written list of the types of filings they wish to receive. The utility shall maintain

general service lists of persons who have filed these requests. The utility shall add to each list the persons who intervened in its last general rate case and persons on the official service list for its last filing of the same type.

Subp. 2. **Annual updating.** The utility may delete from its general service list a person who fails to respond within 30 days to an annual mailing inquiring whether that person wishes to continue receiving the filings requested.

Subp. 3. **Periodic addition.** A person may be added to the utility's general service list at any time by filing a request under subpart 1, even if the person failed to respond to an annual mailing as described in subpart 2.

Subp. 4. **Jurisdiction unaffected.** The service lists established in this part are intended to provide the earliest possible notice to persons who may be interested in a particular filing. The requirements of this part do not displace or add to legal notice requirements, and a utility's failure to comply with this part does not deprive the commission of jurisdiction over a matter of which it would otherwise have jurisdiction.

Subp. 5. **Party or participant status unaffected.** Inclusion on a general service list does not confer party or participant status on persons included on the list.

7829.0700 OFFICIAL SERVICE LIST.

Subpart 1. **Content.** The official service list for each proceeding consists of the names of the parties and the names of participants who have filed a written request for inclusion on the service list with the executive secretary.

Subp. 2. **Establishment and updating.** The commission shall establish the official service list at the conclusion of the initial comment period and shall mail a copy of the list to the parties and to participants who have filed written requests for inclusion. A list established before commission action on a petition for intervention must include those persons whose intervention petitions are pending. The commission shall mail an updated official service list to the parties and participants if the official service list is later expanded or reduced. The commission need not mail the official service list in proceedings when the only parties are the department and a petitioner, complainant, or respondent.

Subp. 3. **Limiting service list.** On its own motion or at the request of a party, the commission shall limit the service list to parties to the proceeding if it finds that requiring service on participants is unduly burdensome.

Subp. 4. **Name and address change.** A party or participant who wishes to change the name or address of a person receiving service on behalf of the party or participant shall provide written notice of the change to the executive secretary and to persons on the official service list.

Subp. 5. **Proceeding before administrative law judge.** In proceedings before an administrative law judge in which the judge establishes a service list, the names on that service list must remain on the official service list for the remainder of the proceeding.

7829.0800 PETITION TO INTERVENE.

Subpart 1. **Filing and service.** A person who desires to become a party to a proceeding shall file a petition to intervene within the time set in this chapter. The petition must be served on known parties and those persons on the utility's general service list for the matter, if applicable.

Subp. 2. **Grounds for intervention.** The petition must allege the grounds for intervention and must be granted upon a showing that: the person is specifically considered by statute to be interested in the particular type of matter at issue; the person is specifically declared by statute to be an interested party; or the outcome of the proceeding will bind or affect the person with respect to an interest peculiar to that person, as distinguished from an interest common to the public or other ratepayers in general.

Subp. 3. **Intervention as of right.** The department and the Office of the Attorney General, through its Residential Utilities Division, may intervene as of right in any proceeding before the commission. They become parties upon filing comments under this chapter and need not file petitions to intervene, except when the rules of the Office of Administrative Hearings require it.

Subp. 4. **Objection to intervention.** An objection to intervention must be filed within ten days of service of the petition to intervene.

Subp. 5. **Disposition of petition.** If there is no objection to intervention and a petition to intervene is not denied or suspended within 15 days of filing, the petition to intervene must be considered granted, unless the matter is referred to the Office of Administrative Hearings for contested case proceedings before the expiration of the 15-day period.

Subp. 6. **Proceeding before administrative law judge.** During the time that a matter is before an administrative law judge, intervention procedures are governed by the rules of the Office of Administrative Hearings and by orders issued under those rules by the administrative law judge.

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7829.0900 PARTICIPANT.

A person may file comments in a proceeding before the commission without requesting or obtaining party status. A participant may also be granted an opportunity for oral presentations.

7829.1000 REFERRAL FOR CONTESTED CASE PROCEEDING.

If a proceeding involves contested material facts or the commission finds that all significant issues have not been resolved to its satisfaction, the commission shall refer the matter to the Office of Administrative Hearings for contested case proceedings, unless:

A. all parties waive their rights to contested case proceedings and instead request informal or expedited proceedings, and the commission finds that informal or expedited proceedings would be in the public interest; or

B. a different procedural treatment is required by statute.

7829.1100 PUBLIC HEARING.

When a public hearing is held in connection with a contested case proceeding, the commission shall, whenever possible, schedule the public hearing to be held before the evidentiary hearings.

7829.1200 INFORMAL OR EXPEDITED PROCEEDING.

Subpart 1. **When appropriate.** Informal or expedited proceedings may be used when contested case proceedings are not required, for example, when:

A. there are no material facts in dispute;

B. the parties and the commission have agreed to informal or expedited proceedings; or

C. informal or expedited proceedings are authorized or required by statute.

Subp. 2. **Presentation of facts.** Written submissions are the preferred method of introducing facts. The commission shall allow oral presentation of facts when that can be done without compromising the rights of any person or the integrity of the proceeding. In informal proceedings, the commission shall require that factual allegations be made under oath or by affirmation when facts appear to be in dispute. In expedited proceedings, the commission shall require that factual allegations be made under oath or by affirmation and that documents filed in the proceeding be verified.

Subp. 3. **Notice.** The commission shall notify the persons on the official service list at least ten days before a meeting at which it may act on the basis of informal or expedited proceedings. Under exigent circumstances the executive secretary shall reduce the ten-day notice period.

7829.1300 MISCELLANEOUS TARIFF AND PRICE LIST FILINGS.

Subpart 1. **Summary.** A miscellaneous tariff filing and price list filing must include, on a separate page, a one-paragraph summary of the filing, sufficient to apprise potentially interested parties of its nature and general content.

Subp. 2. **Service.** The filing utility shall serve copies of each miscellaneous tariff filing on which commission action is required within 60 days, and each price list filing increasing the price of a competitive service, on the persons on the applicable general service list, on the department, and on the Residential Utilities Division of the Office of the Attorney General. For other filings, the utility may serve the summary described in subpart 1 on persons on the applicable general service list. The utility shall serve with the filing or the summary a copy of its general service list for the filing.

Subp. 3. **Content of filing subject to specific requirements.** In addition to complying with specific requirements imposed by statute or rule, miscellaneous tariff and price filings subject to specific filing rules must contain at least the following information:

A. the name, address, and telephone number of the utility, without abbreviation;

B. the name, address, and telephone number of the attorney for the utility, if the utility is using an attorney;

C. the date of the filing and the date the proposed rate or service change will go into effect;

D. the statute that the utility believes controls the time frame for processing the filing; and

E. the signature and title of the utility employee responsible for the filing.

Subp. 4. **Content of filing not subject to specific filing rules.** In addition to complying with any specific requirements imposed by statute, miscellaneous tariff and price list filings not subject to specific filing rules must contain at least the following information:

A. the name, address, and telephone number of the utility, without abbreviation;

B. the name, address, and telephone number of the attorney for the utility, if the utility is using an attorney;

C. the date of the filing and the date the proposed rate or service change will go into effect;

D. the statute that the utility believes controls the time frame for processing the filing;

E. the signature and title of the utility employee responsible for the filing; and

F. a description of the filing, its impact on rates and services, its impact on the utility and affected ratepayers, and the reasons for the filing.

Subp. 5. **Rejection of filing.** The commission shall reject a filing found to be substantially out of compliance with this chapter or applicable statutory requirements. A miscellaneous tariff filing or price list filing not rejected within 20 days of filing must be considered accepted as to form.

Subp. 6. **Initial comments.** A person wishing to comment on a miscellaneous tariff or price list filing shall do so within 30 days of its filing with the commission. A person wishing to comment on one of the following noncompetitive rate change filings shall do so within 20 days of its filing with the commission: a rate reduction filing, a cost increase filing, or a request for a significant change in a condition of telephone service. A person wishing to comment on a new telephone service, competitive or noncompetitive, shall do so within ten days of its filing with the commission. Comments must be served on the persons on the utility's general service list for the filing, as well as on the filing utility.

Subp. 7. **Petition to intervene.** If a person who files initial or reply comments is not entitled to intervene in commission proceedings as of right and desires full party status, the person shall file a petition to intervene before the initial or reply comment period expires. The intervention petition may be combined with the comments on the filing.

7829.1400 COMMENTS ON MISCELLANEOUS TARIFF OR PRICE LIST FILING.

Subpart 1. **Comments to include procedural recommendation.** A person commenting on a miscellaneous tariff or price list filing and recommending its rejection, denial, or modification shall specify whether the person believes the filing requires a contested case proceeding, informal proceeding, expedited proceeding, or some other procedural treatment, together with the person's reasons for recommending a particular procedural treatment.

Subp. 2. **Reply comments.** The utility and other persons have ten days from the expiration of the original comment period to file reply comments. Reply comments must be served on the utility and persons who have filed comments on the miscellaneous tariff filing. Reply comments must be limited in scope to the issues raised in the initial comments.

Subp. 3. **Additional comments.** If further information is required to make a fully informed decision, the commission shall require additional comments and identify specific issues requiring further development.

Subp. 4. **Comments on supplemental or corrected filings.** The commission shall provide opportunity for other parties to respond to supplemental or corrected filings when those filings raise new issues.

Subp. 5. **Comment periods varied.** Except for comment periods set by statute, the commission may vary the comment periods set by this chapter on its own motion or at the request of a person for good cause shown. The commission may delegate the authority to vary time periods to the executive secretary.

Subp. 6. **Comment periods extended at department's request.** At the request of the department, the commission shall extend the comment periods in parts 7829.1300 and 7829.1400 up to an additional 30 days, except for comment periods established by statute and except when the commission must act within 60 days to prevent proposed rate changes from going into effect.

7829.1500 INFORMAL COMPLAINT.

Persons engaged in disputes with utilities may submit informal complaints by letter or other writing, by telephone, or in person. Commission staff shall accept these complaints and shall prepare a memorandum setting forth the substance of each complaint and identifying the customer, the service address, and the utility.

7829.1600 TREATMENT OF INFORMAL COMPLAINT.

Commission staff shall try to help resolve informal complaints by correspondence, mediation, arbitration, and other informal means. If the complainant desires formal action by the commission, a formal complaint must be filed.

7829.1700 FORMAL COMPLAINT.

Subpart 1. **Content.** A formal complaint must include the following information: the name and address of the complainant; the name and address of complainant's counsel, if any; the name and address of respondent; the name and address of respondent's counsel, if known; the statute, rule, tariff, or commission order alleged to have been violated; the facts constituting the alleged violation; and the relief sought by complainant.

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Subp. 2. **Service and filing.** A formal complaint must be served on the respondent, the department, and the Residential Utilities Division of the Office of the Attorney General, as well as filed with the commission.

7829.1800 INITIAL CONSIDERATION OF FORMAL COMPLAINT.

Subpart 1. **Initial commission review.** The commission shall review a formal complaint as soon as practicable to determine whether the commission has jurisdiction over the matter and to determine whether there are reasonable grounds to investigate the allegation. On concluding that it lacks jurisdiction or that there is no reasonable basis to investigate the matter, the commission shall dismiss the complaint.

Subp. 2. **Answer.** On concluding that it has jurisdiction over the matter and that investigation is warranted, the commission shall serve the complaint on the respondent, together with an order requiring the respondent to grant the relief complainant requests or to show cause by answer why respondent should not be ordered to do so. The answer must be filed with the commission and served on the complainant, the department, and the Residential Utilities Division of the Office of the Attorney General within 20 days of service of the complaint and order.

Subp. 3. **Reply.** Replies are not required unless the answer alleges that respondent has granted the relief sought by complainant. In that case, the complainant shall file a reply within 20 days admitting or denying that relief has been granted.If the complainant fails to file the reply, the commission shall dismiss the complaint. Copies of the reply must be served on respondents, the department, and the Residential Utilities Division of the Office of the Attorney General.

Subp. 4. **Failure to answer.** If the respondent fails to answer a complaint served by the commission under subpart 2, the commission shall consider the allegations of the complaint denied, and issue is joined.

7829.1900 COMMISSION ACTION ON FORMAL COMPLAINT.

Subpart 1. **Nature of proceedings.** The commission shall deal with a formal complaint through a contested case proceeding, informal proceeding, or expedited proceeding.

Subp. 2. **Initial comments.** A person wishing to comment on a formal complaint shall do so within 30 days of the date of a commission order requiring an answer to the complaint. Comments must be served on the complainant, respondent, department, Residential Utilities Division of the Office of the Attorney General, and any other known parties.

Subp. 3. **Reply comments.** A commenting party has ten days from the expiration of the original comment period to file reply comments. Reply comments must be limited in scope to the issues raised in the initial comments and must be served on the complainant, respondent, department, Residential Utilities Division Of the Office of the Attorney General, and any other known parties.

Subp. 4. **Petition to intervene.** If a person who files initial or reply comments is not entitled to intervene in commission proceedings as of right and desires full party status, the person shall file a petition to intervene before the initial or reply comment period expires. The intervention petition may be combined with the comments on the complaint.

Subp. 5. **Comments to include procedural recommendation.** A person commenting on a complaint shall specify whether the person believes the matter requires a contested case proceeding, informal proceeding, expedited proceeding, or some other procedural treatment, together with the reasons for recommending a particular procedural treatment.

Subp. 6. **Additional comments.** If further information is required to make a fully informed decision, the commission shall require additional comments and identify specific issues requiring further development.

Subp. 7. **Comments on supplemental or corrected filings.** The commission shall provide opportunity for other parties to respond to supplemental or corrected filings when those filings raise new issues.

Subp. 8. **Comment periods varied.** Except for time periods set by statute, the commission may vary the comment periods established in this part at the request of a person for good cause shown. The commission may delegate the authority to vary time periods to the executive secretary.

Subp. 9. **Comment periods extended at department's request.** At the request of the department, the commission shall extend the comment periods established in this part up to an additional 30 days, except for comment periods set by statute.

7829.2000 ELECTRIC SERVICE AREA COMPLAINT.

Subpart 1. **Content.** A complaint alleging violation of an electric utility's assigned service area must include a copy of the official service area map of an area at issue, with the area of the alleged violation clearly marked.

Subp. 2. **Service and filing.** A service area complaint must be served on the respondent, department, and Residential Utilities Division of the Office of the Attorney General, as well as filed with the commission.

7829.2100 COMMISSION ACTION ON SERVICE AREA COMPLAINT.

Subpart 1. **Answer.** Within ten days of service of a service area complaint, a respondent shall file an answer with the commission and serve it on the complainant, department, and Residential Utilities Division of the Office of the Attorney General.

Subp. 2. **Initial comments.** A person wishing to comment on a service area complaint shall do so within ten days of the date the person was served. Comments must be served on the complainant, respondent, department, Residential Utilities Division of the Office of the Attorney General, and any other known parties.

Subp. 3. **Petition to intervene.** If a person who files comments is not entitled to intervene in a commission proceeding as of right and desires full party status, the person shall file a petition to intervene before the initial comment period expires. The intervention petition may be combined with the comments on the complaint and must be served on those persons entitled to service of the comments.

Subp. 4. **Additional comments.** If further information is required to make a fully informed decision, the commission shall require additional comments and identify specific issues requiring further development.

Subp. 5. **Comments on supplemental or corrected filing.** The commission shall provide opportunity for other parties to respond to supplemental or corrected filings when those filings raise new issues.

Subp. 6. **Time for disposition.** Service area complaints must come before the commission within 15 days of filing. The commission shall issue its order within 30 days after the hearing.

7829.2200 TELEPHONE INCENTIVE PLAN FILING.

Subpart 1. **Summary.** A telephone utility filing an incentive plan under *Minnesota Statutes*, section 237.625, shall include, on a separate page, a brief summary of the filing, sufficient to apprise potentially interested parties of its nature and general content.

Subp. 2. **Service.** A utility filing an incentive plan under *Minnesota Statutes*, section 237.625, shall serve copies of the incentive plan filing on the department and the Residential Utilities Division of the Office of the Attorney General. The utility shall serve the filing or the summary described in subpart 1 on those persons on the applicable general service list and on persons who were parties to its last general rate case or incentive plan proceeding.

Subp. 3. **Challenge to form and completeness.** A person wishing to challenge the form or completeness of an incentive plan filing shall do so within ten days of its filing. The filing utility shall reply to the challenge within five days of its filing. These challenges and responses must be served on the utility, the department, the Residential Utilities Division of the Office of the Attorney General, persons on the general service list for the filing, and any other known parties.

Subp. 4. **Rejection of filing.** The commission shall reject a filing that it finds to be substantially out of compliance with *Minnesota Statutes*, section 237.625, or with any other filing requirement imposed by rule or statute. An incentive plan filing not rejected within 45 days of filing is considered accepted as in substantial compliance with applicable filing requirements.

Subp. 5. **Procedural comments.** A person wishing to comment on a proposed incentive plan shall file comments within 20 days of its filing, recommending a specific procedural framework for examining the filing, including time frames for substantive comments and commission action. Procedural comments must be served on the utility, department, Residential Utilities Division of the Office of the Attorney General, persons on the general service list for the filing, and any other known parties.

Subp. 6. **Petition to intervene.** If a person desires full party status, but is not entitled to intervene in a commission proceeding as of right, the person shall file a petition to intervene before the procedural comment period expires. The intervention petition may be combined with procedural comments on the filing and must be served on those persons entitled to receive service of procedural comments.

Subp. 7. **Notice to public and ratepayers.** The utility shall give notice of the proposed incentive plan to its ratepayers and shall publish notice of the proposed plan in all newspapers of general circulation in all county seats in its service area.

Subp. 8. **Notice of public meeting.** The utility shall notify its ratepayers of public meetings on the proposed incentive plan scheduled by the commission and shall publish notice of the public meetings in all newspapers of general circulation in all county seats in its service area.

Subp. 9. **Nature of proceeding.** The commission shall deal with incentive plan filings by conducting an expedited proceeding under *Minnesota Statutes*, section 237.61. Following review of the procedural comments, the commission shall establish by order, time frames for submitting testimony and comments.

Subp. 10. **Time frame for disposition.** The commission shall approve, reject, or modify a proposed incentive plan within six months of filing. If the commission does not act within that time, the plan is considered withdrawn, unless the commission and the utility agree to extend the six-month period.

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7829.2300 CLASSIFICATION PETITION.

Subpart 1. **Summary.** A telephone utility filing a classification petition under *Minnesota Statutes*, section 237.59, shall include on a separate page a brief summary of the filing, sufficient to apprise potentially interested parties of its nature and general content.

Subp. 2. **Service.** A utility filing a classification petition shall serve copies of the petition on the department and Residential Utilities Division of the Office of the Attorney General. The utility shall serve the petition or the summary described in subpart 1 on those persons on the applicable general service list and on those persons who were parties to its last general rate case or incentive plan proceeding, if applicable.

Subp. 3. **Challenges to form and completeness.** A person wishing to challenge the form or completeness of a classification petition shall do so within ten days of its filing. The filing utility shall reply to the challenge within five days of its filing. Challenges and responses must be served on the department, Residential Utilities Division of the Office of the Attorney General, persons on the general service list for the filing, and any other known parties.

Subp. 4. **Rejection of filings.** The commission shall reject a classification petition found to be substantially out of compliance with *Minnesota Statutes*, section 237.59, or with any other filing requirement imposed by rule or statute. A filing under this section not rejected within 45 days of filing is considered accepted as in substantial compliance with applicable filing requirements.

Subp. 5. **Initial comments.** A person wishing to comment on a classification petition shall file initial comments within 20 days of the filing. Initial comments must include a recommendation on whether the filing requires a contested case proceeding, expedited proceeding, or some other procedural treatment, together with reasons for recommending a particular procedural treatment. Initial comments must be served on the utility, department, Residential Utilities Division of the Office of the Attorney General, persons on the general service list for the filing, and any other known parties.

Subp. 6. **Petition to intervene.** If a person who files initial comments is not entitled to intervene in a commission proceeding as of right and desires full party status, the person shall file a petition to intervene before the reply comment period expires. The intervention petition may be combined with comments on the filing and must be served on those persons entitled to receive service during the comment period when the intervention petition is filed.

Subp. 7. **Reply comments.** Commenting parties have ten days from the expiration of the original comment period to file reply comments. Reply comments must be limited in scope to the issues raised in the initial comments. Reply comments must be served on the utility and on those persons who have filed initial comments.

Subp. 8. **Additional comments.** If further information is required to make a fully informed decision, the commission shall require additional comments and identify specific issues requiring further development.

Subp. 9. **Comments on supplemental or corrected filing.** The commission shall provide opportunity for other parties to respond to a supplemental or corrected filing when the filing raises new issues.

Subp. 10. **Nature of proceeding.** The commission shall deal with a classification petition by conducting an expedited proceeding under *Minnesota Statutes*, section 237.61, or by referring the matter for a contested case proceeding.

Subp. 11. **Time frame for disposition; expedited proceeding.** When the filing utility requests an expedited proceeding on its classification petition, the commission shall take final action within 60 days of the date on which the utility provides the substantive information required by statute, unless the commission finds at least one issue of material fact in dispute and refers the matter for a contested case proceeding within the same 60-day period.

Subp. 12. **Time frame for disposition; contested case proceeding.** When the commission conducts a contested case proceeding, it shall take final action within eight months of the utility's request for a contested case proceeding or the commission's order that contested case proceedings be held, whichever occurs earlier.

Subp. 13. **Extending disposition period.** The commission may extend the eight-month time frame set forth in subpart 12 with the agreement of all parties or upon a finding that the case cannot be completed within the required time and that there is a substantial probability that the public interest would be harmed by enforcing the eight-month time frame.

7829.2400 FILINGS REQUIRING DETERMINATION OF GROSS REVENUE REQUIREMENT.

Subpart 1. **Summary.** A utility filing a general rate case or other filing that requires determination of its gross revenue requirement shall include, on a separate page, a brief summary of the filing, sufficient to apprise potentially interested parties of its nature and general content.

Subp. 2. **Service.** A utility filing a general rate change request shall serve copies of the filing on the department and Residential Utilities Division of the office of the Attorney General. The utility shall serve the filing or the summary described in subpart 1 on the persons on the applicable general service list and persons who were parties to its last general rate case or incentive plan proceeding.

Subp. 3. **Notice to public and governing bodies.** A utility seeking a general rate change shall give notice of the proposed change to the governing body of each municipality and county in its service area and to its ratepayers. The utility shall also publish notice of

the proposed change in newspapers of general circulation in all county seats in its service area.

Subp. 4. **Challenge to form and completeness.** A party wishing to challenge the form or completeness of a general rate case filing shall do so within ten days of its filing. The filing utility shall reply to the challenge within five days of its filing. Challenges and responses must be served on the department, Residential Utilities Division of the Office of the Attorney General, persons on the general service list for the filing, and any other known parties.

Subp. 5. **Rejection of filing.** The commission shall reject a filing under this part that is found to be substantially out of compliance with *Minnesota Statutes*, section 216B.16 or 237.075, or other requirement imposed by rule, statute, or previous commission order. A filing under this part not rejected within 60 days of filing is considered accepted as in substantial compliance with applicable filing requirements.

Subp. 6. **Petition to intervene.** The commission shall entertain a petition to intervene until the matter is referred to the Office of Administrative Hearings for a contested case proceeding or until the commission issues a notice under part 7829.1200, subpart 3, stating its intention to decide the matter on the basis of an informal or expedited proceeding. Once a filing is referred for a contested case proceeding, the rules of the Office of Administrative Hearings control intervention rights.

Subp. 7. **Notice of hearing.** The utility shall notify its ratepayers of hearings held in connection with its rate change request in the manner directed by the commission. The utility shall publish notice of hearings on its rate change request in newspapers of general circulation in all county seats in its service area, as directed by the commission.

7829.2500 CERTIFICATE OF NEED FILING.

Subpart 1. **Compliance.** Certificate of need applications must comply with the requirements of *Minnesota Statutes*, sections 216B.2421 and 216B.243; *Minnesota Rules*, chapters 7849, 7851, 7853, and 7855; and any other requirements imposed by rule or statute.

Subp. 2. **Summary.** A person filing a certificate of need application shall include, on a separate page, a brief summary of the filing, sufficient to apprise potentially interested parties of its nature and general content.

Subp. 3. **Service.** A certificate of need applicant shall serve copies of the filing on the department and Residential Utilities Division of the Office of the Attorney General. The applicant shall serve the filing or the summary described in subpart 2 on those persons on an applicable general service list and on those persons who were parties to its last general rate case or incentive plan proceeding, if applicable.

Subp. 4. **Publication in *State Register*.** The commission shall publish notice of the certificate of need filing in the *State Register* and shall solicit public comment on the application.

Subp. 5. **Publication in newspapers.** The applicant shall publish notice of the filing in newspapers of general circulation throughout the state.

Subp. 6. **Solicitation of comments on filing compliance.** The commission shall request comments on the filing's compliance with *Minnesota Statutes*, sections 216B.2421 to 216B.243, and *Minnesota Rules*, chapters 7849, 7851, 7853, and 7855, when it determines that comments would be helpful in evaluating the filing's substantial compliance with the requirements of those statutes and rules. The commission may delegate the authority to request these comments to the executive secretary.

Subp. 7. **Rejection of filing.** The commission shall reject a filing under this part that is found to be substantially out of compliance with *Minnesota Statutes*, sections 216B.2421 to 216B.243; *Minnesota Rules*, chapters 7849, 7851, 7853, and 7855; and any other requirements imposed by rule or statute. A filing under this section not rejected within 15 days of filing must be considered accepted as in substantial compliance with applicable filing requirements.

Subp. 8. **Petition to intervene.** The commission shall entertain a petition to intervene until the matter is referred to the Office of Administrative Hearings for a contested case proceeding or until the commission issues a notice under part 7829.1200, subpart 3, stating its intention to decide the matter on the basis of an informal or expedited proceeding. Once a filing is referred for a contested case proceeding, the rules of the Office of Administrative Hearings shall control intervention rights.

Subp. 9. **Public hearing.** If the commission decides to act on the application through an informal proceeding, the commission shall hold a public hearing designed to encourage members of the public to express their views on the application, as required under *Minnesota Statutes*, section 216B.243, subdivision 4. If the commission refers the application to the Office of Administrative Proceedings for a contested case proceeding, the commission shall ensure that at least one public hearing is held.

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.

7829.2600 STAFF COMMENTS.

Written comments on a filing by commission staff must be made available to those persons on the service list at the same time they are provided to the commission. If commission staff recommend action not advocated by any party, all parties must be granted oral argument at the request of any party.

7829.2700 PROCEDURE FOLLOWING REPORT OF ADMINISTRATIVE LAW JUDGE.

Subpart 1. **Exceptions to administrative law judge's report.** Except in cases subject to statutory deadlines, parties shall file and serve on the other parties any exceptions to an administrative law judge's report within 20 days of its filing. In cases subject to statutory deadlines, exceptions must be filed and served within 15 days of the filing of the report.

Subp. 2. **Replies to exceptions.** Except in cases subject to statutory deadlines, a party shall file and serve on all other parties any replies to exceptions within ten days of the due date for exceptions. In cases subject to statutory deadlines, replies are not permitted.

Subp. 3. **Oral argument.** Parties must be granted an opportunity for oral argument before the commission as required under *Minnesota Statutes*, section 14.61.

7829.2800 GENERAL NOTICE REQUIREMENT.

Matters may come before the commission only on ten days notice to the parties and those persons on the official service list. Under exigent circumstances the executive secretary shall reduce the ten-day notice period.

7829.2900 DECISION AND ORDER.

The executive secretary shall serve a decision and order of the commission on all parties and participants in the proceeding.

7829.3000 PETITION FOR REHEARING, AMENDMENT, VACATION, RECONSIDERATION, REARGUMENT.

Subpart 1. **Time for request.** A party or a person aggrieved and directly affected by a commission decision or order may file a petition for rehearing, amendment, vacation, reconsideration, or reargument within 20 days of the date the decision or order is served by the executive secretary.

Subp. 2. **Content of request.** A petition for rehearing, amendment, vacation, reconsideration, or reargument must set forth specifically the grounds relied upon or errors claimed. A request for amendment must set forth the specific amendments desired and the reasons for the amendments.

Subp. 3. **Service.** A petition for rehearing, amendment, vacation, reconsideration, or reargument, and an answer, reply, or comment, must be served on the parties and participants in the proceeding to which they relate.

Subp. 4. **Answers.** Other parties to the proceeding shall file answers to a petition for rehearing, amendment, vacation, reconsideration, or reargument within ten days of service of the petition.

Subp. 5. **Replies.** Replies are not permitted unless specifically authorized by the commission.

Subp. 6. **Commission action.** The commission shall decide a petition for rehearing, amendment, vacation, reconsideration, or reargument with or without a hearing or oral argument. The commission may vacate or stay the order, or part of the order, that is the subject of the petition, pending action on the petition.

7829.3100 TIME PERIODS VARIED.

Except for time periods set by statute, the commission may vary the time periods established by this chapter on its own motion or at the request of a person for good cause shown. The commission may delegate the authority to vary time periods to the executive secretary.

7829.3200 OTHER VARIANCES.

Subpart 1. **When granted.** The commission shall grant a variance to its rules when it determines that the following requirements are met:

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

B. granting the variance would not adversely affect the public interest; and

C. granting the variance would not conflict with standards imposed by law.

Subp. 2. **Conditions.** A variance may be granted contingent upon compliance with conditions imposed by the commission.

Subp. 3. **Duration.** Unless the commission orders otherwise, variances automatically expire in one year. They may be revoked sooner due to changes in circumstances or due to failure to comply with requirements imposed as a condition of receiving a variance.

REPEALER. *Minnesota Rules*, parts 7830.0100; 7830.0200; 7830.0300; 7830.0400; 7830.0500; 7830.0600; 7830.0700; 7830.0800; 7830.0900; 7830.1000; 7830.1100; 7830.1200; 7830.1300; 7830.1400; 7830.1500; 7830.1600; 7830.1700; 7830.1800; 7830.1900; 7830.2000; 7830.2100; 7830.2200; 7830.2300; 7830.2400; 7830.2500; 7830.2600; 7830.2700; 7830.2800; 7830.2900; 7830.3000;

7830.3100; 7830.3200; 7830.3300; 7830.3400; 7830.3500; 7830.3600; 7830.3700; 7830.3800; 7830.3900; 7830.4000; 7830.4100; 7830.4200; 7830.4300; 7830.4400; 7847.0010; 7847.0020; 7847.0100; 7847.0110; 7847.0120; 7847.0130; 7847.0140; 7847.0150; 7847.0200; 7847.0210; 7847.0220; 7847.0230; 7847.0240; 7847.0250; 7847.0260; 7847.0270; 7847.0280; 7847.0290; 7847.0300; 7847.0310; and 7847.0320, are repealed.

Secretary of State

Proposed Permanent Rules Relating to Elections; Housekeeping Rules

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Secretary of State intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rules are found in *Minnesota Statutes* 201.022, subdivision 2; 201.221, subdivision 1; 203B.08, subdivision 4; 203B.09; 204B.25, subdivision 2; 204B.45, subdivision 3; 204C.361; 204D.11, subdivision 1; 206.57, subdivision 1; and 207A.09.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the Secretary of State will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Joseph Mansky
Director, Election Division
180 State Office Building
St. Paul, MN 55155
(612) 296-2805

The proposed rules may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rules as noticed.

A copy of the proposed rules are attached to this notice.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from the Secretary of State upon request.

If no hearing is required, upon adoption of the rules, the rules and the required supporting documents will be submitted to the Attorney General for review as to the legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this matter to the Attorney General, or who wish to receive a copy of the adopted rules, must submit the written request to the Secretary of State.

Dated: 22 January 1992

Joseph Mansky
Director, Election Division

Rules as Proposed

8200.6300 COST DETERMINATION.

When the secretary of state or a county auditor determines the cost of ~~copies of~~ producing lists of registered voters, the secretary of state or auditor shall take into account only the costs ~~of reproduction~~ actually incurred ~~by his office~~ to fill the specific request. The

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.

Office of the Revisor of Statutes
Administrative Rules

Ron Ray
Senior Assistant Revisor
296-0945

700 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1297

June 15, 1992

Carol Casebolt
Public Utilities Commission
Room 780 American Center Bldg
St. Paul, MN 55101

RE: File No. 1976

Dear Carol:

Enclosed are four copies of your rule with the modifications you requested.

Please submit the rules to the Attorney General or the Office of Administrative Hearings, as appropriate.

If you have any questions or need further modifications, please call me.

Very truly yours,

Ron Ray

Ron Ray

STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of a Proposal to Adopt New Rules of Practice and Procedure

ISSUE DATE:

DOCKET NO. U-999/R-86-147

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The Minnesota Public Utilities Commission proposes to replace its Rules of Practice and Procedure, Minn. Rules Chapter 7830, with new procedural rules. New rules are necessary because the law, the regulatory environment, and Commission responsibilities have changed significantly since the current rules were adopted.

Commission legal staff drafted the proposed rules, assisted by an Advisory Panel composed of representatives of the regulated industries, other regulatory agencies, consumer organizations, and low income advocacy groups. The new rules are intended to streamline Commission procedure and to provide more effective guidance for persons who do not regularly appear before the Commission.

II. STATUTORY AUTHORITY FOR PROPOSED RULES

The Commission is authorized and required to adopt procedural rules under Minn. Stat. §§ 14.06, 216A.05, subds. 1 and 5, and 237.10 (1990).

III. STATEMENT OF NEED

The Administrative Procedure Act requires the Commission to establish the need for the proposed rules by an affirmative presentation of facts. Minn. Stat. §§ 14.14, subd. 2 and 14.23 (1990). The Commission submits that new procedural rules are necessary because the existing rules no longer meet the needs of the Commission or the public. Specific examples of inadequacy are set forth below.

The current rules were enacted at a time when the Commission regulated motor carriers, a function now performed by the Transportation Regulation Board. References to motor carriers remain in the rules, however, and are unnecessary and confusing.

When the current rules were adopted, the Commission presided over hearings in contested cases. Since then the Legislature has directed that contested case proceedings be conducted before Administrative Law Judges in the Office of Administrative Hearings. This has made the rules' detailed provisions regarding the conduct of contested case proceedings superfluous.

Finally, in 1987 the Legislature enacted new telephone legislation providing for reduced regulation of competitive services and expedited treatment of certain filings relating to noncompetitive services, such as rate reduction filings. The current rules offer no guidance for dealing with filings under the new legislation.

The Commission found that the existing procedural rules required substantial revision and concluded it would be more efficient to draft new rules than to amend the current ones. The need for individual rules is discussed in section V.

IV. STATEMENT OF REASONABLENESS

The Administrative Procedure Act also requires the Commission to establish that the proposed rules are a reasonable solution to the problem they are intended to address, that the Commission relied on evidence in choosing the approach adopted in the rules, and that the evidence relied upon bears a rational relation to the approach the Commission chose to adopt. Minn. Stat. § 14.23 (1990); Minn. Rules, part 2010.0700.

The proposed rules are a reasonable means of establishing uniform procedures for the transaction of Commission business. They provide clear time frames for processing different types of filings. They establish workable notice procedures to apprise potentially interested persons as soon as filings are made. They provide meaningful opportunity for comment prior to Commission action. They provide for adequate notice to all parties of meetings at which the Commission will act upon matters in which they have an interest.

The proposed rules are procedural, not substantive, and therefore factual evidence played a smaller role in their development than policy considerations. The Commission did request comments from the public before undertaking revision of the rules. Outside Opinion Sought Regarding Amendments to the Minnesota Public Utilities Commission's Rules of General Practice and Procedure, 10 S.R. 2039. Nine parties filed comments: the Suburban Rate

Authority, the Minnesota Independent Coalition, Northern States Power Company, Leonard, Street & Deinard, Otter Tail Power Company, Minnesota Power & Light Company, the Department of Public Service, the Residential Utilities Division of the Office of the Attorney General, and Stanley E. Bourassa. With the exception of Mr. Bourassa, all these parties appear before the Commission regularly.

All commenting parties agreed that the procedural rules required revision. They also cited many common concerns: the elimination of anachronisms from the rules, earlier notice of filings to potentially interested parties, clearer time frames for Commission action, separate processes for disputed and undisputed matters, separate processes for resolving factual and policy issues, greater clarity on how the Commission's procedural rules relate to the procedural rules of the Office of Administrative Hearings.

The Commission considered concerns of the parties and the Advisory Panel and believes their concerns are adequately addressed and reasonably accommodated in the proposed rules. The reasonableness of each individual rule is discussed below.

V. ANALYSIS OF INDIVIDUAL RULES

7829.0100 DEFINITIONS

Subp. 1. Scope.

This subpart establishes that the terms used in this chapter are assigned the meanings given them in part 7830.0100. This is reasonable to establish a frame of reference for the rule.

Subp. 2. Classification petition.

The term requires definition because it appears throughout the rules and has a specific meaning not commonly understood outside the context of Minnesota telephone regulation. The proposed definition is reasonable because it clearly and adequately describes what constitutes such a petition and is consistent with the applicable statute, Minn. Stat. § 237.59.

Subp. 3. Commission.

The proposed definition is necessary and reasonable because it will help avoid needless repetition of the full title of the Minnesota Public Utilities Commission.

Subp. 4. Complainant.

This term requires definition because it appears throughout the

rules and has a specific meaning not commonly understood outside the legal and administrative contexts. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term and provides a useful means of identifying parties who have alleged violations of the statutes, rules, tariffs, or orders the Commission is charged with enforcing.

Subp. 5. Cost increase filing.

The term requires definition because it appears throughout the rules and has a specific meaning not commonly understood outside the context of Minnesota telephone regulation. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term and is consistent with the applicable statute, Minn. Stat. § 237.63.

Subp. 6. Department.

The proposed definition is necessary and reasonable because it will help avoid needless repetition of the full title of the Minnesota Department of Public Service.

Subp. 7. Expedited proceeding.

It is important to include this definition in the rules because the concept it represents is unusual and will be unfamiliar to many people. Normally, the Administrative Procedure Act requires contested case proceedings when agencies encounter disputed material facts. The 1987 telecommunications legislation, however, carved out certain exceptions, when the Commission may use "expedited proceedings" instead. Minn. Stat. § 237.61. (These exceptions include incentive plan proceedings, Minn. Stat. § 237.625, subd. 2, and classification petition proceedings, Minn. Stat. § 237.59, subd. 3.)

The proposed definition is reasonable because it clearly and adequately describes what is meant by the term and is consistent with applicable statutes.

Subp. 8. Informal proceeding.

A major purpose of the new rules is to establish different procedural "tracks" to meet the Commission's need for procedural flexibility. Different filings require different levels of formality, depending upon the complexity of the facts, the law, and the policy choices at issue. "Informal proceedings" are intended for filings which do not require formal contested case proceedings, but do require established comment procedures to clarify the issues. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term.

Subp. 9. Intervenor.

The term "intervenor" requires definition because it appears throughout the rules and has a specific meaning not commonly understood outside legal and administrative hearing contexts. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term.

Subp. 10. Language change filing.

The term requires definition because it appears throughout the rules and has a specific meaning not commonly understood outside the context of Minnesota telephone regulation. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term.

Subp. 11. Miscellaneous tariff filing.

This term requires definition because it appears throughout the rules and has a specific meaning not commonly understood outside the context of utility regulation. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term.

Subp. 12. Municipality.

This term requires definition because it appears throughout the rules and has a specific meaning not commonly understood outside the legal and administrative contexts. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term.

Subp. 13. Participant.

This term requires definition because it appears throughout the rules and has a specific meaning not commonly understood outside the context of Minnesota utility regulation. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term.

Subp. 14. Party.

This term requires definition because it appears throughout the rules and has a specific meaning not commonly understood outside the legal and administrative contexts. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term.

Subp. 15. Person.

The proposed definition is intended to encompass all legal entities with a right to appear before the Commission. It is

therefore purposely broad. It is reasonable because it clearly and adequately describes what is meant by the term.

Subp. 16. Petitioner.

This term requires definition because it appears throughout the rules and has a specific meaning not commonly understood outside legal and administrative contexts. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term and is a useful means of identifying persons who initiate Commission action.

Subp. 17. Price list filing.

The term requires definition because it appears throughout the rules and has a specific meaning not commonly understood outside the context of Minnesota telephone regulation. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term.

Subp. 18. Proceeding.

The term requires definition because it appears throughout the rules and has a specific meaning not commonly understood outside legal and administrative hearing contexts. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term.

Subp. 19. Proof of service.

The term requires definition because it appears throughout the rules and has a specific meaning not commonly understood outside legal and administrative hearing contexts. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term.

Subp. 20. Rate reduction filing.

The term requires definition because it appears throughout the rules and has a specific meaning not commonly understood outside the context of Minnesota telephone regulation. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term.

Subp. 21. Respondent.

This term requires definition because it appears throughout the rules and has a specific meaning not commonly understood outside legal and administrative contexts. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term and is a useful means of identifying persons against whom Commission action is sought.

Subp. 22. Suspend.

This term requires definition because it appears throughout the rules and has a specific meaning not commonly understood outside the context of utility regulation. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term.

Subp. 23. Utility.

This term requires definition because it appears throughout the rules and has a specific definition not commonly understood, i.e., it is limited to utilities the Commission regulates. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term.

7829.0200 SCOPE AND CONSTRUCTION

This section emphasizes that the rules exist to ensure orderly procedure and just results and are to be interpreted in that light. One of the goals of this rulemaking was to make Commission procedure as accessible as possible to persons who do not regularly appear before the Commission. The liberal construction provision was added to strengthen this emphasis.

The section also makes it clear that procedural provisions in specific statutes or substantive rules supersede this rule whenever they conflict with it.

7829.0300 COMPUTATION OF TIME

This rule explains how to compute time periods prescribed by the rules. It adopts the same approach as the Rules of Civil Procedure, excluding the first day and adding a day if the last day of the period is a Saturday, Sunday, or legal holiday. This is a reasonable, widely-used, and practical way of computing time periods.

7829.0400 SERVICE AND FILING REQUIREMENTS

Subp. 1. Filing.

This section adopts traditional filing requirements. Documents are deemed filed when received in the Commission's offices during regular business hours. The Executive Secretary may allow specific documents to be filed by facsimile transmission (FAX) or to be deemed filed when mailed.

The Commission decided it would not be practical to accept FAX

filings on a routine basis, as some members of the advisory panel suggested. In fiscal year 1990 the Commission opened 1,078 dockets, most of them involving more than one round of filings. Copies of all filings are distributed to the five Commissioners, the Executive Secretary, designated members of the professional staff, and Attorney General staff. The Commission believes it is more efficient to require parties to file an adequate number of copies than to employ additional support staff to photocopy FAX filings.

At the same time, the Commission considers it important for the rules to allow alternative filing procedures when necessary. The proposed rules therefore allow the Executive Secretary to accept FAX filings or to deem filing complete upon mailing in specific cases. This is a reasonable approach that meets the needs of the Commission and all parties.

Subp. 2. Number of copies.

This section requires parties to file 15 copies of all documents, the number needed for internal distribution at the Commission. Requiring the number of copies actually needed is reasonable and consistent with the prevailing practice of judicial bodies.

Subp. 3. Proof of service.

This section requires parties filing documents to file proof that they served copies on all other parties. This requirement serves as a practical reminder to serve other parties and avoids service disputes. The subpart is reasonable and consistent with standard administrative and judicial practice.

Subp. 4. Format.

This subpart addresses practical matters, such as standard paper size, headings, and captions. Such requirements are necessary to allow immediate identification of each filing and the proceeding to which it relates. The subpart is reasonable because it will promote administrative efficiency without burdening the parties.

Subp. 5. Service.

This subpart adopts traditional service requirements: service on all parties is required for all documents filed with the Commission; service may be in person or by mail; service by mail is complete upon mailing; and service on a party's attorney is service on the party. The subpart also allows service by facsimile transmission, followed by first class mail. The Executive Secretary may require personal service in lieu of service by mail for specific documents. These are standard service requirements in judicial and quasi-judicial proceedings. They are reasonable because due process requires that all parties

receive notice of other parties' claims and receive adequate opportunity to respond to them.

It is reasonable and necessary to authorize the Executive Secretary to require personal service in individual cases, since in some matters statutory deadlines place the Commission under time constraints which make service by mail impractical. See, for example, the 10-month deadline for rate cases and the 45-day deadline for service area disputes, Minn. Stat. §§ 216B.16, subd. 2; 237.075, subd. 2; 216B.43.

Subp. 6. Proceedings before an Administrative Law Judge.

This subpart clarifies that the rules of the Office of Administrative Hearings and the Orders of the presiding Administrative Law Judge control service and filing requirements while a matter is before an Administrative Law Judge. This is a helpful and reasonable clarification.

7829.0500 TRADE SECRET AND PROPRIETARY INFORMATION

Subp. 1. Confidentiality protected.

This subpart makes it clear that the rules are intended to deal only with the procedural aspects of handling trade secret and proprietary information, not with substantive issues. This is reasonable, since they are procedural, not substantive, rules.

Subp. 2. Procedure for excision.

This subpart allows parties filing documents containing privileged information to excise it from all but the original and six copies. The six copies are intended for the Commissioners and the staff person with primary responsibility for the filing.

The advisory panel favored making unexcised copies available to all the Commissioners and the primary staff person in the belief that this would expedite Commission review. They were concerned that requiring Commissioners to share copies of privileged materials might delay action on matters involving such materials. This is a reasonable judgment.

Subp. 3. Identification of excised material.

This subpart requires parties who have excised significant amounts of privileged information to describe it in general terms. This is reasonable because it allows members of the public with a general interest in the filing to understand it. It also allows parties who do not have access to the excised information to decide whether they need access. Parties can normally obtain access to protected information by signing a

protective agreement or by successfully challenging the protected status claimed by the filing party.

Subp. 4. Documents containing protected information.

This subpart requires that documents and pages containing protected information, as well as the protected material itself, be clearly marked. This is a reasonable precaution against inadvertent disclosure and a reasonable courtesy to persons using documents containing protected information.

7829.0600 GENERAL SERVICE LIST

Subp. 1. Establishing list.

This subpart requires utilities to establish lists of potential intervenors who have sent them written requests to receive notice of particular types of filings. Each list is also to contain the names of all intervenors in the utility's last general rate case and all persons on the official service list for its last similar proceeding. Later portions of the rule require utilities to serve initial filings on persons on these general service lists.

The advisory panel recommended maintaining general service lists as something the utilities could do to give interested people the earliest possible notice of filings. They considered early notice important for two reasons: 1. it is good public policy for the Commission to act promptly on matters before it, and parties do not want to be forced to advocate delay to allow them to participate in Commission proceedings; and 2. many Commission proceedings have statutory deadlines which make early notice essential for effective participation. (For example, most proposed changes in gas, telephone, and electric rates become effective 60 days after filing unless the Commission suspends the proposed rate. Minn. Stat. §§ 216B.16, subd. 2; 237.075, subd. 2.)

The subpart is reasonable because it promotes early, informed participation in Commission proceedings by interested parties and prompt decisionmaking by the Commission.

Subp. 2. Annual updating.

Under this subpart utilities are allowed to remove from general service lists persons who fail to respond to annual mailings asking whether they wish to continue being on the list. This subpart is reasonable because it provides an easy and effective means of keeping general service lists current.

Subp. 3. Periodic addition.

This subpart clarifies that persons who fail to respond to annual mailings will again be placed on general service lists upon their written request. This subpart is reasonable because it eliminates any doubts about the effect of failing to respond to an annual mailing.

Subp. 4. Jurisdiction unaffected.

This subpart makes it clear that general service lists are required for practical reasons and that failure to comply with general service list requirements does not affect Commission jurisdiction. It is reasonable to include this clarification in the rules to avoid potential confusion.

Subp. 5. Party or participant status unaffected.

This subpart makes it clear that inclusion on a general service list does not make a person a party or a participant in a proceeding. Persons wishing to become parties or participants must follow the rules' requirements to do so. It is reasonable to include this clarification in the rules to avoid potential confusion.

7829.0700 OFFICIAL SERVICE LIST

Subp. 1. Content.

This subpart provides that the official service list for each proceeding will be made up of the names of all parties and any "participants" who have filed written requests for inclusion. (Participants are persons who express their views in a proceeding without becoming parties. Often, they are members of the public with an interest in one issue in a multi-issue proceeding.) It is reasonable to include on the official service list only those participants who wish to be included, since many participants have no need and no desire for copies of all documents filed in the proceeding. Serving all filings on these participants would involve unreasonable expense.

Subp. 2. Establishment and updating.

This subpart requires the Commission to establish the official service list at the end of the initial comment period, to serve the list on all parties and on participants who ask to be included, and to serve an updated copy of the list when it is expanded or reduced. The list is to include persons whose petitions to intervene have not yet been acted upon.

This subpart provides a reasonable means of establishing and maintaining official service lists. Except for a filing utility, the Commission is the only entity that would know the names of

all persons who have commented or intervened in a proceeding. It is reasonable, then, for the Commission to prepare and maintain the official service list. Similarly, there is no workable alternative to having the Commission supply the official service list for all parties and qualifying participants.

It is reasonable to include on the list persons seeking to intervene, since there is little harm in non-parties receiving copies of filings, and there is substantial benefit in allowing persons who ultimately become parties to receive all filings at the earliest possible date. It is also reasonable not to mail the official service list in cases involving only the Department and one other party, since both of them will know of the other's involvement.

Subp. 3. Limiting Service List.

This subpart allows the Commission to limit the service list to parties only, if requiring service on participants will unduly burden the parties. This is reasonable, since copying and postage costs can be substantial in complex matters and not all parties have substantial resources. Non-profit organizations such as senior citizens' advocacy groups, for example, often intervene in general rate cases.

Subp. 4. Name and address change.

This subpart requires written notice to the Commission and all parties when a person on the official service list changes the name or address of the person receiving service on his or her behalf. This subpart is intended to serve as a reminder of the need to update service names and addresses and to make it clear that written notice, not telephone notice, is required. It is reasonable to require written notice to ensure accuracy.

Subp. 5. Proceeding before an Administrative Law Judge.

This subpart provides that all names on any service list compiled by an Administrative Law Judge will remain on the official service list throughout the proceeding. This is reasonable because it allows the Commission to use the service list compiled by the Office of Administrative Hearings, avoids any potential conflict between the rules of the two agencies, and allows the Commission to add names to the service list as appropriate.

7829.0800 PETITION TO INTERVENE

Subp. 1. Filing and service.

This subpart directs persons wishing to intervene in a proceeding to file petitions within applicable time frames and to serve

copies on known parties. This is reasonable because it allows parties to challenge intervention requests.

The rule also requires would-be intervenors to serve copies of their petitions on any applicable general service list. This is reasonable and helpful, since sometimes decisions on whether to intervene are influenced by whether others with similar or opposing interests are intervening. It may also help intervenors with similar interests avoid duplicating one another's efforts.

Subp. 2. Grounds for intervention.

This subpart lists the grounds for granting petitions for intervention: a statutory entitlement to intervene, a statutorily recognized interest that will be affected by the outcome of a proceeding, or an interest in a proceeding not shared by the public or other ratepayers in general. These are reasonable criteria. They keep the number of potential intervenors manageable, while allowing everyone with distinct interests in a proceeding to intervene.

Subp. 3. Intervention as of right.

This subpart provides that the Department and the Residential Utilities Division of the Office of the Attorney General become parties upon filing comments in a proceeding, without filing petitions for intervention, unless the rules of the Office of Administrative Hearings provide otherwise. This is reasonable, since both agencies were created by statute for the purpose of protecting the public interest in utility regulation matters. Minn. Stat. § 216A.07, subd. 3;

Subp. 4. Objection to intervention.

This subpart sets a 10-day deadline for objecting to petitions to intervene. This is reasonable, since intervention petitions must be acted upon promptly, and since the Commission is usually acting under relatively short statutory time frames.

Subp. 5. Disposition of petition.

This subpart provides that intervention petitions not acted upon or suspended within 15 days of filing shall be deemed granted. This is reasonable and necessary because, given the time frames within which Commission decisionmaking occurs, persons intending to intervene must prepare their cases shortly after filing intervention petitions. They need to know promptly whether they will be allowed to intervene.

The one exception to the 15-day rule is when the matter is referred for contested case proceedings before the 15-day period expires. Then the rules of the Office of Administrative Hearings

control intervention proceedings.

Subp. 6. Proceeding before an Administrative Law Judge.

This subpart clarifies that the rules of the Office of Administrative Hearings and the Orders of the presiding Administrative Law Judge control service and filing requirements while a matter is before an Administrative Law Judge. This is a helpful and reasonable clarification.

7829.0900 PARTICIPANT

This section explains that any person may file comments in any proceeding without becoming a party, and may make oral comments. This is consistent with longstanding Commission practice.

The practice of accepting comments from persons who are interested enough to comment, but not interested enough to seek full party status, is reasonable, because it allows and encourages public input in the regulatory process. The "participant" status allows persons to share their perspective on an issue without undertaking the expense and inconvenience of attending evidentiary hearings and filing briefs.

7829.1000 REFERRAL FOR CONTESTED CASE PROCEEDING

This section establishes the circumstances under which the Commission refers matters to the Office of Administrative Hearings for contested case proceedings. Under the rule, the Commission refers matters involving contested material facts or matters in which the Commission believes evidentiary hearings would be helpful. The rule allows the Commission to dispense with contested case proceedings if all parties waive their right to them or if different procedural treatment is required by statute.

The section is reasonable. It grants contested case proceedings when due process requires them or when a full evidentiary record and Administrative Law Judge's report are necessary for informed decisionmaking. The second situation occurs most frequently when the Commission faces complex policy issues whose resolution turns on a comprehensive understanding of the facts and the legal and policy implications of competing factual scenarios. The contested case process is better suited to comprehensive factual development than informal Commission proceedings.

7829.1100 PUBLIC HEARING

This section, which was suggested by the advisory panel, states

that public hearings shall precede evidentiary hearings whenever possible. This is reasonable, because it allows the parties to identify and address in evidentiary hearings issues which are of concern to members of the public.

7829.1200 INFORMAL OR EXPEDITED PROCEEDING

This section explains when informal or expedited proceedings will be used, briefly describes how they will operate, and provides notice requirements for matters decided under such proceedings.

Subp. 1. When appropriate.

This subpart recites, for purposes of clarity, when informal or expedited proceedings will be used instead of contested case proceedings. It is reasonable to restate the standard established in part 7830.1000 to avoid confusion.

Subp. 2. Presentation of facts.

This subpart provides that factual allegations should normally be made in writing, states that the Commission will require oath or affirmation when facts appear to be in dispute, and requires that factual allegations in expedited proceedings be made on oath or affirmation.

It is reasonable to require that factual allegations normally be in writing, since this reduces confusion and provides a more reliable record. Since the Commission acts on over 1,000 filings a year, some of which are routine or uncontested, it is also reasonable to allow facts to be presented orally when that can be done without compromising the rights of any person or the integrity of the proceeding.

It is reasonable to allow some unsworn factual presentations for similar reasons. It is not unusual for the Commission to request clarification of an undisputed technical or factual issue during a Commission meeting. In these situations it would be awkward and unnecessary to place a Department analyst or utility representative providing such clarification under oath.

It is reasonable to require that factual allegations in expedited proceedings be made under oath or by affirmation, and that pleadings be verified, because the statute requires it. Minn. Stat. § 237.61.

Subp. 3. Notice.

This subpart requires 10 days' notice to persons on the official service list before meetings at which the Commission may act on the basis of informal or expedited proceedings. Shorter notice

is allowed under exigent circumstances.

This is reasonable; it meets due process requirements and allows prompt action on matters before the Commission. The "exigent circumstances" exception is necessary and reasonable, because on rare occasions there is a need for Commission action on less than 10 days' notice, e.g., when a consumer involved in a billing dispute is facing imminent disconnection of service.

7829.1300 MISCELLANEOUS TARIFF FILINGS AND PRICE LIST FILINGS

Subp. 1. Summary.

This subpart requires that all miscellaneous tariff and price list filings include a one-paragraph summary on a separate page. This is necessary and reasonable for two reasons. First, a summary will help regulatory personnel categorize the filing properly, assign an appropriate docket number, determine applicable time frames, and identify any need for emergency action. Second, the rules give utilities the option of serving the summary, instead of the entire filing, on some persons on the general service list, when the filing is not subject to a 60-day or shorter deadline. In such cases, interested persons have enough time to secure a copy of the full filing before deciding the extent of their participation in the case.

Subp. 2. Service.

This subpart requires filing utilities to serve copies or summaries of miscellaneous tariff and price list filings on general service lists, the Department, and the Residential Utilities Division of the Office of the Attorney General. Utilities must also serve copies of applicable general service lists with the filing or summary.

This subpart is designed to provide prompt, adequate notice of all filings to potentially interested persons. The requirement to serve copies of general service lists is designed to allow potentially interested persons to coordinate their efforts if they wish. These requirements are necessary and reasonable, because they will give parties the earliest and most accurate possible notice of matters before the Commission. This should eliminate delays due to late entering parties and give the Commission the benefit of fully informed advocacy from the start of a proceeding.

Subp. 3. Content of filing subject to specific requirements.

This subpart sets forth general content requirements for filings subject to other, more specific filing rules. It ensures that

all filings will include the name, address, and telephone number of the utility; the name, address, and telephone number of any attorney responsible for the filing; the date of the filing and its proposed effective date; the statute the utility believes controls time frames for processing the filing; and the signature and title of the utility employee responsible for the filing.

This is basic information the Commission and potentially interested persons need to begin work on the filing. Since different statutory time frames apply to different filings, and since it is not always clear which statute controls specific filings, the rule requires utilities to state at the outset which statute they believe applies. This allows the Department and the Commission to take any immediate action that may be necessary and discloses at the outset any conflict which may exist over applicable statutory time frames. The signature requirement is necessary to identify at the outset the utility official who will take responsibility for and answer questions about the filing.

Subp. 4. Content of filing not subject to specific filing rules.

The first five requirements of this subpart are identical to the requirements of subpart 3. Since this subpart applies to filings which are not subject to other specific filing rules, however, it requires more detail, i.e., a description of the filing, its impact on rates and services, its impact on the utility and affected ratepayers, and the reasons for the filing.

Most filings will be subject to specific filing rules. Those few which are not, however, should contain the additional information specified above to make sure the Commission can make an informed decision. Since the subpart deals with a catch-all category, filings not subject to specific filing rules, the information required is general. The goal, however, which is reasonable and necessary, is to require the kind of information which will allow regulatory personnel and other parties to determine what further, more specific information may be necessary.

Subp. 5. Rejection of filing.

This subpart provides that the Commission shall reject any miscellaneous tariff or price list filing which fails to comply substantially with the filing requirements above or with filing requirements imposed by statute. If the Commission does not reject a filing within 20 days it is deemed accepted as to form.

This subpart is necessary and reasonable, because it is a misuse of Commission and intervenor resources to attempt to analyze and comment on filings which do not contain essential information. Incomplete filings cause unnecessary work for other parties. They create confusion about time frames and procedures. They

result in disjointed and protracted proceedings. The Commission needs to be able to reject such filings.

At the same time, it is reasonable and necessary for utilities to be able to assume, at some point, that their filings will be considered on the merits and not summarily rejected for failure to meet filing requirements. The subpart's 20-day period for rejecting filings is a reasonable balance of utility and regulatory interests.

Subp. 6. Initial comments.

This subpart establishes deadlines for filing initial comments on miscellaneous tariff and price list filings. The general deadline is 30 days. The deadline for telephone filings subject to expedited treatment by statute is 20 days. The deadline for new telephone service filings is 10 days.

The 30 day deadline for miscellaneous tariff and price list filings is necessary and reasonable. It is necessary because most rate change filings are allowed to go into effect 60 days from the date of filing. Minn. Stat. §§ 216B.16, subd. 2; 237.075, subd. 2. The initial comment period could hardly be longer, then, and still allow time for thoughtful decisionmaking. It could hardly be shorter, either, without jeopardizing the informed advocacy upon which the Commission relies.

The 10 and 20 day time periods for commenting on specific telephone filings are reasonable for similar reasons. The Commission again had to balance the need for informed advocacy against the need for prompt action. Since the filings at issue become effective very quickly (from one to 30 days after filing), there is no workable way to establish comment and decision periods which expire before they become effective. The accelerated comment periods established for these filings, though, will allow the Commission to take any corrective action which may be necessary quickly.

The rule requires commenting parties to serve initial comments on all persons on the applicable general service list and on the utility. This will benefit potentially interested persons and the regulatory process by quickly and effectively informing potentially interested parties of what the issues in the matter are likely to be. It will promote early intervention, cooperation between like-minded intervenors, and full development of all significant issues in every case.

Subp. 7. Petition to Intervene.

This subpart provides that persons wishing to intervene may combine their intervention petitions and their comments. This is reasonable because it simplifies the intervention/comment

process.

The subpart also establishes an intervention deadline of the end of the reply comment period. This is reasonable because it allows potentially interested persons to decide whether or not to intervene after they have seen the initial comments. At that point they will have a clearer idea of what is at issue, who the other parties will be, and the extent to which their viewpoint will be represented by other parties. This is desirable from the standpoint of sound resource allocation.

7829.1400 COMMENTS ON MISCELLANEOUS TARIFF OR PRICE LIST FILING

Subp. 1. Comments to include procedural recommendation.

This subpart requires commenting parties to include a recommendation on the appropriate procedural treatment of the filing. This is reasonable and necessary because it will help the Commission make a preliminary determination on appropriate procedural treatment. It will also provide clear notice when a party believes contested case proceedings are necessary, allowing other parties and the Commission to examine the merits of that claim before inadvertently taking action inconsistent with it.

Subp. 2. Reply comments.

This subpart establishes a reply comment deadline of 10 days from the expiration of the initial comment period. This is reasonable, since it gives parties enough time to prepare comments while giving the Commission enough time for thoughtful decisionmaking. The subpart also limits reply comments to matters raised in the initial comments, a reasonable means of defining and limiting the issues in a proceeding. Finally, reply comments need not be served on the entire general service list, but only on persons who filed initial comments. It is appropriate at this point to end the paper flow to persons who have apparently decided not to intervene in the proceeding.

Subp. 3. Additional comments.

This subpart gives the Commission the option of requiring comments beyond the initial and reply comments allowed in the rules. Clearly, the Commission needs the ability to require additional comments or comments on specific issues as a case develops.

Subp. 4. Comments on supplemental or corrected filings.

This subpart provides that the Commission will allow comments on supplemental or corrected filings when those filings raise new issues. This is reasonable and necessary to ensure fundamental

fairness.

Subp. 5. Comment periods varied.

This subpart allows the Commission to vary any comment period not set by statute and allows the Commission to delegate authority to vary comment periods to the Executive Secretary. Occasionally, a matter will need to be resolved before normal comment periods have expired, or parties will need additional time to submit comments. This subpart grants the Commission the flexibility to deal with such situations.

Delegating the authority to vary comment periods to the Executive Secretary is reasonable resource allocation because it eliminates the need for the full Commission to vote on every request for a time extension. It is also necessary to allow the Commission to respond appropriately to contingencies, since some requests for time extensions or accelerated comment periods are urgent and should not be deferred to a regularly scheduled Commission meeting. This provision was suggested by Advisory Panel members and was supported by everyone on the Advisory Panel.

Subp. 6. Comment periods extended at Department's request.

This subpart grants the Department one 30-day extension as of right per comment period, unless the comment period is set by statute or unless the Commission must act on the matter within 60 days to prevent a proposed rate change from going into effect. The Department is charged with representing the broad public interest in public utility matters and intervenes in all Commission proceedings. Its unique position in the regulatory process and heavy workload make it reasonable and necessary for the Department to be able to extend comment periods when necessary to enable it to perform its duties.

7829.1500 INFORMAL COMPLAINT

This section codifies the Commission's longstanding practice of handling disputes between consumers and utilities through the Commission's Consumer Affairs Division. The section is designed to allow that Division to handle disputes informally whenever possible. Complaints may be made by letter, by telephone, or in person. Consumer Affairs staff assume responsibility for reducing the complaints to writing. These provisions are necessary and reasonable in that they maximize public access to Commission assistance in resolving disputes with utilities.

Informal complaints are submitted infrequently by persons other than consumers. The section continues to allow such complaints, although the informal dispute resolution mechanisms of the informal complaint process are less well suited to non-consumer

complaints.

7829.1600 TREATMENT OF INFORMAL COMPLAINT

This section provides that Commission staff will attempt to resolve informal complaints by informal means without Commission action. As a practical matter, most informal complaints involve billing or payment disputes between consumers and utilities and are resolved by telephone conference. Often facts are clarified and a mutually agreeable payment plan is negotiated.

If informal resolution is impossible, and the complainant desires further action, the complainant must file a formal complaint.

7829.1700 FORMAL COMPLAINT

Subp. 1. Content.

This subpart requires that the complaint set forth enough basic information for the Commission to determine the gist of the complaint. Complainants are to state their own names and addresses, names and addresses of respondents, names and addresses of any legal counsel involved, the factual and legal basis for each claim, and the relief sought. These requirements are necessary and reasonable. They will promote early identification of issues and parties and allow prompt, orderly disposition of complaints.

Subp. 2. Service and filing.

This subpart requires complainants to serve copies of formal complaints on respondents. This is necessary and reasonable. It is intended to encourage early resolution of formal complaints which can be resolved without Commission action and prompt, orderly consideration of those which require Commission action.

The subpart also requires service on the Department and the Residential Utilities Division of the Office of the Attorney General. These two government agencies regularly appear before the Commission and have a statutory mandate to represent the public interest in Commission proceedings. It is reasonable and necessary to give them prompt notice of formal complaint proceedings, in which they may have an interest.

7829.1800 INITIAL CONSIDERATION OF FORMAL COMPLAINT

Subp. 1. Initial Commission review.

This subpart requires the Commission to review formal complaints

and make initial determinations on whether the Commission has jurisdiction over their subject matter and on whether there is a reasonable basis to investigate the matters alleged. Minn. Stat. § 216.14 requires such an initial determination. The subpart is necessary and reasonable because it is required by statute. It is also reasonable because it provides an early opportunity to dismiss frivolous complaints or complaints over which the Commission lacks jurisdiction.

Subp. 2. Answer.

This subpart requires the Commission to serve formal complaints found to warrant investigation on the respondent, together with an order requiring respondent to file and serve an answer within 20 days or to grant the relief complainant requests. The statute requires this procedure. Minn. Stat. § 216.14-.15.

The subpart is necessary to conform with statutory requirements. It is reasonable because it gives respondents an opportunity to end the matter by granting the relief requested and helps clarify the issues in matters which require further proceedings.

The subpart also requires respondent to serve the answer on complainant, the Department, and the Residential Utilities Division of the Office of the Attorney General. Service on the complainant is required by due process considerations and basic fairness. Requiring service on the two regulatory agencies is reasonable, to allow them to make informed decisions on the extent of their participation in the matter.

Subp. 3. Reply.

This subpart requires complainant to file a reply within 20 days if the answer alleges that the relief requested has been granted. Failure to file a reply in such a case results in dismissal of the complaint. These requirements, too, are established by statute. Minn. Stat. § 216.15. They are necessary and reasonable, to avoid proceedings from coming to a standstill when respondent claims relief has been granted.

The subpart also requires service of the reply on respondent, the Department, and the Residential Utilities Division of the Office of the Attorney General. Service on the respondent is required by due process considerations. Service on the two regulatory agencies is reasonable and proper for the reasons set forth in the discussion of subpart 2.

Subp. 4. Failure to answer.

This subpart provides that if respondent fails to answer a formal complaint, the Commission shall deem the complaint's allegations denied. Since the Commission's charge is to protect the public

interest, not to settle disputes between private litigants, it would be unreasonable to provide for relief by default in formal complaint proceedings. Instead, consistent with its statutory mandate, the Commission should determine the merits of the complaint.

7829.1900 COMMISSION ACTION ON FORMAL COMPLAINT

Subp. 1. Nature of proceedings.

This subpart provides that the Commission may use contested case proceedings, informal proceedings, or expedited proceedings to adjudicate formal complaints. This procedural flexibility is reasonable and necessary. Some formal complaints will be factually complex, requiring contested case proceedings, while others will involve legal or policy issues more effectively addressed through informal or expedited proceedings.

Subp. 2. Initial comments.

This subpart requires persons commenting on formal complaints to do so within 30 days of the date of any Commission Order requiring an answer to the complaint. The 30-day comment period is reasonable; by allowing people time to review the answer before filing comments, it will result in informed and helpful comments.

This subpart, too, requires service on the Department and the Residential Utilities Division of the Office of the Attorney General. Again, it is reasonable to require service on these two regulatory agencies, so they can make informed decisions on the extent of their participation in the matter.

Subp. 3. Reply comments.

This subpart establishes a reply comment deadline of 10 days from the expiration of the initial comment period. This is reasonable, since it gives parties enough time to prepare comments without jeopardizing the goal of prompt action on formal complaints. The subpart also limits reply comments to matters raised in the initial comments, a reasonable means of defining and limiting the issues in a proceeding. Finally, service requirements are the same as for initial comments and are reasonable for the reasons stated in the preceding section.

Subp. 4. Petition to Intervene.

This subpart provides that persons wishing to intervene may combine their intervention petitions and their comments. This is reasonable because it simplifies the intervention/comment process.

The subpart also establishes an intervention deadline of the end of the reply comment period. This is reasonable because it allows potentially interested persons to decide whether or not to intervene after they have seen the initial comments. At that point they will have a clearer idea of what is at issue, who the other parties will be, and the extent to which their viewpoint will be represented by other parties. This is desirable from the standpoint of sound resource allocation.

Subp. 5. Comments to include procedural recommendation.

This subpart requires commenting parties to include a recommendation on the appropriate procedural treatment of the filing. This is reasonable and necessary because it will help the Commission make a preliminary determination on appropriate procedural treatment. It will also provide clear notice when a party believes contested case proceedings are necessary, allowing other parties and the Commission to examine the merits of that claim before inadvertently taking action inconsistent with it.

Subp. 6. Additional comments.

This subpart gives the Commission the option of requiring or allowing comments beyond the initial and reply comments allowed in the rules. Clearly, the Commission needs the ability to require additional comments or comments on specific issues as a case develops.

Subp. 7. Comments on supplemental or corrected filings.

This subpart provides that the Commission will allow comments on supplemental or corrected filings when these filings raise new issues. This is reasonable and necessary to ensure fundamental fairness.

Subp. 8. Comment periods varied.

This subpart allows the Commission to vary any comment period not set by statute and allows the Commission to delegate authority to vary comment periods to the Executive Secretary. Occasionally, a matter will need to be resolved before normal comment periods have expired, or parties will need additional time to submit comments. This subpart grants the Commission the flexibility to deal with such situations.

Delegating the authority to vary comment periods to the Executive Secretary is reasonable resource allocation because it eliminates the need for the full Commission to vote on every request for a time extension. It is also necessary to allow the Commission to respond appropriately to contingencies, since some requests for time extensions or accelerated comment periods are urgent and should not be deferred to a regularly scheduled Commission

meeting. This provision was suggested by Advisory Panel members and was strongly supported by all members of the Advisory Panel.

Subp. 9. Comment periods extended at Department's request.

This subpart grants the Department one 30-day extension as of right per comment period, unless the comment period is set by statute. The Department is charged with representing the broad public interest in public utility matters and intervenes in all Commission proceedings. Its unique position in the regulatory process and heavy workload make it reasonable and necessary for the Department to be able to extend comment periods when necessary to enable it to perform its duties.

7829.2000 ELECTRIC SERVICE AREA COMPLAINT

Subp. 1. Content.

This subpart requires that complaints alleging violations of an electric utility's assigned service area include a copy of the official service area map(s), with the area of the alleged violation clearly marked. It is necessary and reasonable to require this level of detail because the statute governing service area complaints requires final Commission action within 45 days of filing. Minn. Stat. § 216B.43. It is therefore very important to clarify and narrow the issues in these cases as soon as possible.

Subp. 2. Service and filing.

This subpart requires that service area complaints be served upon the respondent. Requiring service on the respondent is necessary and reasonable. Given the 45-day time line for Commission action, it is crucial to use the fastest, most direct way to inform respondents of service area disputes.

The subpart also requires service on the Department and the Residential Utilities Division of the Office of the Attorney General. These two government agencies regularly appear before the Commission and have a statutory mandate to represent the public interest in Commission proceedings. It is reasonable and necessary to give them prompt notice of service area complaints, in which they may have an interest.

7829.2100 COMMISSION ACTION ON SERVICE AREA COMPLAINT

Subp. 1. Answer.

This subpart requires respondent to file an answer to a service area complaint within 10 days of service. This is a relatively

short time period, but it is necessary and reasonable due to the 45-day statutory deadline for final action on service area complaints. Minn. Stat. § 216B.43.

The subpart also requires respondent to serve the answer on complainant, the Department, and the Residential Utilities Division of the Office of the Attorney General. Service on the complainant is necessary and reasonable for purposes of basic fairness and due process. Service on the two regulatory agencies is necessary and reasonable to allow them to make an informed decision on whether their responsibilities require them to intervene.

Subp. 2. Initial comments.

This subpart requires persons commenting on service area complaints to do so within 10 days of the date they were served. The relatively short time period is reasonable and necessary due to the 45-day statutory deadline for final action on service area complaints. Minn. Stat. § 216B.43.

The subpart requires service of initial comments on complainant, respondent, the Department, the Residential Utilities Division of the Office of the Attorney General, and any other known parties. Service on complainant, respondent, and other known parties is reasonable and necessary; it is required by fairness and due process. Service on the two regulatory agencies is reasonable and necessary to allow them to fulfill their statutory mandates to represent the public interest in public utility matters.

Subp. 3. Petition to Intervene.

This subpart provides that persons wishing to intervene may combine their intervention petitions and their comments. This is reasonable because it simplifies the intervention/comment process.

The subpart also establishes an intervention deadline of the expiration of the 10-day initial comment period. This is reasonable and necessary in light of the 45-day statutory time line for final Commission action. Minn. Stat. § 216B.43. Finally, the service requirements are identical to those for initial comments, and are necessary and reasonable for the same reasons.

Subp. 4. Additional comments.

This subpart gives the Commission the option of requiring comments beyond the initial comments allowed in the rules. Clearly, the Commission needs the ability to require additional comments or comments on specific issues as a case develops.

Subp. 5. Comments on supplemental or corrected filing.

This subpart provides that the Commission will allow comments on supplemental or corrected filings when those filings raise new issues. This is reasonable and necessary to ensure fundamental fairness.

Subp. 6. Time for disposition.

This subpart requires that service area complaints come before the Commission within 15 days of filing and that the Commission issue its Order within 30 days thereafter. These deadlines are established by statute, Minn. Stat. § 216B.43, and are included in the rule for purposes of clarity.

7829.2200 TELEPHONE INCENTIVE PLAN FILING.

Subp. 1. Summary.

This subpart requires a telephone utility filing an incentive plan under Minn. Stat. § 237.65 to include, on a separate page, a brief summary of the filing, sufficient to apprise potentially interested parties of its nature and general content. This is necessary and reasonable for two reasons. First, the summary lets regulatory personnel know from the start the nature of the filing, so they can promptly assign an appropriate docket number, determine applicable time frames, and identify any need for emergency action. The second reason for the summary is that the rules allow the utility to serve the summary in place of the filing on most parties on the general service list. Serving the summary instead of the filing saves paper, copying, postage, and labor expense, while still informing potentially interested persons that an incentive plan has been filed.

Subp. 2. Service.

This subpart requires service of the entire filing on the Department and the Residential Utilities Division of the Office of the Attorney General. This is necessary and reasonable, given the unique positions of these two agencies in the Minnesota regulatory process. See earlier discussions of such service requirements.

The subpart also requires service of the filing, or the summary described in subp. 1, on all persons on the general service list and all persons who intervened in the utility's last general rate case or incentive plan proceeding. These requirements are necessary and reasonable. They are intended to alert persons likely to be interested in the filing that the filing has been made.

Subp. 3. Challenge to form and completeness.

This subpart provides that parties wishing to challenge the form or completeness of an incentive plan filing must do so within 10 days and that companies must respond to such challenges within five days. These short time frames are reasonable and necessary in light of the six month statutory time frame for acting on incentive plan filings. Minn. Stat. § 237.625, subd. 2.

The subpart requires service of challenges and responses on all persons on whom the company served the filing or the summary. This is reasonable and necessary because it helps apprise potentially interested persons of who the other parties in the case are likely to be and the extent to which their viewpoint is likely to be represented by other parties. This should help potential intervenors make sound resource allocation decisions, while still assuring maximum public input.

Subp. 4. Rejection of filing.

This subpart provides that the Commission shall reject any incentive plan filing which fails to comply substantially with filing requirements imposed by rule or statute. It also provides that any filing not rejected within 45 days is deemed accepted as in substantial compliance with applicable filing requirements.

This provision establishes a necessary and reasonable balance between the Commission's need to reject filings which are too incomplete to support proceedings on the merits and a utility's need to assume at some point that a filing will not be rejected for failure to meet basic filing requirements. The 45-day period is reasonable, since incentive plan filings are extremely complex, and even determining completeness requires substantial analysis.

Subp. 5. Procedural comments.

This subpart requires that parties wishing to comment on incentive plan filings file procedural comments within 20 days of filing. The comments are to include a proposed procedural framework and time frames for substantive comments and Commission action.

This requirement is necessary and reasonable. The incentive plan statute requires the Commission to use expedited proceedings to examine the filing, to hold public meetings on the filing, and to issue a final Order within six months. Minn. Stat. § 237.625, subd. 2. Since the Commission cannot use contested case proceedings and is subject to a six month deadline, it is important to develop a workable procedural framework as soon as possible. It is also important to have input from the parties on

procedure, both to benefit from their insights and to avoid claims of procedural prejudice once the proceeding is underway.

The subpart's service requirements are the same as those for challenges and replies on form and completeness, since there is no way to know at this point how many of those people have decided not to participate in the case.

Subp. 6. Petition to Intervene.

This subpart provides that persons wishing to intervene may combine their intervention petitions and their procedural comments. This is reasonable because it simplifies the intervention/comment process.

The subpart also establishes an intervention deadline of the end of the procedural comment period. This relatively short deadline is necessary and reasonable because of the six-month deadline for acting on incentive plan filings. That deadline requires expedited treatment of all phases of incentive plan proceedings, including intervention periods.

The service requirements for intervention petitions are identical to those for procedural comments, for the same reasons.

Subp. 7. Notice to public and ratepayers.

This subpart requires that companies filing incentive plans notify their ratepayers and publish notice in all newspapers of general circulation in all county seats in their service areas.

This is reasonable and necessary, since the statute anticipates public comment on proposed plans by requiring public meetings. Minn. Stat. § 237.625, subd. 2. Meaningful public input requires meaningful notice.

Subp. 8. Notice of public meeting.

This subpart requires companies filing incentive plans to notify ratepayers of any public meetings on the plans, and to publish notice of such meetings in all newspapers of general circulation in the county seats in their service areas.

The statute requires that these companies notify ratepayers of any public meetings scheduled by the Commission. The rule specifies that such notice must include the published notice described above. Newspaper notice is a reasonable and necessary method of ensuring the meaningful public notice anticipated by the statute.

Subp. 9. Nature of proceeding.

This subpart codifies the statutory requirement that the Commission use expedited proceedings to deal with incentive plan filings. It also provides that the Commission will issue an order establishing time frames for submission of testimony and comments following review of the procedural comments.

The subpart is necessary and reasonable. It alerts parties that expedited proceedings will be used, gives them input on procedural details, and provides prompt notice of what the actual procedural framework and time lines in the case will be.

Subp. 10. Time frame for disposition.

This subpart codifies statutory provisions that the Commission must act on incentive plan filings within six months and that proposed incentive plans are deemed withdrawn if the Commission does not act within that period. Minn. Stat. § 237.625, subd. 2. It is necessary and reasonable to include these provisions for purposes of clarity.

7829.2300 CLASSIFICATION PETITION

Subp. 1. Summary.

This subpart requires a telephone utility filing a classification petition under Minn. Stat. § 237.59 to include, on a separate page, a brief summary of the filing, sufficient to apprise potentially interested parties of its nature and general content. This is necessary and reasonable for two reasons. First, a summary will help regulatory personnel categorize the filing properly, assign an appropriate docket number, determine applicable time frames, and identify any need for emergency action. Second, the rules give the utilities the option of serving the summary, in lieu of the entire filing, on some parties on the general service list. Serving the summary instead of the filing saves paper, copying, postage, and labor expense, while still informing potentially interested persons of the filing.

Subp. 2. Service.

This subpart requires service of the entire filing on the Department and the Residential Utilities Division of the Office of the Attorney General. This is necessary and reasonable, given the unique positions of these two agencies in the Minnesota regulatory process. See earlier discussions of such service requirements.

The subpart also requires service of the filing, or the summary described in subp. 1, on all persons on the general service list and all persons who intervened in the utility's last general rate

case or incentive plan proceeding. These requirements are necessary and reasonable. They are intended to alert persons likely to be interested in the filing that the filing has been made.

Subp. 3. Challenges to form and completeness.

This subpart provides that parties wishing to challenge the form or completeness of a classification petition filing must do so within 10 days and that companies must respond to such challenges within five days. These short time frames are reasonable and necessary in light of the short statutory time frames for acting on classification petitions. (Those time frames are 60 days or eight months, depending upon whether contested case proceedings are used. Minn. Stat. § 237.59, subds. 3 and 4.)

The subpart requires service of challenges and responses on all persons on whom the company served the filing or the summary. This is reasonable and necessary because it helps apprise potentially interested persons of who the other parties in the case are likely to be and the extent to which their viewpoint is likely to be represented by other parties. This should help potential intervenors make sound resource allocation decisions, while still assuring maximum public input.

Subp. 4. Rejection of filings.

This subpart provides that the Commission shall reject any classification petition filing which fails to comply substantially with filing requirements imposed by rule or statute. It also provides that any filing not rejected within 45 days is deemed accepted as in substantial compliance with applicable filing requirements.

This provision establishes a necessary and reasonable balance between the Commission's need to reject filings which are too incomplete to support proceedings on the merits and a utility's need to assume at some point that a filing will not be rejected for failure to meet basic filing requirements. The 45-day period is reasonable, since classification petition filings can be extremely complex, and even determining completeness can require substantial analysis.

Subp. 5. Initial comments.

This subpart requires persons commenting on classification petitions to do so within 20 days of the filing. The relatively short time period is reasonable and necessary due to the statutory deadline for final action.

The subpart also requires commenting parties to include a recommendation on the appropriate procedural treatment of the

filing. This is reasonable and necessary because it will help the Commission make a preliminary determination on appropriate procedural treatment. It will also provide clear notice when a party believes contested case proceedings are necessary, allowing other parties and the Commission to examine the merits of that claim before inadvertently taking action inconsistent with it.

The subpart requires service of initial comments on the utility, the Department, the Residential Utilities Division of the Office of the Attorney General, the general service list for the filing, and any other known parties. Service on the utility and other known parties is reasonable and necessary; it is required by fairness and due process. Service on the two regulatory agencies is reasonable and necessary to allow them to fulfill their statutory mandates to represent the public interest in public utility matters.

Service on the general service list is reasonable and necessary because it helps apprise potentially interested persons of who the other parties in the case are likely to be and the extent to which their viewpoint is likely to be represented by other parties. This should help potential intervenors make sound resource allocation decisions, while still assuring maximum public input.

Subp. 6. Petition to Intervene.

This subpart provides that persons wishing to intervene may combine their intervention petitions and their comments. This is reasonable because it simplifies the intervention/comment process.

The subpart also establishes an intervention deadline of the end of the reply comment period. This is reasonable because it allows potentially interested persons to decide whether or not to intervene after they have seen the initial comments. At that point they will have a clearer idea of what is at issue, who the other parties will be, and the extent to which their viewpoint will be represented by other parties. This is desirable from the standpoint of sound resource allocation.

Subp. 7. Reply comments.

This subpart establishes a reply comment deadline of 10 days from the expiration of the initial comment period. This is reasonable, since it gives parties enough time to prepare comments while giving the Commission enough time to determine whether expedited or contested case proceedings are appropriate, and to issue an order within the 60-day statutory deadline if expedited proceedings are determined to be appropriate.

The subpart also limits reply comments to matters raised in the

initial comments, a reasonable means of defining and limiting the issues in a proceeding.

Finally, reply comments need not be served on the entire general service list, but only on persons who filed initial comments. It is appropriate at this point to end the paper flow to persons who have apparently decided not to intervene in the proceeding.

Subp. 8. Additional comments.

This subpart gives the Commission the option of requiring or allowing comments beyond the comments allowed in the rules. Clearly, the Commission needs the ability to require additional comments or comments on specific issues as a case develops.

Subp. 9. Comments on supplemental or corrected filings.

This subpart provides that the Commission will allow comments on supplemental or corrected filings when those filings raise new issues. This is reasonable and necessary to ensure fundamental fairness.

Subp. 10. Nature of proceeding.

This subpart provides that the Commission shall deal with classification petitions through expedited proceedings or contested case proceedings. The statute limits the Commission to these two procedural tracks. It is reasonable and necessary to include this information in the rule for purposes of clarity.

Subp. 11. Time frame for disposition; expedited proceeding.

This subpart codifies the statutory deadlines for final Commission action when the filing utility requests an expedited proceeding. It is reasonable and necessary to include this information in the rule for purposes of clarity.

Subp. 12. Time frame for disposition; contested case proceeding.

This subpart codifies the statutory deadlines for final Commission action when the Commission refers the case for contested case proceedings. It is reasonable and necessary to include this information in the rule for purposes of clarity.

Subp. 13. Extending disposition period.

This section codifies the statutory provisions on circumstances under which the Commission may extend the time frame for disposition of classification petitions. It is reasonable and necessary to include this information in the rule for purposes of

clarity.

7829.2400 FILINGS REQUIRING DETERMINATION OF GROSS REVENUE REQUIREMENT

Subp. 1. Summary.

This subpart requires a utility filing a general rate case or other filing requiring determination of its gross revenue requirement to include, on a separate page, a brief summary of the filing, sufficient to apprise potentially interested parties of its nature and general content. This is necessary and reasonable, since the following subpart allows the utility to serve the summary in place of the filing on most parties on the general service list. Serving the summary instead of the filing saves paper, copying, postage, and labor expense, while still informing potentially interested persons of the filing.

Subp. 2. Service.

This subpart requires service of the entire filing on the Department and the Residential Utilities Division of the Office of the Attorney General. This is necessary and reasonable, given the unique positions of these two agencies in the Minnesota regulatory process. See earlier discussions of such service requirements.

The subpart also requires service of the filing, or the summary described in subp. 1, on all persons on the general service list and all persons who intervened in the utility's last general rate case or incentive plan proceeding. These requirements are necessary and reasonable. They are intended to alert persons likely to be interested in the filing that the filing has been made.

Subp. 3. Notice to public and governing bodies.

This subpart requires that utilities seeking general rate changes inform municipal and county governments in their service areas, notify ratepayers, and publish notice in newspapers of general circulation in each county seat in their service areas. These requirements are designed to provide meaningful notice of proposed rate changes to all persons who would be affected by them.

Broad notice requirements for general rate cases are reasonable and necessary to secure public input in the ratemaking process, to promote public awareness of the regulatory process, and to give customers early notice of potential changes, especially increases, in the cost of basic services.

Subp. 4. Challenge to form and completeness.

This subpart provides that parties wishing to challenge the form or completeness of a general rate case filing must do so within 10 days and that companies must respond to such challenges within five days. These short time frames are reasonable and necessary in light of the 10 month statutory time frames for acting on general rate case. Minn. Stat. §§ 216B.16, subd. 2; 237.075, subd. 2.

The subpart requires service of challenges and responses on all persons on whom the company served the filing or the summary. This is reasonable and necessary because it helps apprise potentially interested persons of who the other parties in the case are likely to be and the extent to which their viewpoint is likely to be represented by other parties. This should help potential intervenors make sound resource allocation decisions, while still assuring maximum public input.

Subp. 5. Rejection of filing.

This subpart provides that the Commission may reject any general rate case filing which fails to comply substantially with filing requirements imposed by rule, statute, or previous Commission order. It also provides that any filing not rejected within 60 days is deemed accepted as in substantial compliance with applicable filing requirements.

This provision establishes a necessary and reasonable balance between the Commission's need to reject filings which are too incomplete to support proceedings on the merits and a utility's need to assume at some point that a filing will not be rejected for failure to meet basic filing requirements. The 60-day period is reasonable, since general rate case filings are extremely long and complex, and even determining completeness can require substantial analysis.

Subp. 6. Petition to Intervene.

This subpart provides that the Commission will entertain intervention petitions until the matter is referred for contested case proceedings or until the Commission notifies existing parties of its intention to decide the matter on the basis of informal or expedited proceedings. When rate cases are referred for contested case proceedings, the rules of the Office of Administrative Hearings are to control intervention rights.

The intervention time frames in this subpart are reasonable and necessary. Given the complexity of general rate cases and the expense intervention requires, it makes sense to allow potential intervenors time to analyze the filing and determine whether their interests justify intervention. At the same time, however,

the intervention period established in the subpart is not so long as to jeopardize parties' ability to present their cases fully, or the Commission's ability to make a sound decision.

Subp. 7. Notice of hearing.

This subpart requires utilities in general rate cases to notify ratepayers of any hearings held in the case as directed by the Commission. Such notice is to include published notice in newspapers of general circulation in the county seats of all counties in filing utilities' service areas.

This necessary and reasonable. It is intended to promote public awareness of the regulatory process, to secure public input in the ratemaking process, and to give utility customers early notice of potential changes, especially increases, in the cost of these basic services.

7829.2500 CERTIFICATE OF NEED FILING

Subp. 1. Compliance.

For purposes of clarity, this subpart cites the statutes and rules that govern certificate of need proceedings. This is reasonable and necessary, because certificate of need proceedings often involve intervenors who are unfamiliar with Commission procedure. Since the certificate of need statute requires the Commission to encourage public participation in the hearing process, it makes sense to provide this assistance. Minn. Stat. § 216B.243, subd. 4.

Subp. 2. Summary.

This subpart requires a certificate of need applicant to include, on a separate page, a brief summary of the filing, sufficient to apprise potentially interested parties of its nature and general content. This is necessary and reasonable, since the following subpart allows the utility to serve the summary in place of the filing on most persons who may be interested in the filing. Serving the summary instead of the filing saves paper, copying, postage, and labor expense, while still informing potentially interested persons that a certificate of need application has been filed.

Subp. 3. Service.

This subpart requires service of the entire filing on the Department and the Residential Utilities Division of the Office of the Attorney General. This is necessary and reasonable, given the unique positions of these two agencies in the Minnesota regulatory process. See earlier discussions of such service

requirements.

The subpart also requires service of the filing, or the summary described in subp. 2, on all persons on any applicable general service list and on all persons who intervened in the utility's last general rate case, if applicable. These requirements are necessary and reasonable. They are intended to alert persons likely to be interested in the filing that the filing has been made.

Subp. 4. Publication in State Register.

This subpart requires the Commission to publish notice of the certificate of need application in the State Register and to solicit public comment on the application. Use of the State Register is necessary and reasonable, since public agencies likely to have an interest in certificate of need applications are accustomed to depending on the State Register for information.

Subp. 5. Publication in newspapers.

This subpart requires certificate of need applicants to publish notice of their applications in newspapers of general circulation throughout the state. This is reasonable and necessary.

The certificate of need statute clearly requires serious Commission efforts to involve the public in the certificate of need process. It requires the Commission to appoint a staff member "to facilitate citizen participation in the hearing process," and it requires that the Commission hold at least one public meeting "to obtain public opinion on the necessity of granting a certificate of need." Minn. Stat. § 216B.243, subd. 4. The first step in facilitating public participation in a proceeding is to notify the public, and newspaper notice is a reasonable way to accomplish this.

Subp. 6. Solicitation of comments on filing compliance.

This subpart provides that the Commission may request comments on an application's compliance with the specific filing requirements set forth in the certificate of need statutes and rules, and that the Commission may delegate the authority to request such comments to the Executive Secretary.

The reason the Commission does not establish a set period for challenging the form and adequacy of certificate of need filings is that the statutory deadline for acting on certificate of need filings, six months, is too short to make such challenges a standard part of the process. At the same time, however, there are cases in which the Commission can benefit significantly from other parties' analyses of a filing's compliance with the

detailed requirements of the certificate of need statute and rules. The rule therefore gives the Commission the option of requesting comments on the filing's compliance with applicable filing requirements.

The subpart also allows the Commission to delegate to the Executive Secretary the authority to request comments. This is necessary because of the short time frame, six months, for processing certificate of need applications. Since evidentiary hearings are usually necessary for these applications, time constraints are present from the start.

Subp. 7. Rejection of filing.

This subpart provides that the Commission may reject any certificate of need application which fails to comply substantially with filing requirements imposed by rule or statute. It also provides that any filing not rejected within 15 days is deemed accepted as in substantial compliance with applicable filing requirements.

This provision establishes a necessary and reasonable balance between the Commission's need to reject filings which are too incomplete to support proceedings on the merits and an applicant's need to assume at some point that a filing will not be rejected for failure to meet basic filing requirements. The 15-day period is reasonable, given the six month statutory deadline for action on certificate of need filings.

Subp. 8. Petition to intervene.

This subpart provides that the Commission will entertain intervention petitions until the matter is referred for contested case proceedings or until the Commission notifies existing parties of its intention to decide the matter on the basis of informal or expedited proceedings. When cases are referred for contested case proceedings, the rules of the Office of Administrative Hearings are to control intervention rights.

The intervention time frames in this subpart are reasonable and necessary. Given the complexity of certificate of need cases and the expense intervention requires, it makes sense to allow potential intervenors time to analyze the filing and determine whether their interests justify intervention. At the same time, however, the intervention period established in the subpart is not so long as to jeopardize parties' ability to present their cases fully, or the Commission's ability to make a sound decision.

Subp. 9. Public hearing.

This subpart clarifies that, whether the Commission uses

contested case or informal proceedings to decide a certificate of need application, the Commission must hold at least one public meeting on the application. This is reasonable and necessary because it is required by statute (Minn. Stat. § 216B.243, subd. 4) and carries out the statutory intent of encouraging public participation in certificate of need proceedings.

7829.2600 STAFF COMMENTS

This subpart provides that any written comments prepared by Commission staff shall be made available to all parties at the same time they become available to the Commission. It also provides for oral argument at the request of any party if staff recommend action not advocated by any party.

Making staff comments available to the parties at the same time they become available to the Commission is reasonable and necessary. The comments are public data under the Minnesota Government Data Practices Act and must be made available during meetings under the Minnesota Open Meeting Law. Minn. Stat. §§ 13.01 et seq.; Minn. Stat. § 471.705, subd. 1b. No purpose would be served by limiting access to the legal minimum. Providing access as soon as comments are available, on the other hand, benefits the parties and underscores the public nature of the regulatory process.

Allowing oral argument when staff recommend action not advocated by any party is reasonable and necessary for similar reasons. It ensures fundamental fairness, promotes informed decisionmaking, and reinforces parties' confidence in the regulatory process.

7829.2700 PROCEDURE FOLLOWING REPORT OF ADMINISTRATIVE LAW JUDGE

Subp. 1. Exceptions to Administrative Law Judge's report.

This subpart provides that parties shall file and serve exceptions to an Administrative Law Judge's report within 20 days of its filing, except in general rate cases, when they are due in 15 days. This relatively short time period is reasonable and necessary because the Commission is usually working under a statutory deadline in contested case proceedings. Although the Commission, all parties, and the Administrative Law Judge work together at trying to leave time at the end of the process for careful decisionmaking, as a practical matter the Commission is usually pressed for time by the time the Administrative Law Judge files his or her report. It is better in these cases to accelerate the filing of exceptions, replies, and oral argument, than to rush the Commission's decisionmaking.

Subp. 2. Replies to exceptions.

This subpart requires parties to file replies to exceptions within ten days, except in general rate cases, when replies are not permitted. This relatively short time period is necessary and reasonable for the same reasons set forth in explaining subpart 1.

Subp. 3. Oral argument.

This subpart makes it clear that parties will be offered an opportunity for oral argument after the Administrative Law Judge's report is filed. It is reasonable and necessary to include this provision, which is required under the Administrative Procedure Act and is important for informed decisionmaking.

7829.2800 GENERAL NOTICE REQUIREMENT

This subpart provides that matters will come before the Commission on ten days notice to all persons on the official service list. The Executive Secretary is to reduce the notice period under exigent circumstances.

The notice provisions are reasonable and necessary. Ten days is long enough for parties to prepare final comments on a matter, and short enough to accommodate the statutory time constraints under which the Commission operates. It is also necessary and reasonable to allow the Executive Secretary to bring matters before the Commission on less than ten days notice under exigent circumstances. Despite everyone's best efforts, Commission action is sometimes necessary on less than ten days notice. The exigent circumstances exception was suggested by members of the Advisory Panel and strongly supported by all members of the panel.

7829.2900 DECISION AND ORDER

This subpart requires the Executive Secretary to serve decisions and orders on all parties and participants in a proceeding. The subpart is necessary and reasonable for purposes of clarity.

7829.3000 PETITION FOR REHEARING, AMENDMENT, VACATION, RECONSIDERATION, REARGUMENT

Subp. 1. Time for request.

This subpart provides that petitions for post-hearing relief must be filed within 20 days of the date the order or decision is served by the Executive Secretary. It is necessary to have a deadline for petitions for post-hearing relief, and 20 days is a

reasonable deadline. It allows parties enough time to analyze the decision and its implications, without unreasonably prolonging the period of uncertainty between the decision and the expiration of time for seeking post-hearing relief.

Subp. 2. Content of request.

This subpart requires specificity in petitions for post-hearing relief. It requires that the grounds for the petition and any errors claimed be specifically set forth, and that any amendments requested be set forth clearly. Requiring specificity is necessary and reasonable to ensure reasoned analysis of the petition, meaningful responses, and informed decisionmaking.

Subp. 3. Service.

This subpart requires that documents filed in regard to petitions for post-hearing relief be served on all parties and participants in the proceeding. This is reasonable and necessary for purposes of due process.

Subp. 4. Answers.

This subpart establishes a 10 day deadline for responding to petitions for post-hearing relief. The 10 day deadline is reasonable and necessary because it keeps the proceeding moving, while allowing adequate time to prepare responses to such petitions.

Subp. 5. Replies.

This subpart provides that replies to answers will not be permitted except upon specific authorization by the Commission. This is reasonable and necessary. It avoids prolonging any proceeding unnecessarily, while giving the Commission the flexibility to allow replies when they would be helpful.

Subp. 6. Commission action.

This subpart allows the Commission to decide petitions for post-hearing relief with or without oral argument and allows the Commission to stay or vacate orders pending disposition of such petitions.

The oral argument provision is necessary and reasonable, since it is sometimes preferable to decide petitions for post-hearing relief without oral argument. An example would be a case in which a petition seeks reconsideration of an issue on grounds already briefed and argued and analyzed in detail in the order. In such a case the Commission might decide to forgo oral argument to spare the parties the expense of another appearance, especially if there are out-of-state parties involved.

The subpart also provides that the Commission may stay or vacate an order pending resolution of a petition for post-hearing relief. This is not discretionary in energy matters. Under the gas and electric statute, orders on which petitions for rehearing are pending are stayed as a matter of law, and petitions for rehearing are deemed denied if not granted within 20 days of filing. Minn. Stat. § 216B.27. There are no similar provisions in the telephone statute, however. To avoid confusion, the rule deals with the stay issue generically. This is reasonable, since the rules do make it clear that statutory provisions control if they conflict with provisions in the rules, and since it can be assumed that the Commission will exercise its discretion in compliance with statutory requirements.

7829.3100 TIME PERIODS VARIED

This subpart allows the Commission to vary any of the time periods established in the rules for good cause shown and allows the Commission to delegate the authority to vary time periods to the Executive Secretary. This kind of flexibility is reasonable and necessary, since, obviously, not all of the approximately 1,078 filings received each year can be handled under the rules' time frames. Allowing the Commission to delegate authority to vary time periods to the Executive Secretary is also reasonable and necessary, since it would avoid the need for a vote by the full Commission each time a party requests an extension of time.

7829.3200 OTHER VARIANCES

Subp. 1. When granted.

This subpart provides for the Commission to vary any of its rules upon a finding that (a) enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule; (b) granting the variance would not adversely affect the public interest; and (c) granting the variance would not conflict with standards imposed by law. Under Minn. Stat. § 14.05, subd. 4, agencies may grant variances to rules, as long as they have adopted standards to apply to variance requests and set forth reasons in writing whenever they act on them.

It is reasonable and necessary for the Commission to establish a procedure to vary its rules. The number and diversity of the companies it regulates require that it apply rules flexibly from time to time. (The Commission regulates six electric utilities, eight gas utilities, 99 local exchange telephone companies, three facilities-based long distance companies, 65 long distance resellers, plus municipal and co-operative utilities by complaint and under special circumstances.)

The variance criteria established in the rule are reasonable and necessary. They provide for variances when they would benefit the applicant, would not harm the public interest, and would not conflict with any governing legal principles.

Subp. 2. Conditions.

This subpart provides that the Commission may condition a variance upon the applicant's compliance with specified conditions. This is reasonable and necessary. The Commission may grant a small company a variance from certain filing requirements, for example, as long as the company complies with less burdensome filing requirements specified in the variance order.

Subp. 3. Duration.

This subpart provides that, unless the Commission orders otherwise, variances automatically expire in one year. They may also be revoked earlier due to changes in circumstances or for failure to comply with conditions imposed in the variance order.

The general one-year time limit is reasonable and necessary. It reinforces the principle that variances should be the exception, not the rule, and ensures that no company will operate out of compliance with Commission rules inadvertently. The one-year limit will also help alert the Commission when its substantive rules should be changed. If variances to a particular rule are requested year after year, it will be clear that changing the rule should be considered.

It is also reasonable and necessary to provide that variances can be revoked due to changes in circumstances or due to failure to comply with conditions imposed in the variance order. Fundamental fairness and the integrity of the regulatory process require that variances end if the circumstances necessitating them end, or if conditions the Commission considers essential to a variance are not met.

VI. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1990) requires the Commission, when proposing rules which may affect small business, to consider the following methods for reducing the impact on small businesses:

(a) the establishment of less stringent compliance or reporting requirements for small businesses;

(b) the establishment of less stringent schedules or

deadlines for compliance or reporting requirements for small businesses;

(c) the consolidation or simplification of compliance or reporting requirements for small businesses;

(d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and

(e) the exemption of small businesses from any or all requirements of the rule.

Minn. Stat. § 14.115, subd. 1 (1990) defines small business as follows:

> For purposes of this section, "small business" means a business entity, including farming and other agricultural operations and its affiliates that (a) is independently owned and operated; (b) is not dominant in its field; and (c) employs fewer than 50 full-time employees or has gross annual sales of less than $4,000,000. For purposes of a specific rule, an agency may define small business to include more employees if necessary to adapt the rule to the needs and problems of small businesses.

The proposed rules will affect small businesses as defined in Minn. Stat. § 14.115 (1990). They will affect small electric and gas utilities, small local telephone companies, and small long distance resellers. They will also affect small business that choose to intervene in Commission proceedings or file formal complaints. The Commission has therefore considered the above-listed methods for reducing the impact of the rules on small businesses.

Methods (a), (b), and (c) address compliance and reporting requirements. The proposed rules do not contain compliance and reporting requirements.

Method (d) does not apply to the proposed rules because the rules do not contain design or operational standards.

Method (e) addresses the exemption of small businesses from any or all rule requirements. Since these rules establish the procedural framework for Commission proceedings, there is no way to exempt some parties from their requirements and still maintain a fair and workable process. Furthermore, none of the rules are unduly burdensome, making an exemption unnecessary in any case.

VII. LIST OF WITNESSES AND EXHIBITS

A. Witnesses

In the event that an administrative rulemaking hearing is necessary, this Statement of Need and Reasonableness contains the Commission's verbatim affirmative presentation of the need for and reasonableness of the proposed rules.

The following members of the Commission staff and the Office of the Attorney General will be available at the hearing to answer questions about the proposed rules or to briefly summarize all or a portion of this Statement of Need and Reasonableness if requested by the Administrative Law Judge.

1. Richard Lancaster
   Executive Secretary

2. Carol Casebolt
   Staff Attorney

3. Rosellen Condon
   Special Assistant Attorney General
   Public Utilities Commission Division

B. Exhibits

In support of the need and reasonableness of the proposed rules, the following documents will be entered into the hearing record by the Commission:

Exhibit No.	Document
1.	Notice of Intent to Solicit Outside Information (10 S.R. 2039, March 31, 1986).
2.	Comments in Response to Notice of Intent to Solicit Outside Information, submitted by the Suburban Rate Authority, the Minnesota Independent Coalition, Northern States Power Company, Leonard, Street & Deinard, Otter Tail Power Company, Minnesota Power & Light Company, the Department of Public Service, the Residential Utilities Division of the Office of the Attorney General, and Stanley E. Bourassa.

VII. CONCLUSION

The proposed Rules of Practice and Procedure are necessary and reasonable for the reasons set forth above.



Richard R. Lancaster
Executive Secretary

Office of the Revisor of Statutes

Administrative Rules

Ron Ray
Senior Assistant Revisor
296-0945

700 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1297

January 7, 1992

Carol Casebolt
Public Utilities Commission
Room 780 American Center Bldg
St. Paul, MN 55101

RE: File No. 1976

Dear Carol:

I am enclosing six copies of your rules, approved as to form. Please submit two copies to the State Register for publication.

If you have any questions, please call me.

Very truly yours,

Ron Ray

Public Utilities Commission

Proposed Permanent Rules Relating to Practice and Procedure

Rules as Proposed (all new material)

7829.0100 DEFINITIONS.

Subpart 1. **Scope.** The terms used in this chapter have the meanings given them in this part.

Subp. 2. **Classification petition.** "Classification petition" means a petition filed by a telephone company to classify a telephone service as subject to emerging or effective competition under Minnesota Statutes, section 237.59.

Subp. 3. **Commission.** "Commission" means the Minnesota Public Utilities Commission.

Subp. 4. **Complainant.** "Complainant" means a person who complains formally or informally of an alleged violation of a statute or rule within the commission's jurisdiction, a utility tariff, or a commission order.

Subp. 5. **Cost increase filing.** "Cost increase filing" means a miscellaneous tariff filing under Minnesota Statutes, section 237.63, proposing a rate increase for a particular telephone service on grounds that the actual costs of providing that particular service have increased. It does not include cost increases that are part of overall cost increases and cost increases that have been discovered as a result of new cost studies.

Subp. 6. **Department.** "Department" means the Minnesota Department of Public Service.

Subp. 7. **Expedited proceeding.** "Expedited proceeding" means an informal proceeding described in Minnesota Statutes, section 237.61, and subject to specific procedural requirements such as verification of pleadings.

Subp. 8. **Informal proceeding.** "Informal proceeding" means a proceeding that addresses and resolves issues of public policy, fact, or law without a formal contested case proceeding

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before the Office of Administrative Hearings.

Subp. 9. **Intervenor.** "Intervenor" means a person permitted to intervene as a party in a proceeding under this chapter.

Subp. 10. **Language change filing.** "Language change filing" means a miscellaneous tariff filing under Minnesota Statutes, section 237.63, changing descriptive language in a telephone utility tariff without changing the meaning or operation of the tariff.

Subp. 11. **Miscellaneous tariff filing.** "Miscellaneous tariff filing" means a request or notice that does not require determination of the utility's revenue requirement.

A miscellaneous tariff filing includes a filing involving a new service offering; a change in a utility's rates, services, terms, or conditions of service; a change in a utility's corporate structure, assigned service area, or capital structure, when conducted separately from a general rate proceeding; or any related matter. The term also includes a language change filing, cost increase filing, and rate reduction filing.

The inclusion of a particular type of filing in this list does not require a filing that would not otherwise be required or confer jurisdiction that would not otherwise be present.

Subp. 12. **Municipality.** "Municipality" includes a town, statutory city, and home rule charter city.

Subp. 13. **Participant.** "Participant" means a person who files comments or appears in a proceeding, other than public hearings held in contested cases and other commission proceedings conducted to receive general public comments, to present views without becoming a party.

Subp. 14. **Party.** "Party" means a person by or against whom a proceeding before the commission is commenced or a person permitted to intervene in a proceeding under this chapter. A party to a proceeding is styled a "petitioner," "complainant," "intervenor," or "respondent," according to the nature of the proceeding and the relationship of the party to the proceeding.

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Subp. 15. **Person.** "Person" means a natural person, corporation, municipal corporation, public corporation, utility, governmental entity, government agency, association, partnership, receiver, joint venture, trustee at common law or statutory trust guardian, or executor.

Subp. 16. **Petitioner.** "Petitioner" means a person who requests the commission's permission, authorization, or approval or a person who notifies the commission of a proposed change in a rate, service, or term or condition of service.

Subp. 17. **Price list filing.** "Price list filing" means a filing under Minnesota Statutes, section 237.60, pertaining to telephone services claimed to be subject to emerging or effective competition.

Subp. 18. **Proceeding.** "Proceeding" means a formal or informal undertaking of the commission, in which it seeks to resolve a question or issue taken up on its own motion or presented to it in a complaint, petition, or notice of a proposed change in a rate, service, or term or condition of service.

Subp. 19. **Proof of service.** "Proof of service" means a certificate of service stating the facts of service, including the time and manner of service and the parties served.

Subp. 20. **Rate reduction filing.** "Rate reduction filing" means a miscellaneous tariff filing under Minnesota Statutes, section 237.63, proposing a reduction in a rate for telephone service.

Subp. 21. **Respondent.** "Respondent" means a person against whom a complaint is filed or against whom an investigation or other proceeding on commission motion is addressed.

Subp. 22. **Suspend.** "Suspend" means to hold in abeyance or to delay the effective date of.

Subp. 23. **Utility.** "Utility" means a gas, electric, or telephone company subject to the jurisdiction of the commission.

7829.0200 SCOPE AND CONSTRUCTION.

Subpart 1. **Construction.** This chapter must be construed

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to secure the just, speedy, and economical determination of issues before the commission. This chapter must be construed in light of the commission's statutory authority and responsibilities.

Subp. 2. **Conflicting statutes and substantive rules to control.** This chapter governs practice and procedure in matters before the commission except when a statute or a rule on a specific topic contains procedural requirements in direct conflict with this chapter. Then, the statute or rule on a specific topic controls insofar as it is in direct conflict with this chapter.

7829.0300 COMPUTATION OF TIME.

In computing a period of time prescribed by this chapter, the commission shall exclude the first and include the last day of the designated period of time. When the last day of the time period falls on Saturday, Sunday, or a legal holiday, that day must be omitted from the computation.

7829.0400 SERVICE AND FILING REQUIREMENTS.

Subpart 1. **Filing.** Documents are filed with the commission when they are received in the commission offices during regular business hours. Specific documents may be filed by facsimile transmission or filed when mailed or delivered in person, if the executive secretary so directs. Documents must be directed to the attention of the executive secretary.

Subp. 2. **Number of copies.** Parties and participants shall file an original and 15 copies of each document filed with the commission, unless otherwise directed by the executive secretary.

Subp. 3. **Proof of service.** Filings must be accompanied by proof of service on the persons on the appropriate service list.

Subp. 4. **Format.** Filings must identify the nature of the filing as briefly as possible, for example, "Replies to Exceptions to Report of Administrative Law Judge," and indicate that the matter is before the Minnesota Public Utilities Commission. Filings after the original filing must include the title and docket number of the matter. Filings must be on 8-1/2

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by 11-inch paper, unless the executive secretary authorizes a nonconforming filing for good cause shown.

Subp. 5. **Service.** A document filed with the commission must be served the same day on the persons listed on the appropriate service list, except when this chapter permits service of a summary of the filing. Service may be accomplished by first class mail or by delivery in person, unless otherwise provided by law or commission order. Service may also be accomplished by facsimile transmission, followed by first class mail. Service by mail or facsimile transmission plus mail is complete upon mailing, unless the executive secretary directs otherwise for specific documents. When a party or participant is represented by an attorney, service upon the attorney is considered service upon the party or participant.

Subp. 6. **Proceeding before administrative law judge.** During the time that a matter is before an administrative law judge, service and filing requirements are controlled by the rules of the Office of Administrative Hearings and by any orders issued under those rules by the administrative law judge.

7829.0500 TRADE SECRET AND PROPRIETARY INFORMATION.

Subpart 1. **Confidentiality protected.** Nothing in this chapter requires the public disclosure of privileged proprietary information, trade secrets, or other privileged information.

Subp. 2. **Procedure for excision.** Persons filing documents containing proprietary information, trade secrets, or other privileged information shall excise this information in all copies but the original and six copies.

Subp. 3. **Identification of excised material.** When a person classifies an entire document, or a substantial part of a document, as protected information, the person shall file a description of the excised material that includes at least the following information: the nature of the material, its authors, its general import, and the date on which it was prepared.

Subp. 4. **Document containing protected information.** The first page or cover page of a document containing protected

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information must be clearly marked in bold print "TRADE SECRET INFORMATION -- NOT FOR PUBLIC DISCLOSURE" or with words of similar import. Every page on which protected information appears must be similarly marked and the protected information must be underlined, placed in brackets, or otherwise clearly identified as the information which is to be protected from disclosure.

7829.0600 GENERAL SERVICE LIST.

Subpart 1. **Establishing list.** Persons desiring to receive notice of particular types of filings and who are qualified to intervene under part 7829.0800 shall file with the utility a written list of the types of filings they wish to receive. The utility shall maintain general service lists of persons who have filed these requests. The utility shall add to each list the persons who intervened in its last general rate case and persons on the official service list for its last filing of the same type.

Subp. 2. **Annual updating.** The utility may delete from its general service list a person who fails to respond within 30 days to an annual mailing inquiring whether that person wishes to continue receiving the filings requested.

Subp. 3. **Periodic addition.** A person may be added to the utility's general service list at any time by filing a request under subpart 1, even if the person failed to respond to an annual mailing as described in subpart 2.

Subp. 4. **Jurisdiction unaffected.** The service lists established in this part are intended to provide the earliest possible notice to persons who may be interested in a particular filing. The requirements of this part do not displace or add to legal notice requirements, and a utility's failure to comply with this part does not deprive the commission of jurisdiction over a matter of which it would otherwise have jurisdiction.

Subp. 5. **Party or participant status unaffected.** Inclusion on a general service list does not confer party or participant status on persons included on the list.

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7829.0700 OFFICIAL SERVICE LIST.

Subpart 1. **Content.** The official service list for each proceeding consists of the names of the parties and the names of participants who have filed a written request for inclusion on the service list with the executive secretary.

Subp. 2. **Establishment and updating.** The commission shall establish the official service list at the conclusion of the initial comment period and shall mail a copy of the list to the parties and to participants who have filed written requests for inclusion. A list established before commission action on a petition for intervention must include those persons whose intervention petitions are pending. The commission shall mail an updated official service list to the parties and participants if the official service list is later expanded or reduced. The commission need not mail the official service list in proceedings when the only parties are the department and a petitioner, complainant, or respondent.

Subp. 3. **Limiting service list.** On its own motion or at the request of a party, the commission shall limit the service list to parties to the proceeding if it finds that requiring service on participants is unduly burdensome.

Subp. 4. **Name and address change.** A party or participant who wishes to change the name or address of a person receiving service on behalf of the party or participant shall provide written notice of the change to the executive secretary and to persons on the official service list.

Subp. 5. **Proceeding before administrative law judge.** In proceedings before an administrative law judge in which the judge establishes a service list, the names on that service list must remain on the official service list for the remainder of the proceeding.

7829.0800 PETITION TO INTERVENE.

Subpart 1. **Filing and service.** A person who desires to become a party to a proceeding shall file a petition to intervene within the time set in this chapter. The petition

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must be served on known parties and those persons on the utility's general service list for the matter, if applicable.

Subp. 2. **Grounds for intervention.** The petition must allege the grounds for intervention and must be granted upon a showing that: the person is specifically considered by statute to be interested in the particular type of matter at issue; the person is specifically declared by statute to be an interested party; or the outcome of the proceeding will bind or affect the person with respect to an interest peculiar to that person, as distinguished from an interest common to the public or other ratepayers in general.

Subp. 3. **Intervention as of right.** The department and the Office of the Attorney General, through its Residential Utilities Division, may intervene as of right in any proceeding before the commission. They become parties upon filing comments under this chapter and need not file petitions to intervene, except when the rules of the Office of Administrative Hearings require it.

Subp. 4. **Objection to intervention.** An objection to intervention must be filed within ten days of service of the petition to intervene.

Subp. 5. **Disposition of petition.** If there is no objection to intervention and a petition to intervene is not denied or suspended within 15 days of filing, the petition to intervene must be considered granted, unless the matter is referred to the Office of Administrative Hearings for contested case proceedings before the expiration of the 15-day period.

Subp. 6. **Proceeding before administrative law judge.** During the time that a matter is before an administrative law judge, intervention procedures are governed by the rules of the Office of Administrative Hearings and by orders issued under those rules by the administrative law judge.

7829.0900 PARTICIPANT.

A person may file comments in a proceeding before the commission without requesting or obtaining party status. A

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participant may also be granted an opportunity for oral presentations.

7829.1000 REFERRAL FOR CONTESTED CASE PROCEEDING.

If a proceeding involves contested material facts or the commission finds that all significant issues have not been resolved to its satisfaction, the commission shall refer the matter to the Office of Administrative Hearings for contested case proceedings, unless:

A. all parties waive their rights to contested case proceedings and instead request informal or expedited proceedings, and the commission finds that informal or expedited proceedings would be in the public interest; or

B. a different procedural treatment is required by statute.

7829.1100 PUBLIC HEARING.

When a public hearing is held in connection with a contested case proceeding, the commission shall, whenever possible, schedule the public hearing to be held before the evidentiary hearings.

7829.1200 INFORMAL OR EXPEDITED PROCEEDING.

Subpart 1. **When appropriate.** Informal or expedited proceedings may be used when contested case proceedings are not required, for example, when:

A. there are no material facts in dispute;

B. the parties and the commission have agreed to informal or expedited proceedings; or

C. informal or expedited proceedings are authorized or required by statute.

Subp. 2. **Presentation of facts.** Written submissions are the preferred method of introducing facts. The commission shall allow oral presentation of facts when that can be done without compromising the rights of any person or the integrity of the proceeding. In informal proceedings, the commission shall require that factual allegations be made under oath or by

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affirmation when facts appear to be in dispute. In expedited proceedings, the commission shall require that factual allegations be made under oath or by affirmation and that documents filed in the proceeding be verified.

Subp. 3. **Notice.** The commission shall notify the persons on the official service list at least ten days before a meeting at which it may act on the basis of informal or expedited proceedings. Under exigent circumstances the executive secretary shall reduce the ten-day notice period.

7829.1300 MISCELLANEOUS TARIFF AND PRICE LIST FILINGS.

Subpart 1. **Summary.** A miscellaneous tariff filing and price list filing must include, on a separate page, a one-paragraph summary of the filing, sufficient to apprise potentially interested parties of its nature and general content.

Subp. 2. **Service.** The filing utility shall serve copies of each miscellaneous tariff filing on which commission action is required within 60 days, and each price list filing increasing the price of a competitive service, on the persons on the applicable general service list, on the department, and on the Residential Utilities Division of the Office of the Attorney General. For other filings, the utility may serve the summary described in subpart 1 on persons on the applicable general service list. The utility shall serve with the filing or the summary a copy of its general service list for the filing.

Subp. 3. **Content of filing subject to specific requirements.** In addition to complying with specific requirements imposed by statute or rule, miscellaneous tariff and price filings subject to specific filing rules must contain at least the following information:

A. the name, address, and telephone number of the utility, without abbreviation;

B. the name, address, and telephone number of the attorney for the utility, if the utility is using an attorney;

C. the date of the filing and the date the proposed rate or service change will go into effect;

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D. the statute that the utility believes controls the time frame for processing the filing; and

E. the signature and title of the utility employee responsible for the filing.

Subp. 4. **Content of filing not subject to specific filing rules.** In addition to complying with any specific requirements imposed by statute, miscellaneous tariff and price list filings not subject to specific filing rules must contain at least the following information:

A. the name, address, and telephone number of the utility, without abbreviation;

B. the name, address, and telephone number of the attorney for the utility, if the utility is using an attorney;

C. the date of the filing and the date the proposed rate or service change will go into effect;

D. the statute that the utility believes controls the time frame for processing the filing;

E. the signature and title of the utility employee responsible for the filing; and

F. a description of the filing, its impact on rates and services, its impact on the utility and affected ratepayers, and the reasons for the filing.

Subp. 5. **Rejection of filing.** The commission shall reject a filing found to be substantially out of compliance with this chapter or applicable statutory requirements. A miscellaneous tariff filing or price list filing not rejected within 20 days of filing must be considered accepted as to form.

Subp. 6. **Initial comments.** A person wishing to comment on a miscellaneous tariff or price list filing shall do so within 30 days of its filing with the commission. A person wishing to comment on one of the following noncompetitive rate change filings shall do so within 20 days of its filing with the commission: a rate reduction filing, a cost increase filing, or a request for a significant change in a condition of telephone service. A person wishing to comment on a new telephone service, competitive or noncompetitive, shall do so within ten

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days of its filing with the commission. Comments must be served on the persons on the utility's general service list for the filing, as well as on the filing utility.

Subp. 7. **Petition to intervene.** If a person who files initial or reply comments is not entitled to intervene in commission proceedings as of right and desires full party status, the person shall file a petition to intervene before the initial or reply comment period expires. The intervention petition may be combined with the comments on the filing.

7829.1400 COMMENTS ON MISCELLANEOUS TARIFF OR PRICE LIST FILING.

Subpart 1. **Comments to include procedural recommendation.** A person commenting on a miscellaneous tariff or price list filing and recommending its rejection, denial, or modification shall specify whether the person believes the filing requires a contested case proceeding, informal proceeding, expedited proceeding, or some other procedural treatment, together with the person's reasons for recommending a particular procedural treatment.

Subp. 2. **Reply comments.** The utility and other persons have ten days from the expiration of the original comment period to file reply comments. Reply comments must be served on the utility and persons who have filed comments on the miscellaneous tariff filing. Reply comments must be limited in scope to the issues raised in the initial comments.

Subp. 3. **Additional comments.** If further information is required to make a fully informed decision, the commission shall require additional comments and identify specific issues requiring further development.

Subp. 4. **Comments on supplemental or corrected filings.** The commission shall provide opportunity for other parties to respond to supplemental or corrected filings when those filings raise new issues.

Subp. 5. **Comment periods varied.** Except for comment periods set by statute, the commission may vary the comment periods set by this chapter on its own motion or at the request

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of a person for good cause shown. The commission may delegate the authority to vary time periods to the executive secretary.

Subp. 6. **Comment periods extended at department's request.** At the request of the department, the commission shall extend the comment periods in parts 7829.1300 and 7829.1400 up to an additional 30 days, except for comment periods established by statute and except when the commission must act within 60 days to prevent proposed rate changes from going into effect.

7829.1500 INFORMAL COMPLAINT.

Persons engaged in disputes with utilities may submit informal complaints by letter or other writing, by telephone, or in person. Commission staff shall accept these complaints and shall prepare a memorandum setting forth the substance of each complaint and identifying the customer, the service address, and the utility.

7829.1600 TREATMENT OF INFORMAL COMPLAINT.

Commission staff shall try to help resolve informal complaints by correspondence, mediation, arbitration, and other informal means. If the complainant desires formal action by the commission, a formal complaint must be filed.

7829.1700 FORMAL COMPLAINT.

Subpart 1. **Content.** A formal complaint must include the following information: the name and address of the complainant; the name and address of complainant's counsel, if any; the name and address of respondent; the name and address of respondent's counsel, if known; the statute, rule, tariff, or commission order alleged to have been violated; the facts constituting the alleged violation; and the relief sought by complainant.

Subp. 2. **Service and filing.** A formal complaint must be served on the respondent, the department, and the Residential Utilities Division of the Office of the Attorney General, as well as filed with the commission.

7829.1800 INITIAL CONSIDERATION OF FORMAL COMPLAINT.

Subpart 1. **Initial commission review.** The commission

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shall review a formal complaint as soon as practicable to determine whether the commission has jurisdiction over the matter and to determine whether there are reasonable grounds to investigate the allegation. On concluding that it lacks jurisdiction or that there is no reasonable basis to investigate the matter, the commission shall dismiss the complaint.

Subp. 2. **Answer.** On concluding that it has jurisdiction over the matter and that investigation is warranted, the commission shall serve the complaint on the respondent, together with an order requiring the respondent to grant the relief complainant requests or to show cause by answer why respondent should not be ordered to do so. The answer must be filed with the commission and served on the complainant, the department, and the Residential Utilities Division of the Office of the Attorney General within 20 days of service of the complaint and order.

Subp. 3. **Reply.** Replies are not required unless the answer alleges that respondent has granted the relief sought by complainant. In that case, the complainant shall file a reply within 20 days admitting or denying that relief has been granted. If the complainant fails to file the reply, the commission shall dismiss the complaint. Copies of the reply must be served on respondents, the department, and the Residential Utilities Division of the Office of the Attorney General.

Subp. 4. **Failure to answer.** If the respondent fails to answer a complaint served by the commission under subpart 2, the commission shall consider the allegations of the complaint denied, and issue is joined.

7829.1900 COMMISSION ACTION ON FORMAL COMPLAINT.

Subpart 1. **Nature of proceedings.** The commission shall deal with a formal complaint through a contested case proceeding, informal proceeding, or expedited proceeding.

Subp. 2. **Initial comments.** A person wishing to comment on a formal complaint shall do so within 30 days of the date of a commission order requiring an answer to the complaint. Comments

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must be served on the complainant, respondent, department, Residential Utilities Division of the Office of the Attorney General, and any other known parties.

Subp. 3. **Reply comments.** A commenting party has ten days from the expiration of the original comment period to file reply comments. Reply comments must be limited in scope to the issues raised in the initial comments and must be served on the complainant, respondent, department, Residential Utilities Division Of the Office of the Attorney General, and any other known parties.

Subp. 4. **Petition to intervene.** If a person who files initial or reply comments is not entitled to intervene in commission proceedings as of right and desires full party status, the person shall file a petition to intervene before the initial or reply comment period expires. The intervention petition may be combined with the comments on the complaint.

Subp. 5. **Comments to include procedural recommendation.** A person commenting on a complaint shall specify whether the person believes the matter requires a contested case proceeding, informal proceeding, expedited proceeding, or some other procedural treatment, together with the reasons for recommending a particular procedural treatment.

Subp. 6. **Additional comments.** If further information is required to make a fully informed decision, the commission shall require additional comments and identify specific issues requiring further development.

Subp. 7. **Comments on supplemental or corrected filings.** The commission shall provide opportunity for other parties to respond to supplemental or corrected filings when those filings raise new issues.

Subp. 8. **Comment periods varied.** Except for time periods set by statute, the commission may vary the comment periods established in this part at the request of a person for good cause shown. The commission may delegate the authority to vary time periods to the executive secretary.

Subp. 9. **Comment periods extended at department's request.**

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At the request of the department, the commission shall extend the comment periods established in this part up to an additional 30 days, except for comment periods set by statute.

7829.2000 ELECTRIC SERVICE AREA COMPLAINT.

Subpart 1. **Content.** A complaint alleging violation of an electric utility's assigned service area must include a copy of the official service area map of an area at issue, with the area of the alleged violation clearly marked.

Subp. 2. **Service and filing.** A service area complaint must be served on the respondent, department, and Residential Utilities Division of the Office of the Attorney General, as well as filed with the commission.

7829.2100 COMMISSION ACTION ON SERVICE AREA COMPLAINT.

Subpart 1. **Answer.** Within ten days of service of a service area complaint, a respondent shall file an answer with the commission and serve it on the complainant, department, and Residential Utilities Division of the Office of the Attorney General.

Subp. 2. **Initial comments.** A person wishing to comment on a service area complaint shall do so within ten days of the date the person was served. Comments must be served on the complainant, respondent, department, Residential Utilities Division of the Office of the Attorney General, and any other known parties.

Subp. 3. **Petition to intervene.** If a person who files comments is not entitled to intervene in a commission proceeding as of right and desires full party status, the person shall file a petition to intervene before the initial comment period expires. The intervention petition may be combined with the comments on the complaint and must be served on those persons entitled to service of the comments.

Subp. 4. **Additional comments.** If further information is required to make a fully informed decision, the commission shall require additional comments and identify specific issues requiring further development.

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Subp. 5. **Comments on supplemental or corrected filing.** The commission shall provide opportunity for other parties to respond to supplemental or corrected filings when those filings raise new issues.

Subp. 6. **Time for disposition.** Service area complaints must come before the commission within 15 days of filing. The commission shall issue its order within 30 days after the hearing.

7829.2200 TELEPHONE INCENTIVE PLAN FILING.

Subpart 1. **Summary.** A telephone utility filing an incentive plan under Minnesota Statutes, section 237.625, shall include, on a separate page, a brief summary of the filing, sufficient to apprise potentially interested parties of its nature and general content.

Subp. 2. **Service.** A utility filing an incentive plan under Minnesota Statutes, section 237.625, shall serve copies of the incentive plan filing on the department and the Residential Utilities Division of the Office of the Attorney General. The utility shall serve the filing or the summary described in subpart 1 on those persons on the applicable general service list and on persons who were parties to its last general rate case or incentive plan proceeding.

Subp. 3. **Challenge to form and completeness.** A person wishing to challenge the form or completeness of an incentive plan filing shall do so within ten days of its filing. The filing utility shall reply to the challenge within five days of its filing. These challenges and responses must be served on the utility, the department, the Residential Utilities Division of the Office of the Attorney General, persons on the general service list for the filing, and any other known parties.

Subp. 4. **Rejection of filing.** The commission shall reject a filing that it finds to be substantially out of compliance with Minnesota Statutes, section 237.625, or with any other filing requirement imposed by rule or statute. An incentive plan filing not rejected within 45 days of filing is considered

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accepted as in substantial compliance with applicable filing requirements.

Subp. 5. **Procedural comments.** A person wishing to comment on a proposed incentive plan shall file comments within 20 days of its filing, recommending a specific procedural framework for examining the filing, including time frames for substantive comments and commission action. Procedural comments must be served on the utility, department, Residential Utilities Division of the Office of the Attorney General, persons on the general service list for the filing, and any other known parties.

Subp. 6. **Petition to intervene.** If a person desires full party status, but is not entitled to intervene in a commission proceeding as of right, the person shall file a petition to intervene before the procedural comment period expires. The intervention petition may be combined with procedural comments on the filing and must be served on those persons entitled to receive service of procedural comments.

Subp. 7. **Notice to public and ratepayers.** The utility shall give notice of the proposed incentive plan to its ratepayers and shall publish notice of the proposed plan in all newspapers of general circulation in all county seats in its service area.

Subp. 8. **Notice of public meeting.** The utility shall notify its ratepayers of public meetings on the proposed incentive plan scheduled by the commission and shall publish notice of the public meetings in all newspapers of general circulation in all county seats in its service area.

Subp. 9. **Nature of proceeding.** The commission shall deal with incentive plan filings by conducting an expedited proceeding under Minnesota Statutes, section 237.61. Following review of the procedural comments, the commission shall establish by order, time frames for submitting testimony and comments.

Subp. 10. **Time frame for disposition.** The commission shall approve, reject, or modify a proposed incentive plan within six months of filing. If the commission does not act

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within that time, the plan is considered withdrawn, unless the commission and the utility agree to extend the six-month period.

7829.2300 CLASSIFICATION PETITION.

Subpart 1. **Summary.** A telephone utility filing a classification petition under Minnesota Statutes, section 237.59, shall include on a separate page a brief summary of the filing, sufficient to apprise potentially interested parties of its nature and general content.

Subp. 2. **Service.** A utility filing a classification petition shall serve copies of the petition on the department and Residential Utilities Division of the Office of the Attorney General. The utility shall serve the petition or the summary described in subpart 1 on those persons on the applicable general service list and on those persons who were parties to its last general rate case or incentive plan proceeding, if applicable.

Subp. 3. **Challenges to form and completeness.** A person wishing to challenge the form or completeness of a classification petition shall do so within ten days of its filing. The filing utility shall reply to the challenge within five days of its filing. Challenges and responses must be served on the department, Residential Utilities Division of the Office of the Attorney General, persons on the general service list for the filing, and any other known parties.

Subp. 4. **Rejection of filings.** The commission shall reject a classification petition found to be substantially out of compliance with Minnesota Statutes, section 237.59, or with any other filing requirement imposed by rule or statute. A filing under this section not rejected within 45 days of filing is considered accepted as in substantial compliance with applicable filing requirements.

Subp. 5. **Initial comments.** A person wishing to comment on a classification petition shall file initial comments within 20 days of the filing. Initial comments must include a recommendation on whether the filing requires a contested case

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proceeding, expedited proceeding, or some other procedural treatment, together with reasons for recommending a particular procedural treatment. Initial comments must be served on the utility, department, Residential Utilities Division of the Office of the Attorney General, persons on the general service list for the filing, and any other known parties.

Subp. 6. **Petition to intervene.** If a person who files initial comments is not entitled to intervene in a commission proceeding as of right and desires full party status, the person shall file a petition to intervene before the reply comment period expires. The intervention petition may be combined with comments on the filing and must be served on those persons entitled to receive service during the comment period when the intervention petition is filed.

Subp. 7. **Reply comments.** Commenting parties have ten days from the expiration of the original comment period to file reply comments. Reply comments must be limited in scope to the issues raised in the initial comments. Reply comments must be served on the utility and on those persons who have filed initial comments.

Subp. 8. **Additional comments.** If further information is required to make a fully informed decision, the commission shall require additional comments and identify specific issues requiring further development.

Subp. 9. **Comments on supplemental or corrected filing.** The commission shall provide opportunity for other parties to respond to a supplemental or corrected filing when the filing raises new issues.

Subp. 10. **Nature of proceeding.** The commission shall deal with a classification petition by conducting an expedited proceeding under Minnesota Statutes, section 237.61, or by referring the matter for a contested case proceeding.

Subp. 11. **Time frame for disposition; expedited proceeding.** When the filing utility requests an expedited proceeding on its classification petition, the commission shall take final action within 60 days of the date on which the utility provides the

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substantive information required by statute, unless the commission finds at least one issue of material fact in dispute and refers the matter for a contested case proceeding within the same 60-day period.

Subp. 12. **Time frame for disposition; contested case proceeding.** When the commission conducts a contested case proceeding, it shall take final action within eight months of the utility's request for a contested case proceeding or the commission's order that contested case proceedings be held, whichever occurs earlier.

Subp. 13. **Extending disposition period.** The commission may extend the eight-month time frame set forth in subpart 12 with the agreement of all parties or upon a finding that the case cannot be completed within the required time and that there is a substantial probability that the public interest would be harmed by enforcing the eight-month time frame.

7829.2400 FILINGS REQUIRING DETERMINATION OF GROSS REVENUE REQUIREMENT.

Subpart 1. **Summary.** A utility filing a general rate case or other filing that requires determination of its gross revenue requirement shall include, on a separate page, a brief summary of the filing, sufficient to apprise potentially interested parties of its nature and general content.

Subp. 2. **Service.** A utility filing a general rate change request shall serve copies of the filing on the department and Residential Utilities Division of the office of the Attorney General. The utility shall serve the filing or the summary described in subpart 1 on the persons on the applicable general service list and persons who were parties to its last general rate case or incentive plan proceeding.

Subp. 3. **Notice to public and governing bodies.** A utility seeking a general rate change shall give notice of the proposed change to the governing body of each municipality and county in its service area and to its ratepayers. The utility shall also publish notice of the proposed change in newspapers of general

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circulation in all county seats in its service area.

Subp. 4. **Challenge to form and completeness.** A party wishing to challenge the form or completeness of a general rate case filing shall do so within ten days of its filing. The filing utility shall reply to the challenge within five days of its filing. Challenges and responses must be served on the department, Residential Utilities Division of the Office of the Attorney General, persons on the general service list for the filing, and any other known parties.

Subp. 5. **Rejection of filing.** The commission shall reject a filing under this part that is found to be substantially out of compliance with Minnesota Statutes, section 216B.16 or 237.075, or other requirement imposed by rule, statute, or previous commission order. A filing under this part not rejected within 60 days of filing is considered accepted as in substantial compliance with applicable filing requirements.

Subp. 6. **Petition to intervene.** The commission shall entertain a petition to intervene until the matter is referred to the Office of Administrative Hearings for a contested case proceeding or until the commission issues a notice under part 7829.1200, subpart 3, stating its intention to decide the matter on the basis of an informal or expedited proceeding. Once a filing is referred for a contested case proceeding, the rules of the Office of Administrative Hearings control intervention rights.

Subp. 7. **Notice of hearing.** The utility shall notify its ratepayers of hearings held in connection with its rate change request in the manner directed by the commission. The utility shall publish notice of hearings on its rate change request in newspapers of general circulation in all county seats in its service area, as directed by the commission.

7829.2500 CERTIFICATE OF NEED FILING.

Subpart 1. **Compliance.** Certificate of need applications must comply with the requirements of Minnesota Statutes, sections 216B.2421 and 216B.243; Minnesota Rules, chapters 7849,

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7851, 7853, and 7855; and any other requirements imposed by rule or statute.

Subp. 2. **Summary.** A person filing a certificate of need application shall include, on a separate page, a brief summary of the filing, sufficient to apprise potentially interested parties of its nature and general content.

Subp. 3. **Service.** A certificate of need applicant shall serve copies of the filing on the department and Residential Utilities Division of the Office of the Attorney General. The applicant shall serve the filing or the summary described in subpart 2 on those persons on an applicable general service list and on those persons who were parties to its last general rate case or incentive plan proceeding, if applicable.

Subp. 4. **Publication in State Register.** The commission shall publish notice of the certificate of need filing in the State Register and shall solicit public comment on the application.

Subp. 5. **Publication in newspapers.** The applicant shall publish notice of the filing in newspapers of general circulation throughout the state.

Subp. 6. **Solicitation of comments on filing compliance.** The commission shall request comments on the filing's compliance with Minnesota Statutes, sections 216B.2421 to 216B.243, and Minnesota Rules, chapters 7849, 7851, 7853, and 7855, when it determines that comments would be helpful in evaluating the filing's substantial compliance with the requirements of those statutes and rules. The commission may delegate the authority to request these comments to the executive secretary.

Subp. 7. **Rejection of filing.** The commission shall reject a filing under this part that is found to be substantially out of compliance with Minnesota Statutes, sections 216B.2421 to 216B.243; Minnesota Rules, chapters 7849, 7851, 7853, and 7855; and any other requirements imposed by rule or statute. A filing under this section not rejected within 15 days of filing must be considered accepted as in substantial compliance with applicable filing requirements.

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by Revisor _____

Subp. 8. **Petition to intervene.** The commission shall entertain a petition to intervene until the matter is referred to the Office of Administrative Hearings for a contested case proceeding or until the commission issues a notice under part 7829.1200, subpart 3, stating its intention to decide the matter on the basis of an informal or expedited proceeding. Once a filing is referred for a contested case proceeding, the rules of the Office of Administrative Hearings shall control intervention rights.

Subp. 9. **Public hearing.** If the commission decides to act on the application through an informal proceeding, the commission shall hold a public hearing designed to encourage members of the public to express their views on the application, as required under Minnesota Statutes, section 216B.243, subdivision 4. If the commission refers the application to the Office of Administrative Proceedings for a contested case proceeding, the commission shall ensure that at least one public hearing is held.

7829.2600 STAFF COMMENTS.

Written comments on a filing by commission staff must be made available to those persons on the service list at the same time they are provided to the commission. If commission staff recommend action not advocated by any party, all parties must be granted oral argument at the request of any party.

7829.2700 PROCEDURE FOLLOWING REPORT OF ADMINISTRATIVE LAW JUDGE.

Subpart 1. **Exceptions to administrative law judge's report.** Except in cases subject to statutory deadlines, parties shall file and serve on the other parties any exceptions to an administrative law judge's report within 20 days of its filing. In cases subject to statutory deadlines, exceptions must be filed and served within 15 days of the filing of the report.

Subp. 2. **Replies to exceptions.** Except in cases subject to statutory deadlines, a party shall file and serve on all other parties any replies to exceptions within ten days of the due date for exceptions. In cases subject to statutory

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deadlines, replies are not permitted.

Subp. 3. **Oral argument.** Parties must be granted an opportunity for oral argument before the commission as required under Minnesota Statutes, section 14.61.

7829.2800 GENERAL NOTICE REQUIREMENT.

Matters may come before the commission only on ten days notice to the parties and those persons on the official service list. Under exigent circumstances the executive secretary shall reduce the ten-day notice period.

7829.2900 DECISION AND ORDER.

The executive secretary shall serve a decision and order of the commission on all parties and participants in the proceeding.

7829.3000 PETITION FOR REHEARING, AMENDMENT, VACATION, RECONSIDERATION, REARGUMENT.

Subpart 1. **Time for request.** A party or a person aggrieved and directly affected by a commission decision or order may file a petition for rehearing, amendment, vacation, reconsideration, or reargument within 20 days of the date the decision or order is served by the executive secretary.

Subp. 2. **Content of request.** A petition for rehearing, amendment, vacation, reconsideration, or reargument must set forth specifically the grounds relied upon or errors claimed. A request for amendment must set forth the specific amendments desired and the reasons for the amendments.

Subp. 3. **Service.** A petition for rehearing, amendment, vacation, reconsideration, or reargument, and an answer, reply, or comment, must be served on the parties and participants in the proceeding to which they relate.

Subp. 4. **Answers.** Other parties to the proceeding shall file answers to a petition for rehearing, amendment, vacation, reconsideration, or reargument within ten days of service of the petition.

Subp. 5. **Replies.** Replies are not permitted unless specifically authorized by the commission.

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Subp. 6. **Commission action.** The commission shall decide a petition for rehearing, amendment, vacation, reconsideration, or reargument with or without a hearing or oral argument. The commission may vacate or stay the order, or part of the order, that is the subject of the petition, pending action on the petition.

7829.3100 TIME PERIODS VARIED.

Except for time periods set by statute, the commission may vary the time periods established by this chapter on its own motion or at the request of a person for good cause shown. The commission may delegate the authority to vary time periods to the executive secretary.

7829.3200 OTHER VARIANCES.

Subpart 1. **When granted.** The commission shall grant a variance to its rules when it determines that the following requirements are met:

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

B. granting the variance would not adversely affect the public interest; and

C. granting the variance would not conflict with standards imposed by law.

Subp. 2. **Conditions.** A variance may be granted contingent upon compliance with conditions imposed by the commission.

Subp. 3. **Duration.** Unless the commission orders otherwise, variances automatically expire in one year. They may be revoked sooner due to changes in circumstances or due to failure to comply with requirements imposed as a condition of receiving a variance.

REPEALER. Minnesota Rules, parts 7830.0100; 7830.0200; 7830.0300; 7830.0400; 7830.0500; 7830.0600; 7830.0700; 7830.0800; 7830.0900; 7830.1000; 7830.1100; 7830.1200; 7830.1300; 7830.1400; 7830.1500; 7830.1600; 7830.1700; 7830.1800; 7830.1900; 7830.2000; 7830.2100; 7830.2200;

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7830.2300; 7830.2400; 7830.2500; 7830.2600; 7830.2700;
7830.2800; 7830.2900; 7830.3000; 7830.3100; 7830.3200;
7830.3300; 7830.3400; 7830.3500; 7830.3600; 7830.3700;
7830.3800; 7830.3900; 7830.4000; 7830.4100; 7830.4200;
7830.4300; 7830.4400; 7847.0010; 7847.0020; 7847.0100;
7847.0110; 7847.0120; 7847.0130; 7847.0140; 7847.0150;
7847.0200; 7847.0210; 7847.0220; 7847.0230; 7847.0240;
7847.0250; 7847.0260; 7847.0270; 7847.0280; 7847.0290;
7847.0300; 7847.0310; and 7847.0320, are repealed.

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by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Practice and Procedure

AGENCY: Public Utilities Commission

MINNESOTA RULES: Chapter 7829

The attached rules are approved for publication in the State Register

Ron Ray
Senior Assistant Revisor

0999/R-86-171

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APR 09 1986

MINNESOTA PUBLIC
UTILITIES COMMISSION

April 7, 1986

Ms. Mary Ellen Hennen
Executive Secretary
Minnesota Public Utilities Commission
780 American Center Building
160 East Kellogg Boulevard
St. Paul, MN 55101

Re: Rules Governing General Practice and Procedure

Dear Ms. Hennen:

I am responding to your request for comment as published in the State Register on March 31, 1986. My response is on behalf of the Suburban Rate Authority. We believe that the outline is satisfactory.

I would appreciate receiving notice of negotiations.

Very truly yours,

LeFEVERE, LEFLER, KENNEDY,
O'BRIEN & DRAWZ

Glenn E. Purdue

GEP/sbp
cc: Graydon R. Boeck, Chairman

Rose Ann Richard LEGALCRAWL

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May 15, 1986

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MAY 16 1986
MINNESOTA PUBLIC UTILITIES COMMISSION

Ms. Mary Ellen Hennen, Executive Secretary
Minnesota Public Utilities Commission
780 American Center Building
160 East Kellogg Boulevard
St. Paul, Minnesota 55101

Re: Docket No. U-999/R-86-147

Dear Ms. Hennen:

An original and eleven copies of this letter are hereby submitted on behalf of the Minnesota Independent Coalition ("MIC") in response to the written Notice of March 31, 1986, (the "Notice") with respect to the above docket concerning the adoption of Rules of Practice and Procedure by the Minnesota Public Utilities Commission (the "Commission"). Pursuant to the Notice, these comments are addressed principally to the scope of the proposed Rules of Practice and Procedure (the "Rules") with only limited comments regarding possible specific Rules. The undersigned hereby requests notice of any negotiations concerning these proposed Rules in order to participate.

At the outset, it should be noted that the proposed outline of Rules addresses both formal and practical aspects of practice before the Commission, including areas where existing rules fail to provide explicit guidance. In this regard, the undersigned submits that the significant effort needed to develop the new Rules will be well spent and that completeness with respect to all types of proceedings before the Commission is highly desirable. As such, proposed deletions from existing rules should be carefully weighed, with any doubts as to the need for explicit coverage of various practices being resolved in favor of continued inclusion. Ideally, the Rules should be explicit enough to allow a new or infrequent participant to practice before the Commission effectively and in compliance with all customary requirements.

Consistent with these concerns, the MIC believes that the proposed outline is generally appropriate, so long as the various headings and subheadings include all necessary subparts for complete coverage. The following comments outline some areas which the MIC believes to be worthy of particular attention by the Commission, along with some tentative suggestions with respect to selected individual subjects.

1. Relation to OAH Rules

One area of particular concern in connection with contested case proceedings relates to the relationship between the Commission's Rules and the Office of Administrative Hearings rules, Minn. Rule Section 1400.0200, et seq. ("OAH Rules"). While this relationship is generally addressed by the OAH Rules, practice before the Commission would benefit substantially by explicit references in the Commission's Rules to this general subject matter. Particular areas of concern include: 1) the handling of issues certified to the Commission by the Administrative Law Judge ("ALJ") under Minn. Rule 1400.7600, and 2) practice before the Commission subsequent to submission of the ALJ's Report. While it is certainly possible to reconcile the existing Rules of the Commission to the OAH Rules and their respective application at specific stages of proceedings before the Commission, explicit direction in the new Rules would be helpful. In addition, it would be useful if the Commission could make explicit reference to the circumstances under which variation of the usual time limits for exceptions and replies will be considered or granted, as is frequently necessary given the time limitations set forth in Minn. Stat. § 237.075 and elsewhere.

2. Procedures Prior to Referral to the OAH

Practice before the Commission would also benefit from explicit handling of procedures prior to referral of a matter to the OAH. Steps available, such as receipt of notices of filings, rights to file comments, prehearing motions and similar matters which are now used, should be made clear through explicit rules. This is particularly necessary because it is becoming increasingly evident that a number of the most significant issues facing the Commission, particularly in the area of telecommunications, will be concerned largely with matters of price setting and rate design and that these issues will not necessarily be resolved through "general rate" proceedings. In such a situation, explicit treatment of commenting parties' procedural rights is essential, as the Commission recognized in its disposition of DPS rulemaking petition in Docket No. P-999/R-86-30 dated March 6, 1986.

3. Timing Issues

As the proposed outline suggests, explicit treatment of timing requirements relating to filings, responses to other pleadings and other matters would be of great assistance. Explicit treatment of issues such as when service and filing are effective, the effect of service by mail on the time to respond and other similar matters along the lines in OAH Rule 1400.6100 and Minnesota Rules of Appellate Procedures Rules 125 and 126 would be quite helpful. Specific attention to matters regarding timing would, when combined with express attention to parties' rights to receive notices of initial and other filings, be of great assistance to practice before the Commission. The MIC recommends that the Commission establish and make generally known an opportunity to receive copies of Commission filings on a routine basis.

4. Types of Proceedings

The Rules will be most effective if they expressly deal with all frequent categories of proceedings, as is suggested in the description following the heading "Commencement of Proceedings-Petitions" in the Commission's proposed outline for the Rules. Other categories which deserve express handling may include depreciation certification proceedings, procedures for interim rates and/or interim relief prior to the commencement or completion of contested case matters. The Commission's disposition suggests that many of these steps will be taken and that the Commission recognizes differing procedural considerations applicable to different types of proceedings. The MIC respectfully urges the Commission to continue to focus on such practical considerations.

The MIC appreciates this opportunity to submit comments in this proceeding and hopes to participate further in the development of Rules in this important area.

Respectfully submitted,

MOSS & BARNETT,
A Professional Association

Richard J. Johnson
ATTORNEYS FOR THE
MINNESOTA INDEPENDENT COALITION

/jbn

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May 29, 1986

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JUN 2 1986
MINNESOTA PUBLIC
UTILITIES COMMISSION

Ms. Mary Ellen Hennen
Executive Secretary
Public Utilities Commission
State of Minnesota
780 American Center Building
160 East Kellogg Boulevard
St. Paul, MN 55101

Re: Docket No. U-999/R-86-147 procedural rules

Dear Ms. Hennen:

With the following letter NSP responds to the Commission's solicitation of comments in the above-captioned docket. NSP believes the Commission's procedural rules are in need of some revision and updating and the company is supportive of this effort to reform the rules. The following paragraphs will first address the proposed outline of the procedural rules and then address some specific additions and deletions to the proposed rules.

A. Comments Regarding Commission Proposed Outline.

Procedural rules should be designed with the objectives of achieving fairness, efficiency and responsiveness to the participants. Moreover, the procedures employed should fairly balance the interests of the effected participants with the need and usefulness of the procedure. Finally, the procedural rules should create a high degree of predictability of the procedures to be employed by the agency.

NSP believes the proposed outline of the Commission would be more useful to the practitioner if it better reflected the ratemaking process before the Commission. The procedures relied upon by the Commission to make rates surround essentially two steps in the ratemaking process. These steps are the commencement of the filing and the Commission decision. The procedural rules concerning the commencement of the proceeding relate to the sufficiency of the filing. The rules surrounding the Commission's decision relate to the Commission review of contested case recommendations, informal filings, or reconsideration of its own order.

NSP proposes the following outline for procedural rules:

A. General Provisions.
B. Commencement of Actions - Pleadings, Rate Filings, Notice.
C. Informal Dispute Resolution.
D. Decisions.
E. Variances.
F. Ex Parte Communications.

B. Proposed Additional Areas for Rule Development.

NSP proposes that there are four areas in which some additional procedural rules would be particularly helpful. These area include:

1. Noncontested case resolutions of pleadings and filings. The Commission should adopt rules providing for mediation and settlement conferences.

2. Declaratory judgments. The Commission should devise a procedure to allow petitioners to seek policy decisions in advance of taking action.

3. Motion practice. The current Commission rules do not provide for motion practice. Some rules regarding motion practice should be developed.

4. Filing requirements. The Commission's rules should reflect all filing requirements including the number of copies to be filed, the time in which they are to be filed, etc.

C. Proposed Deletions From Rules.

NSP suggests that some areas of the Commission's rules should be deleted. These areas include:

1. Hearing and Prehearings. In light of laws requiring that all contested case hearings be constructed by the Office of Administrative Hearings, there appears to be no reason to have these provisions in the rules.

2. Motor carriers. All provisions and references to motor carriers are obviously no longer applicable to the PUC.

NSP would appreciate the opportunity to assist in the further development of procedural rules.

Sincerely,

David M Sparby

DAVID M. SPARBY

DMS/ccj

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May 15, 1986

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160 East Kellogg Boulevard
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WRITER'S DIRECT DIAL NUMBER
337-1640

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MAY 16 1986

MINNESOTA PUBLIC UTILITIES COMMISSION

RE: Docket No. U-999/R-86-147

Dear Ms. Hennen:

Please find enclosed the comments of Byron E. Starns, Esq. and Susan M. McGoldrick, Esq. regarding amendments to the Minnesota Public Utilities Commission's Rules of General Practice and Procedure. It is our understanding that the Commission may negotiate the language for specific rules following the deadline for submitting comments. Please forward information regarding such negotiations to this office, attention Susan M. McGoldrick.

Yours truly,

LEONARD, STREET AND DEINARD

Susan M. McGoldrick

By
Byron E. Starns
Susan M. McGoldrick

SMM: ljr
Enc.

Comm
Res Rel
Carlyn
Lyk (Ind)

Outside Opinion Sought Regarding Amendments to the Minnesota Public Utilities Commission's Rules of General Practice and Procedure

Docket No. U-999/R-86-147

COMMENTS OF BYRON E. STARNS, ESQ. AND SUSAN M. McGOLDRICK, ESQ.

The following comments are submitted for the Commission's consideration in proposing amendments to the Minnesota Public Utilities Commission's Rules of General Practice and Procedure.

I. DUTY OF CANDOR

It is recommended that a duty of candor rule be incorporated into the Commission's Rules of Practice and Procedure. This rule would require any and all parties in their dealings with the Commission to act in good faith and with complete truthfulness, accuracy and candor. The rule would also provide that a material misstatement or omission would result in Commission action as appropriate, including, but not limited to, rejection of the affected filing, application, petition or other action sought from the Commission.

The primary purpose of such a rule of candor would be to assure the quality of access to technological and economic information. It is not uncommon for the utilities who come before this Commission to possess, and have access to, greater information and information gathering resources than that available to the Commission. For instance, in NSP's pending

rate case, Docket No. E-002/GR-85-558, NSP filed testimony from seven experts in its initial filing and an additional eight in its rebuttal testimony. These experts testified on a wide range of topics including marketing and energy alternatives as well as more traditional ratemaking topics. While the Commission and staff have ratemaking expertise they do not have the resources to assemble the broad base of information that the utilities can assemble. Moreover, a utility, in a standard rate change filing can take whatever time it needs to prepare its case before filing. Staff and intervenors, though, have less than ten months to react, assemble information, prepare and put on their cases. See Minn. Stat. §§ 216B.16, subd. 2; 237.075, subd. 2. Consequently, the utilities' positions can go unchallenged not because of their merit, but because of staff's limited time and resources. A utility has no incentive to present a full picture to the Commission regarding the consequences of its requests knowing that its "opponent" has significantly less technological and economic resources available to it. A strict duty of candor would provide the incentive that the regulatory frame work does not inherently provide.

The regulatory process is not a true adversarial process. The regulated utilities have a statutory duty to provide consumers in this state with "adequate and reliable services at reasonable rates." Minn. Stat. § 216B.01; Minn. Stat. §

237.06. The utilities are granted the right to operate in a quasi-monopolistic fashion with the duty and expectation that they will provide their services in an adequate, reliable and nondiscriminatory fashion. Furthermore, the Commission itself has its own mandate to assure that the rates charged by public utilities are neither unreasonable nor discriminatory and yet assure a reasonable rate of return for the utilities. An adversarial process which does not foster equality of access to information is particularly inappropriate in such a setting. Instead, an atmosphere of candor and full disclosure furthers the Commission's and utilities' common statutory goals.

Any rule of candor must contain a penalty provision sufficient to insure compliance (its preventive function) and which assures that other parties will not be prejudiced, i.e., left worse off, by the noncomplying parties' actions (restorative function). Rejecting an application, filing, or petition where the filing party has failed to demonstrate full candor and truthfulness would serve both these functions. Moreover, such a penalty is particularly necessary where a filing is subject to a ten month rule. There is little opportunity to rectify omissions and misstatements through additional submissions to the record when a filing must be acted upon by the Commission with ten months of its initial filing date. Given the limited period of time in which information can be exchanged, failure to proceed with candor

from the onset of a proceeding has significant prejudice to the other parties to the proceeding. The time lost due to another parties lack of candor cannot be made up.

Finally, a duty of candor rule is not without precedent in Minnesota regulatory agencies. The Pollution Control Agency adopted, and has had in effect for over ten years, a duty of candor rule which applies to all their proceedings. It reads as follows:

> "In all formal or informal negotiations, communications, proceedings and other dealings between any person and any members, employee, or agent of the agency it shall be the duty of each person and each member, employee or agent to act in good faith, and with complete truthfulness, accuracy, disclosure and candor."
> Minn. Rule 7000.1300.

It is recommended that this language be adopted in its entirety with additional language providing for penalties including, but not limited to, rejection of an affected filing, application or petition.

II. REJECTION OF INADEQUATE FILINGS

It is recommended that a rule be incorporated into the Commission's Rules of Practice and Procedure which permits the Commission upon its own motion or the motion of any party, to reject a utilities filing for a change in rates when it is determined that the filing has not provided adequate notice as provided in Minn. Rules 7825.3200-4400.

It is without dispute that the Commission can and does reject rate change filings for providing inadequate notice.

See, e.g., In Re Proposed Filing by Northwestern Bell Telephone Co. to Change its Schedule of Intrastate InterLATA Special Access Charges, Docket No. P-421/M-85-647 (September 5, 1985). The Commission rules permit the Commission to waive certain information requirements and to request further information beyond that required by the notice rules. See Minn. Rules 7825.4500 and 7825.4600. A rule which states clearly that a rate change filing will be rejected if it provides inadequate notice serves several purposes. First, it clarifies existing practice. Secondly, it insures that notice will be adequate from the very beginning of the ten month period. Thirdly, on a related point, such a rule insures that the statutory notice burden is fully carried by the utilities and not taxed against intervenors or Commission staff. For example, when a utility fails to provide adequate notice in its initial filing or direct testimony, the staff or intervenors are left to discover such information through the discovery process or through subsequent testimony. Time spent gathering information which should have been provided in the initial filing should not cut into staff and intervenors limited time to gather information and prepare their cases. Fourthly, by allowing intervenors by motion to attack the adequacy of notice of a filing, the resources, tailored interests and viligance of the intervenors can be used by the Commission to further the statutory goals of full and adequate notice.

III. DISCOVERY PROCEDURES

It is recommended that the Commission incorporate a set of discovery rules into its Rules of Practice and Procedure. The discovery rules provided for by the Office of Administrative Hearings are not uniformly used by the Minnesota Public Utilities Commission and are not tailored to the ten month rule which is in effect in a number of Commission proceedings. Consequently, discovery procedures are frequently set out in prehearing orders at the Commission. See, e.g., In Re Petition of NSP for Authority to Change its Schedule of Rates for Electric Utility Service, Docket No. E-002/GR-85-558, Prehearing Order (October 24, 1985); In Re Proposed Filing by Northwestern Bell Telephone Co. to Change its Schedule of Intrastate InterLATA Special Access Charges, Docket No. P-421/M-86-53, Prehearing Order (April 30, 1986). The procedures provided for in these prehearing orders tend to have common characteristics: e.g., a ten day response time, requiring copies of requests to be sent to all parties, provisions for protective orders and motions to compel. It would be administratively convenient for those discovery procedures which frequently recur in prehearing orders at the Commission to be incorporated into rules promulgated by the Commission. The following procedures are recurring components in prehearing orders issued by administrative law judges at the Commission and are recommended to be incorporated in Rules of Practice and Procedure for the Commission:

1. That copies of all information requests be sent to all parties and intervenors.
2. That responses to information requests be sent only to the requesting party, unless other parties have requested a response or responses.
3. That an information request be responded to within ten days of having been received by the requesting party.
4. That extensions beyond the ten day period be provided upon agreement of the requesting and responding parties or upon motion to the Commission.
5. That all parties have a continuing obligation to seasonably supplement their responses as provided for in Minn. Rules of Civil Procedure 26.05.
6. That motions to compel discovery are to be heard before the Commission.
7. That protective orders may be entered into by agreement of the parties or upon motion to the Commission.

Any additional discovery procedures could of course be provided for in any prehearing order.

IV. NOTICE REGARDING NEW TECHNOLOGY OR ENERGY RESOURCES

It is recommended that a rule be incorporated into the Commissions Rules of Practice and Procedure which requires a utility in its filing of a notice in change of rates to identify and describe those projects and plants for which it is

seeking rate base treatment for the first time and which utilize technology or resources not previously used by the utility on a regular, nonexperimental basis.

Research into new technology and energy resources is encouraged by the Commission. However, the use of new technology and resources creates a unique need for adequate and early notice. The use of new technology or resources, by its nature, lacks a track record of prior Commission approval. Furthermore, such rate base items, again by their very nature, are not the "same in nature and kind" as those rate base items which have been included in previous rates and hence are not eligible for being included in calculating interim rates. See Minn. Stat. § 216B.16 subd. 3; § 237.075 subd. 3. Segregating out those rate base items which utilize new technology or resources provides added assurance that all interested persons are alerted to the presence of these items in the utilities' filing and further assures that such items will not be included in calculating interim rates.

Dated: May 15, 1986

LEONARD, STREET AND DEINARD

By Susan M. McGoldrick
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RECEIVED
MAY 19 1986
MINNESOTA PUBLIC
UTILITIES COMMISSION

May 15 1986

Ms. Mary Ellen Hennen,
Executive Secretary
Minnesota Public Utilities Commission
St. Paul, MN 55101

In Re: Amendments to the Commission's
Rules of General Practice and Procedure
Docket No. U-999/R-86-147

THE RULES OF PRACTICE and procedures to be promulgated by the Commission need to clarify the status of matters labeled "miscellaneous" at present, and they need to be based on the de facto role of the Department of Public Service as public advocate, or adversary to the filing party in most matters. They need to separate out matters which can be disposed of by the Commission in a ministerial fashion, on an ex parte basis, from those in which public interest justifies intervention on behalf of the public; and as to the latter, they need to distinguish between matters which require contested case hearings under the APA, and those which can be resolved before the Commission. Where the Commission can appropriately adjudicate a question outside the contested case or rulemaking procedures of the APA, the rules should provide that all interested parties have notice and opportunity to be heard, and to respond to adverse comments.

At this point in this proceeding it does not seem fruitful to try to set out the form of specific rules, or a categorical framework for analysis. The Commission, we believe, should develop that after considering the comments filed at this stage. We also believe that interested parties should be provided with a summary of the comments filed, so that they may consider alternatives, and that at that point the Commission should schedule one or more meetings of interested parties to discuss and negotiate a proposed draft set of rules. The Office of Administrative Hearings and the Minnesota Bar Association's Administrative Law Committee should each be invited to participate in this process.

All persons who have participated in regulatory proceedings in Minnesota recognize that there is a kind of limbo of undefined issues which do not precisely fit into the APA provisions for rulemakings or contested case hearings, and which, in the interests of practicality should be adjudicated expeditiously by the Commission itself; but as to which there may be several contending positions by interested parties. A "miscellaneous" tariff matter which will affect thousands of ratepayers and result in a revenue impact of hundreds of thousands of dollars is not statutorily required to be decided by a contested case hearing. Yet the adversarial nature of the process by which the Commission

will decide whether to approve, modify or disapprove seems to require an orderly, well defined procedure that protects the rights and interests of those affected. We see this as one of the most significant problems this rulemaking should resolve.

At the beginning, however, it seems that all parties should recognize an argument can be made that such a situation is inherently a contested case and should be handled under the APA. When speaking in the abstract probably everyone would agree that it would be burdensome, uneconomical and a waste of time to assign every contested issue to a full scale hearing. But different parties will feel that different individual matters should be so assigned. Therefore, a logical and cost-effective scheme for differentiating these kinds of matters needs to be set forth in these rules.

A clear delineation of function between the Commission and the Department is required to be set out, and should provide the rationale for the entire process at the Commission. That is, the Commission function is adjudicative or decision-making, and where decisions can be made without controversy or adversarial input, then they should be handled as a ministerial function of the commission wherever feasible, in order to reduce the workload on the Commission, the Department and regulated industries. Ex parte decisions are not inappropriate for matters where the Department, after notice, elects not to comment, on the basis that there is not a significant issue of public policy, or enforcement issue involved.

The process, given this assumption about the nature of the Commission role, should provide that the Department exercise the function of public advocate in the enforcement of state law, including the Commission's rules. In that role, all filings should be made with the Commission, with a copy to the Department.

Filed matters should be first categorized on the basis of whether or not a contested case hearing is required by statute. If so, the filing should be immediately forwarded to the Office of Administrative Hearings, even while the Commission may have certain functions to carry out, as in making the determination of whether a rate case filing meets the filing requirements, and evaluating the interim rates.

In all other matters the procedures should be based on the concept of expeditiously disposing of non-controversial or emergency matters, through ministerial disposition where appropriate; and assuring due process to all interests in matters which are controversial and affect the broad public interest. Where matters are inherently private in nature, for example in bill

complaints, shut-off determinations or other individual disputes, the Commission should attempt to maximize the use of alternative dispute resolution processes, including the mediation services of the Office of Administrative Hearings.

It is important that the Rules recognize priorities for the Commission's time, and not allocate as much Commission decision-making time to minor matters as to major matters.

On ordinary matters the Department should have ten days to notify the Commission whether or not it regards the filing to be private in nature, or to have a public interest aspect, and if so, whether the matter has issues making it a complex matter. After a limited time, during which the filing party and the Department could attempt to compromise, the matter should come before the Commission for disposition. (The time period could be different for different types of filings, but we suggest that in ordinary matters twenty days...after the ten days for initial evaluation of the filing...should be sufficient.)

Once on the Commission "Disposition" agenda, disposition of the matter could be made in one of several ways, depending on the extent to which the matter involves important public issues or is minor, local, or private in nature. The important thing is to expeditiously get the matter onto an appropriate "track".

If the matter is not controversial, that is, if neither the Department nor other intervenors takes an adversarial position, by filing comments in opposition to part or all of the proposal, the Commission should act to dispose of the matter by approving or disapproving on the basis of Commission staff analysis.

In the most minor category Commission staff could be assigned to make a determination under written guidelines. For example, staff could decide, or at least make a recommendation for approval or disapproval which would be automatically adopted unless the Commission specially excepted to it, in appeals of Inability to Pay matters, the private nature of which simply cannot justify the Commission's time.

Matters which do involve a public interest of significance will justify the filing of Comments by the Department, with a copy to the filing party. The Department could be automatically granted one extension of time to file Comments in matters which it states are too complex to analyze within the basic 30 day period. However, all matters should get to a Commission "Disposition" Agenda within 6 - 8 weeks.

The Commission could dispose of very complex matters by assigning them to the OAH as contested case matters.

If the Commission itself makes a disposition on the merits its procedures should safeguard the due process rights of both the filing party and interested intervenors. A process roughly like the federal Notice and Comment procedures, with opportunity for each party to file written comments and one reply would appear to be reasonable. However, we believe that it is very useful to the Commission to be able to question interested parties and to allow them each a short time, five to ten minutes, to present their positions directly to the Commission.

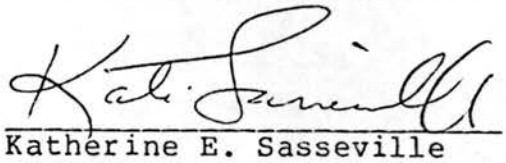
Whether or not incorporated in the rules, we think the Commission staff should use a standard format for making its analysis available to the Commission. This should set out the facts, legal precedent if any, and basic arguments of the parties, together with a staff recommended disposition and briefly, the reasons therefor. These staff recommendations should be available to the parties, at the meeting. If there is an apparent mistake or misunderstanding they will then have the opportunity to correct it prior to the Commission's determination.

Otter Tail believes that the creation of an orderly process for practice and procedure before the Commission, one which emphasizes the role of adjudicator and protector of the rights to due process of all parties before it will benefit the Commission. It will provide a rational basis for an adequate budget and staffing, and a foundation of respect for the Commission's image and role in state government.

Otter Tail is interested in participating throughout this process of developing rules which ease the Commission's administrative burden while assuring due process to all parties. Please advise us if a meeting of interested persons is to be held.

Dated: May 15, 1986

Respectfully submitted,
OTTER TAIL POWER COMPANY



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Douglas W. Peterson - attorney

May 14, 1986

Ms. Mary Ellen Hennen, Executive Secretary
Minnesota Public Utilities Commission
780 American Center Building
160 East Kellogg Boulevard
St. Paul, MN 55101

RECEIVED

MAY 16 1986

MINNESOTA PUBLIC UTILITIES COMMISSION

Re: Outside Opinions Regarding Amendments to the MPUC'S Rules of General Practice and Procedure, Docket No. U-999/R-86-147

Dear Ms. Hennen:

Please find enclosed an original and three (3) copies of Minnesota Power's statement of opinion in the above described matter.

The Commission has stated a desire to amend its rules of practice and procedure to incorporate existing practices and procedures into the rules and to state clearly and completely the procedural stages of a case as it progresses before the Commission. Minnesota Power (MP) supports the Commission's desire to clarify and fully enumerate the practices and procedures of the Commission.

The Commission has provided a list of topics to be addressed in amending the rules. The Commission has stated that existing rules of practice and procedure may be incorporated into this outline.

Minnesota Power feels that it is unable to fully address the issue of the Commission's practices and procedures without having a background or framework as a reference point. Such a reference point could either be in the form of a summary of existing practices and procedures, or proposed practices and procedures. Perhaps a summary of all existing rules applicable to the list of topics could be compiled and forwarded to those who have indicated an interest in further developing the practices and procedures. In addition, it would be helpful if a notation was made by each existing rule as to whether it is based on existing statutory law or regulation or whether it is based on informal practice. A summary description of the existing practices and procedures is especially relevant because of recent rules regarding ex parte communications.

In the overall context of the development of practices and procedures, Minnesota Power appreciates the opportunity to offer the following principles. An important issue to be addressed in

amending the rules is assigning the appropriate priority to matters before the Commission. Where the matter is highly complex, the Commission must determine whether it should be forwarded to the Office of Administrative Hearings for a contested case proceeding. In less complex matters, interested parties should be afforded an opportunity to comment before the Commission makes its determination.

Finally, in matters of little or no public interest, the Commission should dispose of matters expeditiously based on Commission staff analysis. The due process requirements of the parties will vary according to the level of public interest involved. It is important that parties are aware of the procedural status of their cases and that these procedural rules are applied consistently.

Another area that should be addressed in amending the rules is the role distinction between the Commission and the Department of Public Service. The Commission performs a decision-making role in matters before it. The Department, however, is an advocate of the public. The Department is quite often an adversary of the public utility. Care must be taken that the participants do not blur this distinction between the Commission and the Department.

MP would like to participate in further discussions or proceedings regarding the Commission's rules after obtaining more information. Please send a summary of the comments filed and any additional information on this matter to MP at the address listed below.

Again, thank you for this opportunity to comment.

Sincerely,

Douglas W. Peterson

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DWP:fvs
Enclosures

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

ST. PAUL 55155

May 15, 1986

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RECEIVED
MAY 19 1986
DEPT. OF PUBLIC SERVICE

Mary Ellen Hennen
Executive Secretary
Minnesota Public Utilities Commission
780 American Center Building
160 East Kellogg Boulevard
Saint Paul, Minnesota 55101

Re: Notice of Solicitation of Outside Information Or Opinions Regarding Amendments to the Minnesota Public Utilities Commission's Rules of General Practice and Procedure
MPUC Docket No. U-999/R-86-147

Dear Executive Secretary Hennen:

Enclosed are the original and eight copies of the Comments of the Department of Public Service in the above-captioned matter.

The Department agrees with the Commission on the need to amend the existing rules of practice and procedure and has integrated the published topic outline which appeared in the State Register with the rules contained in Minn. Rules. chapter 7830.

The attached document reflects several recommendations regarding rule form, content and language. Although the Department has advanced several substantive changes, it is not wedded to the particular language employed. If further comments or discussions become necessary, the Department is prepared to assist the Commission in any way.

Sincerely,

JAMES T. JARVIS
Special Assistant
Attorney General
Telephone: (612) 296-3301

COUNSEL FOR THE DEPARTMENT
OF PUBLIC SERVICE

JTJ/lar

Encs.

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BEFORE THE MINNESOTA PUBLIC
UTILITIES COMMISSION

780 American Center Building
160 East Kellogg Boulevard
St. Paul, Minnesota 55101

Solicitation of Outside Information or Opinions Regarding Amendments to the Minnesota Public Utilities Commission's Rules of General Practice and Procedure.

MPUC Docket No.
U-999/R-86-147

COMMENTS OF THE MINNESOTA DEPARTMENT OF PUBLIC SERVICE

INTRODUCTION

The Minnesota Department of Public Service ("Department") has reviewed the outline of topics prepared by the Minnesota Public Utilities Commission ("Commission") for possible inclusion in Minn. Rules, chapter 7830. The Department recommends that the Commission consider the following proposed deletions, amendments and rules regarding Commission practice and procedure. Accompanying each proposal is a brief explanation of its need and reasonableness. In organizing its comments the Department has integrated the Commission's proposed outline with the existing rules of practice and procedure, eliminating redundancy where it appeared warranted. The following comments, therefore, are intended to provide a complete proposal for Minn. Rules, chapter 7830.

PROPOSED DELETIONS, AMENDMENTS AND RULES

7830.0100 DEFINITIONS.

Subpart 1. Scope. [No Change.]

Subp. 2. Commission. [No Change.]

Subp. 3. Complainant. [No Change.]

Subp. 4. Department. "Department" means the Minnesota Department of Public Service. ~~which includes the Minnesota Public Utilities Commission as its quasi-legislative branch.~~

Rationale: This rule should be amended to reflect the fact that the Commission is no longer a branch of the Public Service Department.

Subp. 5. Intervenor. [No Change.]

~~Subp. 6. Motor carrier. "Motor carrier means a person engaged in the business of for-hire transportation as defined in Minnesota Statutes, chapter 221 and includes local cartage carriers.~~

Rationale: The Transportation Regulation Board ("TRB") has replaced the Commission as the state agency which reviews motor carrier applications for authority under Minnesota Statutes, chapter 221. Therefore, this definition is no longer needed in conducting Commission business. It is recommended that the elimination of motor carrier rules and regulations from the Commission's rules of practice and procedure be coordinated with the TRB.

Subp. 7. Participant. [No Change.]

Subp. 8. Party. "Party" means a person by or against whom a proceeding before the commission is commenced; or a person permitted to intervene in a proceeding pursuant to this chapter. ~~, or a person admitted pursuant to this chapter as a protestant in a motor carrier proceeding.~~ Parties to proceedings shall be styled, "petitioners", "complainants", "intervenors", or "respondents" ~~, or "protestants"~~ according to the nature of the proceeding and the relationship of the parties thereto. Parties to a proceeding may present evidence, cross-examine witnesses, file briefs, shall receive notification of all scheduling actions and oral arguments relating to the proceeding, and shall receive copies of all pleadings and other documents relating to the proceedings.

Rationale: Two changes have been made to this rule. First, references to motor carrier protestants have been eliminated consistent with the present jurisdictional authority of the Commission. Secondly, the rule has been amended so tnat parties will receive notice of their opportunity to make oral argument to the Commission. This amendment recognizes the due process rights constitutionally afforded to a party.

Subp. 9. Person. [No Change.]

Subp. 10. Petitioner. "Petitioner" means any person who requests commission permission, authorization, or approval; or any person who notifies the commission of a proposed change in telephone, gas or electric rates, service or terms and conditions under which rates are charged or service provided.

Rationale: This amendment recognizes that a petitioner may propose changes in rates and service, or the terms and conditions of either, all of which are regulated by the Commission. The proposal also expressly includes telephones which are the subject matter of Minnesota Statutes, chapter 237.

Subp. 11. Presiding officer(s). "Presiding officer(s)" means the commissioner(s), and/or, where appropriate under Minnesota Statutes, chapter 14, the ~~hearing examiner(s)~~ administrative law judge ~~or staff member(s)~~ presiding in ~~at~~ a rulemaking or contested case ~~hearing.~~ proceeding.

Rationale: This amendment reflects a statutory change made subsequent to the existing rule which recognizes that the Office of Administrative Hearings will provide an administrative law judge to preside over both rulemaking and contested case proceedings. See Minnesota Statutes, Chapter 14.

Subp. 12. Proceeding. [No Change.]

Subp. 13. Proof of service. [No Change.]

~~Subp. 14. Protestant. "Protestant" means a party objecting in a motor carrier proceeding.~~

Rationale: The authority for this rule has been legislatively transferred to the TRB, therefore it should be deleted.

Subp. 15. Respondent. [No Change.]

Subp. 16. Utility. [No Change.]

Subp. 17. Rate change. "Rate change" means any change in rates, service, or terms and conditions under which rates are charged or service provided.

Rationale: The costs incurred by a utility or telephone company affect the price that could or should be charged for a particular service. Similarily, changes in service or the terms and conditions of service may also affect cost. Therefore, a definition of a rate change is needed which is broad enough to take into account a change in costs which could ultimately affect the price a ratepayer should pay.

7830.0200 SCOPE AND CONSTRUCTION. [No Change.]

7830.2600 ~~SERVICE.~~ FILING AND NOTICE REQUIREMENTS.

Unless otherwise specifically covered under other rules the following subparts shall apply to all filings made with the commission.

Subp. 1. Service. When filing a formal complaint, petition, pleading or other document initiating or relating to a proceeding pending before the commission the following rules of service shall be adhered to.

Service of all documents shall be made upon the executive secretary of the commission, the department of public service and other parties in proceedings before the commission by deposit in the first class mail or by delivery in person, unless otherwise ordered by the presiding officer(s) or unless otherwise specifically provided by law. When any party has appeared by attorney, service

upon such attorney shall be upon such attorney shall be deemed service upon the party. The date of service shall be the day when the document served is deposited in the mail or is delivered in person, as the case may be, unless otherwise provided by the presiding officer(s).

When a document is served, the person serving the paper shall file with the commission proof of service, or acceptance of service by the person served or its attorney, annexed to the copies of documents served.

Rationale: The rule on service has been incorporated into the Filing and Notice Requirements topic heading suggested by the Commission's outline. The Department supports the Commission's efforts to bring together rules regarding service, filings, public notice and public access all under one heading. The major change regarding service is that it is to be made on both the Commission and Department. This change is intended to expedite the review and recommendation process conducted by the Department.

Subp. 2. Filings.

All filings, including those by public utilities and telephone companies under Minnesota Statutes, section 216B.16 or section 237.075, shall be made by service of one copy upon the commission and one copy upon the department.

Rationale: See rationale to subpart 1.

Subp. 3. Public notice of petitions and complaints.

A petitioning public utility or telephone company shall provide notice to the governing body of each municipality and county in accordance with Minnesota Statutes, section 216B.16, subdivision 1 or section 237.075, subdivision 1. The commission shall also publish notice to the public of all petitions and complaints in its weekly calendar.

Rationale: This subpart is a necessary requirement if meaning is to be given to the public's right to participate in matters which could effect them under the statutory requirements of chapters 216B and 237. It would include rate case filings, complaints and miscellaneous tariff filings.

Subp. 4. Public access to filings.

The commission, department, and where applicable, public utility or telephone company, shall maintain and make available for public access petitions proposing rate and service changes. The commission and department will also maintain for public access any complaints filed for administrative action.

Rationale: It is important to include a public access section in the rules so that interested persons know that they may review filings in determining whether to participate in Commission proceedings.

Subp. 5. Time.

Discussion: The Department is not certain of the intent of this outline topic. If this proposed rule is, in part, envisioned

to provide guidance for the computation of time for filing and notice requirements a reference to Minn. Stat. § 645.15 (1984) would be appropriate.

7830.0600. PARTIES TO INTERVENE.

Complainants, petitioners, and respondents specifically named as such in any pleading are parties to the proceeding. No other person shall become a party to the proceeding except by leave of the presiding officer(s) upon petition to intervene under parts 7830.2200 to 7830.2400 and a showing that the presiding officer ~~he~~ is specifically deemed by statute to be interested in the particular type of matter involved, or that the presiding officer ~~he~~ is specifically declared by statute to be an interested party to the particular type of proceeding involved, or that by the outcome of the proceeding ~~he~~ the presiding officer will be bound and affected either favorably or adversely with respect to an asserted interest peculiar to the person as distinguished from an interest common to the public or other taxpayers in general; such person shall be styled "intervenor." ~~In addition any person admitted pursuant to this chapter as a protestant in a motor carrier proceeding and shall be styled "protestant."~~

Rationale: The reference to protestants in a motor carrier proceeding has been deleted to clarify the commissions lack of jurisdiction in this area. In addition, the rule has been changed to be gender neutral.

7830.0700 PARTICIPANTS. [No Change.]

~~7830.0800--PROTESTANTS-AND-NOTICES-OF-INTENT-TO-PROTEST-IN-MOTOR CARRIER-PROCEEDINGS.~~ [Delete.]

Rationale: The TRB possesses jurisdiction over this area.

7830.0300 ~~COMPLAINT-PETITION.~~ COMMENCEMENT OF PROCEEDINGS.

A "proceeding," as the term is used in this chapter, may be initiated by any of the following: 1) a complaint, which may be formal or informal, alleging a violation of any provision of law or rule or requirement ~~made-pursuant-to-a-power-granted-by-law~~ subject to tne jurisdiction of the commission; 2) a petition for: a rate change; the granting of any license, permit, certificate or privilege; authority to grant or withhold which is specifically vested in the commission; or an order of the commission granting relief under or from any provision of law, rule or requirement made pursuant to power vested by any law, or approving any submission required or permitted by law to be made by the commission; and 3) a motion of the commission.

Rationale: The existing rule has been restated with altered punctuation and language to clarify the three different types of proceedings conducted by the Commission: complaint proceedings; petition initiated proceedings; and proceedings initiated on the Commission's own motion.

7830.0400 TITLE. [No Change.]

7830.0500 JOINDER OF SEVERAL PERSONS IN ONE PLEADING. [No Change.]

7830. . RATE CHANGE PETITIONS.

Subpart 1. Copies to be filed. A utility or telephone company which seeks a change of rate under Minnesota Statutes, section 216B.16 shall file or section 237.075 one copy with the commission and one copy with the department the applicable materials required by parts 7825.3200 to 7825.4500 parts to . [Note: insert the pending telephone filing requirement rules]. The utility or telephone company shall provide notice to the governing body of each municipality and county in accordance with Minnesota Statutes, section 216B.16, subdivision 1 or section 237.075, subdivision 1.

Subp. 2. Complete filing - requirements. In order to be complete, the filing must:

A. meet the requirements of part 7825.3200, item B or parts to ; [Note: insert the pending telephone filing requirement rules].

B. include, at a minimum, information required by parts 7825.3700 or [Note: insert the pending telephone filing requirement rules]; and

C. describe the effect of the proposed change on a customer's monthly bill.

Subp. 3. Rejection of filing. If the filing does not contain the information required by subpart 2, the commission will reject the filing and return it to the requesting utility or telephone company.

Subp. 4. Acceptance of filing. If the filing is complete the time provisions of Minnesota Statutes, section 216B.16, subdivision 1 or section 237.075, subdivision 1 will apply. After the date of filing the department or any other interested person may request the commission to suspend the rates pursuant to Minnesota Statutes, section 216B.16, subdivision 2 or section 237.075, subdivision 2.

Subp. 5. Substantive review by department. Upon the determination that the filing is complete the department will review the filing to determine if the information supports the proposed change and is consistent with state law, commission rules, and prior commission actions.

Subp. 6. Information requests. If the department needs additional information it may request that information from the utility or telephone company. Information requested from the utility or telephone company regarding the filing may be made orally or in writing. A utility or telephone company shall respond to the department's written requests in writing no later than 10 days after the date of the department's request. If information is requested orally, the department staff will briefly summarize the information obtained, noting the name of the information provider.

Subp. 7. Non-contested cases. Items A through E shall not apply when the commission has set a rate change petition before the office of administrative hearings.

A. Recommendation. When the department has completed its review of the utility or telephone company proposal in a non-contested case proceeding, it will, based on the record developed by the department through its process of review, recommend approval, approval in part, modification of, or disapproval of the utility's or telephone company's proposal. In each case, the department will state specific reasons for its recommendation.

B. Written response. Prior to sending its report to the commission for action, the department will send a copy of its recommendation to the utility or telephone company, and to any other interested person who has requested that executive secretary of the commission to include them on a list for filings by either topic or utility/telephone company. The utility or telephone company, and any interested persons shall have 10 days from the date of receipt of the department's recommendation to file a written response with the department.

C. Change of recommendation. The department will review the response comments. If those responses are sufficient to warrant changing the original recommendation of the department, the department will substantiate that change in a revised recommendation.

D. Transmittal to commission. The department will provide its final recommendation, the reasons supporting its recommendation, and supporting documents (including, but not

limited to, the utility's or telephone company's original filing, the department's original recommendation and supporting reasons, the written responses to the department's recommendations and any department replies to the responses) to the commission.

E. Commission action. Based on the information provided under item D, the commission shall, by written order, approve, approve in part, modify, disapprove, or set the utility or telephone company proposal for contested case hearing. The commission's order shall state reasons for its decision, and where the decision differs from the department's recommendation, the commission shall specifically address the reasons therefor.

Subp. 8. Ex parte communications. The ex parte communication provisions of this chapter shall apply throughout the rate change procedure.

Subp. 9. Lists. The executive secretary of the commission shall maintain lists of persons to be notified of proposed rate changes. Those lists shall be kept by utility/telephone company and by topic.

Rationale: Many of the provisions in this proposed rule restate and elaborate the rate change procedures followed by the Commission and Department under Minn. Stat. §§ 216B.16 and 237.075. The additions to the process have been included to insure that all interested persons may have an equal opportunity to participate in

the comment process before the petition is reviewed by the Commission. The Department proposes this new rule in order to comply with Minn. Stat. § 14.06 (1984), which requires agencies to adopt rules setting forth the "nature and requirements of all formal and informal procedures" which affect the public. Because rate change petitions affect the rates and services provided to the public by utilities and telephone companies, section 14.06 requires that rules be adopted to set forth the procedure for this process.

Subpart 1 identifies which filings will be handled under the rate change procedure set forth in this proposed rule. It also describes how many copies are to be filed with the Commission and the Department and requires the statutory notice, as set forth by statute, be met. The rule requires that filings contain the information required by the relevant filing rules in Minn. Rules ch. 7825 for public utilities and the telephone filing rules currently being prepared by the Commission.

Subparts 2 and 3 will ensure that a utility or telephone company requesting a rate change will provide the Department and the Commission with all available relevant information. At the same time, the requirement permits the utility or telephone company to know what information must be submitted along with its request by requiring that necessary information be filed with the request. The requirement will serve to prevent unnecessary delay in processing rate change requests by requiring that necessary information be filed with the request.

Subpart 4, acceptance of filing, allows the Department or any other interested person, pursuant to Minn. Stat. §§ 216B.16 or 237.075, to request the Commission to suspend the proposed rate change in cases where it may take longer than 60 days before the Commission issues its final order.

Subparts 5 and 6 recognize the present procedure whereby the Department reviews all rate change filings, requests additional information from the filing utility or telephone company and makes a recommendation to the Commission. These proposals reflect the Department's role in regulation as stated in Minn. Stat. § 216A.07.

Subpart 7 has been added in recognition that not all rate change petitions are sent to the Office of Administrative Hearings for a contested case hearing. In those instances where the Commission is reasonably satisfied that no material dispute of facts exist to warrant a contested case hearing on the rate change petition it is appropriate to inform the public of the practices and procedures to be employed. Items A through E articulate such a procedure.

Item A requires that prior to sending its recommendation to the Commission, the Department will send its recommendation to the utility or telephone company and interested persons. This requirement permits notification of and opportunity for written responses in a proceeding which may affect such persons.

Under items B and C if new information becomes available to the Department during the comment period, the information may be sufficient to cause the Department to change its original recommendation. In such an instance, the Department will explain the reasons for changing its recommendation. Item D requires that all written responses submitted to the Department during the comment period and the Department's replies to those comments (including the rationale for its final recommendation) will be submitted to the Commission to allow the Commission to make a fully informed decision.

Item E, "Commission action", is needed because it recognizes several alternative actions which could occur once the rate change petition is pending before the Commission. It further addresses the need for a written decision as required by Minn. Stat. §§ 216B.33 and 237.24 (1984).

Subpart 8, "Ex parte communications," is also warranted. The rate change procedure allows ample opportunity for the utility or telephone company and interested persons to comment on the record. Thus, the opportunity to make off the record comments or provide off the record information to the decisionmakers also exists. Therefore, it is appropriate that the Commission's proposed ex parte communication rules apply to the rate change procedure.

Finally, subpart 9, "Lists," allows interested persons to receive notification of actions which might affect their interests and thus provides notice of and opportunity to participate in those proceedings.

7830.2800 DOCKETS.

Discussion:

The Department does not have any recommended changes to this rule regarding the assignment of docket numbers to filings made with the Commission. If the Commission desires to alter this rule and requires additional input, the Department is prepared to provide any assistance required.

7830.1200 ~~FILING.~~ INFORMAL COMPLAINT PROCEEDING.

Informal complaints will be assigned numbers on the informal docket in the order of their receipt. Copies of the informal complaint and all writings relating to it shall be filed under the name of the respondent. Matters thus presented, if their nature warrants it, will be taken up by correspondence with the persons affected in an endeavor to bring about resolution of the complaint without formal hearing. If the matter cannot be resolved to the complainant's satisfaction the commission's complaint unit will offer a copy of the formal complaint rules to the informal complainant if the matter cannot be resolved.

Rationale: The text of Minn. Rules pt. 7830.1200 has been inserted under the new heading of "Informal Complaint Proceeding" without change for clarity. The rule has also been amended so that informal complainants, who are typically residential and business ratepayers, may receive a copy of the formal complaint rules and procedures to pursue their complaint in the event the informal complaint process does not resolve the matter.

7830. FORMAL COMPLAINT PROCEEDING.

Formal complaints will be assigned numbers on the formal docket in the order of their receipt. Copies of the formal complaint and all writings relating to it shall be filed under the name of the respondent. Matters thus presented will be reviewed by the commission, and, if the public interest warrants it, will be set for a contested case hearing before the Office of Administrative Hearings.

Rationale: The formal complaint proceeding recognizes the statutory requirements of Minn. Stat. §§ 216B.17 and 237.081 that: 1) the Commission possesses discretionary authority in setting a complaint for hearing, and 2) that a hearing is required prior to commission action altering service terms and conditions or rates pursuant to the complaint.

7830. INVESTIGATIONS ON COMMISSION'S OWN MOTION.

Commission initiated investigations will be assigned numbers on the formal docket, in the order of their initiation. Notice of such investigations will be published in the commission's weekly calendar. If commission action is required subsequent to the investigation, the matter will be set for a contested case hearing before the office of administrative hearings.

Rationale: This rule recognizes the authority of the Commission to initiate investigations into any matter subject to its jurisdiction and gives notice to the public that an investigation has begun. See Minn. Stat. §§ 216B.21 and 237.081. The rule also

expressly recognizes the requirement of a contested case hearing prior to the alteration of the status quo vis a vis utility and telephone rates and service on a prospective basis.

7830.0900 TYPES OF PLEADINGS.

The pleadings before the commission shall be informal complaint, formal complaint, answer, reply, petition, ~~notice of intent to protest~~ petition to intervene, and answer to petition to intervene, including amendments or supplements to any of the foregoing.

Rationale: The notice of intent to protest has been deleted because this form of pleading is peculiarly related to the regulation of motor carriers.

7830.1000 FORM OF INFORMAL COMPLAINT. [No Change.]

7830.1100 RESPONSE TO INFORMAL COMPLAINT. [No Change.]

7830.1300 FORM OF FORMAL COMPLAINT. [No Change.]

7830.1400 ALLEGATIONS: JOINDER OF CAUSES. [No Change.]

7830.1500 TARIFF REFERENCE. [No Change.]

7830.1600 PREFERENCE OR PREJUDICE TO BE SPECIFIED. [No Change.]

~~7830.1700 SUBSCRIPTION VERIFICATION.~~ [Delete rule]

Rationale: Subscription and verification, is a vestige of code pleading and has been eliminated in most jurisdictions since it places form over substance. This rule should be deleted because it is unnecessary.

7830.1800 SUPPLEMENTAL COMPLAINT. [No Change.]

7830.1900 ANSWER TO FORMAL COMPLAINT. [No Change.]

7830.2000 REPLY. [No Change.]

7830.2100 PETITION. [No Change.]

7830.2200 PETITION TO INTERVENE. [No Change.]

7830.2400 SCOPE OF INTERVENOR's PARTICIPATION. [No Change.]

7830.2500 AMENDMENTS AND UPDATES.

Subpart 1. Amendments of pleadings. [No Change.]

Subp. 2. Answer to amended or supplemental complaint, or to petition to intervene. [No Change.]

Subp. 3. Amendments to rate change filings. A utility or telephone company shall not amend any rate change filing unless exigent circumstances exist. However, a rate change filing may be withdrawn and refiled.

Rationale: This rule recognizes that all rate change petitions must be resolved within 10 months of filing and that such filings must be complete for proper review. Attempts to amend such filings frustrate administrative review. Rather than reduce the time for administrative review, utilities and telephone companies should withdraw filings requiring amendment and resubmit them, thereby beginning the 10 month clock again, unless exigent circumstances warrant the amendment.

Subp. 4. Updates. A utility or telephone company may update its filed forecasted financial numbers with actual figures in a contested case proceeding provided that the update is received by

all intervenors at least 25 working days before the direct testimony of such intervenors is to be filed.

Rationale: This provision is being added in order to provide intervenors with sufficient notice of updates made by a utility or telephone company in a rate case, while allowing reasonable time for the utility or telephone company to update the figures in its initial filing. The rule prevents updates from being made at a point where parties will no longer have adequate opportunity to review and respond to new and additional information.

~~7830.2700 CONTINUANCES AND EXTENSION OF TIME~~ [Delete rule.]

Rationale: The existing rule on variances makes this rule unnecessary.

7830.2900 TRADE SECRET AND PROPRIETARY INFORMATION. [No Change.]

HEARING NOTICE ~~AND FORMALITIES~~

Rationale: The reference to "Formalities" in the existing heading should be eliminated because contested case hearing formalities are subject to the jurisdiction of the Office of Administrative Hearings.

7830.3100 WRITTEN NOTICE OF HEARINGS.

Rationale: "Of Hearings" was added to clarify what "written notice" refers to.

7830.3200 NOTICE REQUIRED WHEN UTILITY CHANGES RATES. [No Change.]

~~PREHEARING-CONFERENCE~~

Rationale: This heading has been eliminated because this portion of the existing rules is now subject to the jurisdiction of the Office of Administrative Hearings.

~~7830.3300-PREHEARING-CONFERENCES-AND-SETTLEMENT-CONFERENCES.~~

[Delete rule.]

Rationale: This rule, which affects the conduct of parties subsequent to the transfer of a contested case by the Commission to the Office of Administrative Hearings, is no longer within the jurisdiction of the Commission.

~~7830.3400--CONFERENCE-RECOMMENDED-BY-PRESIDING-OFFICER.~~ [Delete rule.]

Rationale: See rationale for deleting Minn. Rules pt. 7830.3300.

7830.3500 STIPULATION AND SETTLEMENT

The parties to a proceeding before the commission may agree ~~by stipulation~~ to a stipulated settlement of the case or any portion thereof either in writing filed with the commission or by oral entry in the record~~.upon-the-facts-or-any-portion-thereof-involved-in-the controversy-and-s~~Such stipulation shall be ~~regarded-and-used-as~~ supported by substantial evidence ~~in-the-determination-thereof.~~ and shall be accepted or rejected in its entirety by the commission.

Rationale: The language of this rule has been changed to correspond with the new statutory language found in Minn. Stat. § 216B.16 subd. 1a and 237.075 subd. 1a.

~~7830.3600--WITNESSES.~~ [Delete rule.]

Rationale: The present rule on witnesses was established at a time when the Commission had jurisdiction over the conduct of contested case hearings. This authority has now been vested in the Office of Administrative Hearings under Minnesota Statutes, chapter 14. Therefore, the rule on witnesses should be deleted.

7830.3700 BRIEFS, OTHER PLEADINGS TO THE COMMISSION AND CLOSING ARGUMENT.

Subp. 1. If briefs, other pleadings to the commission or closing argument are desired by any of the parties to the proceeding, they shall notify the presiding officer(s) before or at the hearings. If such request is made, the presiding officer(s) shall allow all parties to file briefs and/or make closing argument. ~~He-(they)~~ The presiding officer(s) shall also prescribe the time for service and filing of briefs or making of closing argument. All briefs for presentation to the presiding officer(s) must be filed with the secretary accompanied by written evidence of service upon opposing counsel, party, or parties. Oral argument shall be recorded and transcribed only if the commission so orders; when transcribed it shall be bound with a transcript of the testimony, if the testimony has been transcribed, and will be available to the commission for consideration in deciding the matter. The charge for transcripts shall be fixed by resolution of the commission.

Rationale: This rule has been amended so it will be gender neutral. It has also been amended to include any pleadings made to the Commission since the present limitation to briefs appears to be too narrow.

Subp. 2. Form and length of briefs and other pleadings.

Briefs and other pleadings shall be limited to a total of no more than one hundred pages in length. All matter other than footnotes must appear in at least 11 point type on unglazed opaque paper. Pages shall be size 8-1/2 x 11 inches with typewritten matter not exceeding 6 1/2 x 9 1/2 inches.

Rationale: Rule 132 of the Minnesota Appellate court prohibits briefs longer than 50 pages. Parties should comply with some limitation on the size of their pleadings. Because of the complex matter of rate cases, the Department is suggesting a 100 page limit to all pleadings. The rule will also facilitate prompt and complete review by the Commission. The remaining portion of the rule corresponds with Appellate Court Rule 132.01.

7830.3750 Commission Deliberations. Commission deliberations will follow the completion of oral arguments. Except as provided in part 7830.4000, no new or additional oral or written comments will be accepted from any person following completion of oral argument. During deliberation, the Commission shall consider the issues raised in the proceeding. Commission deliberations shall be recorded.

Rationale: Once the parties have filed briefs and completed oral arguments, the Commission should be permitted to review and make its decision based upon a complete and final record. Except for extraordinary circumstances such as those covered by part 7830.4000, no further information should be necessary for Commission review and deliberation of the case.

7830.3800 DECISIONS AND ORDERS.

Decisions and orders of the commission when made shall be filed with the secretary, who shall notify by mail all parties to the proceeding of such filing. Every decision or order adverse to a party in a contested case shall be in writing and shall include a statement of the reasons therefor. The statement of reasons shall consist of a concise statement of the conclusions upon eahc contested issue of fact necessary to the decisions. Commission decisions and orders may include written concurring and/or dissenting opinions by member(s) of the Commission on any issue(s) raised in the proceeding. A copy of the decision or order shall be delivered or mailed to each party. In a contested case the presiding officer(s) shall make and file a proposal for decision stating his findings of fact and his conclusions and recommendations. The secretary shall serve each party by mail with a copy of the proposal for decision or order.

Rationale: Not all issues are decided on unanimous votes. This language enunciates the ability of any Commissioner to concur or dissent with the language in the Commission's written order.

7830.3900 EXCEPTIONS. [No Change.]

7830.4000 PETITION FOR FURTHER HEARING. [No Change.]

7830.4100 PETITION FOR REHEARING, AMENDMENT, VACATION, RECONSIDERATION, REARGUMENT.

Within ~~20~~ 10 days from the date of the mailing by the secretary of the final decision or order, any party may petition for a rehearing, or for an amendment or vacation of the findings of fact, decision, or order, or for reconsideration or reargument. If the petition be for a further hearing, rehearing, vacation, reconsideration, or reargument, the grounds relied upon shall be specifically set forth and the claimed errors clearly stated. If the petition be ofr an amendment of the findings of fact, decision, or order, it shall contain the desired proposed amendments, and the reasons thefor shall be clearly stated. The petition shall be served upon all parties to the proceeding. An adverse party shall have ten days from the date of the service of the petition to answer and no reply will be permitted. The commission may grant or deny the petition without a hearing or in its discretion set a hearing thereon. Pending the decision of the commission on the petition, the commission may vacate and set aside the decision or order. No petition will extend the time of appeal from the deicsion or order.

Rationale: The change from 20 days to 10 days has been made to bring the existing rule in sync with the timing provision for an administrative appeals of Minn. Stat. § 14.64 which states:

If a request for reconsideration is made within ten days after the decision and order of the agency, the 30-day period provided in section 14.63 [for bringing an appeal] shall not begin to run until service of the order finally disposing of the application for reconsideration.

7830.4200 AMENDMENT OF EFFECTIVE DATE OF ORDER OR DECISION. [No Change.]

7830.4300 SECOND PETITION UPON SAME GROUND NOT ENTERTAINED. [No Change.]

7830. Compliance Filings.

Discussion: The Department does not presently have any comments or suggestions as to a possible rule regarding the Commission's practice and procedure for compliance filings other than to state that such a rule could track the existing practice if such is acceptable to the Commission.

7830.4400 VARIANCES.

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

A. enforcement of the rule would impose an excessive burden upon the applicant or others identified persons affected by the rule in a manner or to a degree not imposed on those generally affected by the rule;

B. granting of the variance would not adversely affect the public interest; and

C. granting of the variance ,considered by itself and in conjunction with other variances granted or pending on the same or related subject matter, would not conflict with standards imposed by law, including the prohibition against adopting, amending, suspending, or repealing rules outside the Administrative Procedure Act, Minnesota Statutes Chapter 14.

The commission shall, within five days after receipt of an application for a variance, notify the department and any other persons who have requested that the executive secretary of the commission notify them, of the application. The department and any other parties may submit comments on the application. Within 30 days after receipt of an application, the commission shall notify the applicant by written order of the granting or denial of the variance and the reasons therefor. A variance may be conditioned upon alternative practice proposed by the applicant or imposed by the commission.

Variances may be of limited duration, and shall in no instance be of a duration longer than 12 months. An applicant receiving a variance is obligated to promptly inform the commission of any changes in the circumstances which prompted the application. Any variance 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.

Rationale: The Commission promulgated its variances rule in 1981, in response to an amendment to the Administrative procedure Act (APA) which requires state agencies to have a rule governing variances in place if they wish to vary any of their rules. Minn. Stat. § 14.05, subd. 4 (1984).

Since that time, the Commission, the Department, and the utilities and telephone companies regulated by the Commission have had an opportunity to work with and understand the variances rule. While the Department believes that the rule has been an important tool for the Commission in dealine with day-to-day administration of its duties under the law, the Department is concerned that the rule as presently drafted permits utilities and telephone companies to use the Commission's variance authority to create de facto rulemaking. For example, tne Department recently brought to the Commission's attention the use being made of variances to effectively rewrite the Commission's automatic adjustment clause rules for gas and electric utilities. See, capsule recommendations in Minnegasco's request for variance of purchased gas adjustment rule, Docket No. G-008/AA-85-726; Northern States Power Company's request for variance of purchased gas adjustment rule, Docket No. G-002/M-85-734; Peoples Natural Gas Company's request for variance of purchased gas adjustment rule, Docket Nos. G-022/M-82-377 and G-011/AA-85-771; Department presentation at December 3, 1985 Commission meeting.

The changes proposed are needed to ensure that the Commission's variances rule works to permit specific, limited variances to properly promulgated rules. The first two changes are to the standards the Commission must apply when deciding whether or not to grant a variance. The first change requires the applicant to demonstrate that the excessive burden from which relief is being sought falls upon the applicant in a manner or to a degree different than the general burden. In other words, if an applicant seeks relief because of excessive burden, the applicant will have to show that the burden is excessive compared to the burden placed upon all those to whom the rule generally applies.

The second change would require the Commission to consider whether the variance sought, considered both by itself and in conjunction with other variance requests which the Commission may have granted or be in the process of considering, would amount to de facto rulemaking prohibited under the APA. This provision will ensure that the Commission does not run afoul of the APA prohibitions, and thereby risk losing the variances rule on a challenge to its scope.

The variances rule should only be used to set aside or modify a provision of a rule when there is a special, overriding need in a specific set of circumstances. If there has been a change affecting the entire industry, or if a rule has failed to perform its expected purpose, the proper course of action under the APA is for the Commission to address the problem through rulemaking. Variances by

their nature do not permit the public comment and thorough discussion that formal rulemaking is designed to provide.

The next change in the proposed rule also addresses this last point, by requiring that the Department and any person who has previously notified the Commission (through its Executive Secretary) that the person wishes notice of variances, be given notice of the variance request in order to comment on the request. This change will ensure that the Commission has a reasonable opportunity to receive input on the variance request beyond that of teh applicant, so that a sound decision on the request may be made.

The final change in the proposed rule is to limit the maximum duration of a variance to 12 months, again to ensure that variances are not substituted by utilities or telephone companies for the propser source of long-term change--rulemaking. The change also places an affirmative duty on an applicant who receives a variance to promptly notify the Commission of any change in the circumstances which prompted the request for a variance. This will effectuate the last sentence of the existing rule, which allows the Commission to revoke a variance if such a change takes place.

Taken together, the changes in the proposed rule are a reasonable way for the Commission to continue to have a workable tool for adapting its rules to unusual and hardship situations, without running the risk of illegally promulgating new rules by the act of granting variances.

Caroline

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June 19, 1986

RECEIVED
JUN 20 1986
MINNESOTA PUBLIC
UTILITIES COMMISSION

Mary Ellen Hennen
Executive Secretary
Minnesota Public Utilities Commission
780 American Center Building
160 East Kellogg Boulevard
St. Paul, Minnesota 55101

Re: Comments on Proposed Rule Changes Requested
by the Department of Public Service
Docket No. U-999/R-86-147.

Dear Ms. Hennen:

The Office of Attorney General has reviewed the proposed rule changes of the Department of Public Service. With the few exceptions and modifications, noted below, we believe they represent both reasonable proposals and improvements over the existing rules. Therefore, we endorse their acceptance with the following modifications:

7830.0600. Parties To Intervene.

(Page 8 of the Department's Comments.)

On three occasions the phrase "the presiding officer" has been inserted. Instead, the phrase should be "the party".

7830. . Rate Change Petitions.

(Pages 10-13 of the Department's Comments.)

The Department has accurately noted that one of the most difficult tasks for interested parties is to receive accurate and current information. This task will become even more difficult if the Commission and the Department attempt to accelerate the review process for certain filings (e.g., the Commission's Order in the Toll Competition docket requires expedited treatment for OCC rate changes).

However, the Department's proposed rules do not clearly state that a utility must provide a copy of its filings to those persons and organizations on the Executive Secretary's list. Therefore, we recommend that Subpart 9 be rewritten to read:

> Lists. The executive secretary of the commission shall maintain lists of persons to be notified of proposed rate changes. Those lists shall be kept by utility/telephone company and by topic and shall be supplied to the utility/telephone companies. It shall be the duty of the utility/telephone company, at the time it makes a rate change filing, to supply a copy of the same materials filed with the commission to those persons indicated on the list.

At the very least the rule should expressly list the Office of Attorney General, which has a statutory right to participate, as being entitled to receive a copy of each filing in Subpart 1.

7830.3700, subpt. 2. Briefs, Other Pleadings To The Commission And Closing Argument.

(Department Comments, page 24.)

The Department has requested that briefs be limited to 100 pages in length and cites the Court of Appeals rule limiting briefs to 50 pages as support. This, unfortunately, is neither workable nor in anyone's best interest.

First, in contrast to a rate case, as a rule of thumb an appeal is limited to three or fewer issues, and is generally limited to a two-party dispute, i.e., either the Commission's Order is right or it is wrong. The briefs we write at the administrative level can involve in excess of fifty issues, and for many issues (e.g., customer cost-of-service studies) involve as many as five separate proposals.

In Northwestern Bell's last general rate case, our initial brief was 265 pages in length. We could not have covered the subjects, much less covered them adequately, if a 100 page limit had been imposed. For example, consider that the Yellow Page Issue alone required a 50-page appellate brief. It was an important and complex issue. We simply could not have addressed that issue, divestiture, joint cost theory, and the myriad of other important issues in 100 pages. Furthermore, since it is the Administrative Law Judge ("ALJ") who relies on the briefs to make his or her decision, the length of briefs should be determined by the ALJ, considering the breadth and complexity of issues in each case.

In conclusion, rate cases are extremely complex matters. They can involve hundreds of exhibits, dozens of witnesses, and thousands of pages of transcripts. The brief is the only available vehicle to put the entire proceeding into perspective. An arbitrary, inflexible page limit will not enhance this process.

7830.4100. Petition For Rehearing, Amendment, Vacation.

(Department Comments, page 26.)

It is suggested that the 20-day time limit to petition for reconsideration be shortened to 10 days. It is stated that this will make the rule "in sync with the timing provision for an administrative appeals (sic) of Minn. Stat. § 14.64 . . . ."

While the statement is accurate, that is an insufficient reason for requiring that all petitions be made within 10 days. Section 14.64 merely requires that appeals be filed within 10 days in order to stay the time for appeal. It is clear from the statute that a petition for reconsideration may occur after the tenth day. However, such petitions will not stay the time for appeal.

The Department's proposal is also contrary to Minn. Stat. § 216B.27 (1984), which expressly authorizes the filing of petitions for reconsideration in gas and electric cases within 20 days.

Finally, ten days is not always sufficient time to receive an order, review and understand the provisions of the order, make the policy decision of whether a petition should be filed, draft a meaningful petition, and serve the petition.

For all of the above reasons, we believe 7830.1400 should remain unchanged.

7830.4400 C. Variances.

(Department's Comments, page 28.)

We agree with the Department's proposal but would modify the language of the first sentence of the second paragraph to read:

> The commission shall, within five days after receipt of an application for a variance, notify the department and any other persons who have ~~requested that~~ filed with the executive secretary of the commission pursuant to 7830. , subp. 9, ~~notify them~~ of the application.

In conclusion, we commend the Department's efforts and request that its proposals be adopted with the earlier described modifications.

Respectfully submitted,

Wm W. Ahlers for

MICHAEL J. BRADLEY
Assistant Attorney General

U-999/R-86-14,
(3)

FROM THE DESK OF

Stanley E. Bourassa

5605 DALE AVENUE SOUTH • MINNEAPOLIS, MINNESOTA 55436

929-2217

April 9th,1986

RECEIVED
APR 10 1986
MINNESOTA PUBLIC UTILITIES COMMISSION

Mary Ellen Hennen,
Executive Sec'y
Minnesota Public Utilities, Comm
State Office Building,
StPaul, Minnesota.

Dear Ms Hennen: RE: New Rules,practices of the PUC

A few sessions ago, and because it was obvious that your members were under the control of Public Utilty Lobbiests I wrote a "Bill" which would STOP the Utilities from automatically recieving rate increases upon their publication of same in newspapers.. Of course the bill was emasculated by the Senate Committee in favor of the Utilities to a great extent, however it should have made Board Members sit up and think. It didnt. Money talks

Lets face the facts. UTILITIES have created a monopoly for ENERGY in Minnesota. Gone are the City-owned energy plants of yesterday.

Industry in Minnesota does NOT pay its fair share of the energy bill, and the citizens are bieng constantly ripped off with higher rates.

Since when did members of the PUC get the idea that they should guarantee the stockholders of Private Utilities a high rate of interest ? Especially through higher rates to the citizens of Minnesota. Just the opposite should be the constant effort of this Commission. Protect our citizens is a must

NEW POLICY, PRACTICES and PROCEEDURES

1. Upon any request by a Public Utility in Minnesota for a rate increase, there must accompany such request the the Utilities financial facts and reasons for such a rate increase covering every segement of the Utility ownership and operations. Upon receipt of this formal information, the Public Utilities Commission shall set into motion their own AUDIT of the utility making the request by using either their own staff or the State Auditors Office. All information obtained shall be public information, and all hearings concerning the matter shall be open public hearings.
2. The Public Utility Commission shall hold public hearings on all rate increase requests at any time..preferably not longer than six months after each formal request by a utility..however, there shall be no rate increase allowed to any utility until after the final hearings by the Public Utility Commission and the final decision for any rate increase shall rest with the Governor of the State of Minnesota. (This is where the buck stops)
3. Majorfactors in the consideration of any rate increase must be
   1. Equaly cost increase between citizens and industries.
   2. Environmental hazards due to new construction.
   3. Dangers and Health to and of citizens and the economy of the State
   4. The actual NEED of a rate increase as against the actual costs of operation of the Utility and its Profits in salarys, and stocks.

Sincerely,

SEB/gb

Northern States Power Company
Law Department

Gary R. Johnson
Vice President and General Counsel

Hollies M. Winston
Secretary

David A. Lawrence
Director—Law

Jack F. Sjoholm
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Michael C. Connelly
John W. Haine
Chandra G. Houston
Audrey A. Zibelman

RECEIVED
MAR 11 1992

March 11, 1992

330 - 6607

Ms. Carol Casebolt
Staff Attorney
Minnesota Public Utilities Commission
780 American Center Building
150 East Kellogg Blvd.
St. Paul, MN 55101

Re: In the Matter of the Proposed Rules Governing Practice and Procedure, Minnesota Rules, parts 7829.0100 through 7829.3200
Docket No. U-999/R-86-147.

Dear Ms. Casebolt,

On February 10, 1992, the Minnesota Public Utilities Commission ("MPUC" or "Commission") published a Notice of Hearing and Notice of Intent to Cancel Hearing if Fewer Than Twenty-Five Persons Request a Hearing in Response to Notice of Intent to Adopt Rules Without a Public Hearing ("Notice"). Northern States Power Company participated in the task force drafting the proposed rules and supports major portions of the proposed rules as published. As a party to the process, NSP appreciates the effort that has gone into the proposed rules. NSP believes, however, that a number of changes are necessary to clarify the proposed rules. Of particular concern are the complaint sections (Parts 7829.1500 through 7829.1900) which NSP believes should be rewritten as indicated in Attachment A hereto.

NSP hereby requests a hearing pursuant to Minn. Stat. Section 14.25. A petition with the names of thirty interested persons is attached.

Please contact me with any questions regarding this petition.

Very truly yours,

Michael J. Hanson for

Gene R. Sommers

330 - 6601

Attachment A

7829.1500 INFORMAL COMPLAINTS.

Persons engaged in disputes with utilities may submit informal complaints by letter or other writing, by telephone, or in person. Complaints related to customer service policies and procedures are governed solely by Minnesota Rules Part 7820.0200 to 7820.5600. Commission staff shall accept other informal complaints and shall prepare a memorandum setting forth the substance of each complaint, and identifying the customer, the service address, and the utility.

7829.1600 TREATMENT OF INFORMAL COMPLAINTS.

Commission staff shall attempt to facilitate the resolution of informal complaints by mediation, arbitration, and other informal means. If an informal complaint is not so resolved, the commission, after investigation, shall either issue a formal complaint on its own motion, or dismiss the informal complaint and close the docket.

7829.1700 FORMAL COMPLAINTS.

Subp. 1. Content. Formal complaints properly filed by qualifying parties pursuant to Minn. Stat. 216B.17, or Minn. Stat. 237.081(a), or upon the commission's own motion shall include the following information: (1) the name and address of the complainant; (2) the name and address of complainant's counsel, if any; (3) the name and address of respondent; (4) the name and address of respondent's counsel, if known; (5) the statute, rule, or Commission Order alleged to have been violated; (6) the facts constituting the alleged violation ; (7) the relief sought by complainant.

Subp. 2. Mailing and filing. Formal complaints shall be mailed to the respondent, the Department of Public Service, the Residential Utilities Division of the Office of Attorney General,as well as filed with the Commission.

7829.1800 INITIAL CONSIDERATION OF FORMAL COMPLAINTS.

Subp. 1. Initial Commission review. The Commission shall review formal complaints as soon as practicable to determine whether the Commission has

jurisdiction over the matter and to determine whether there are reasonable grounds to investigate the allegation(s). If the Commission concludes that it lacks jurisdiction or that there is no reasonable basis to investigate the matter, the Commission shall dismiss the complaint.

Subp. 2. Investigation. Complaints not dismissed pursuant to Subp. 1 shall first be investigated by the commission. The commission shall notify the affected utility, municipally owned gas or electric utility, or cooperative electric association of the complaint against it, and that its staff shall investigate the matter. If, after investigation, the commission determines that a hearing on the complaint is not in the public interest, it shall dismiss the complaint.

Subp. 3. Service and notice. If the commission has determined that a formal hearing on the complaint is in the public interest, it shall serve the complaint on the respondent, notify the governing bodies of affected municipalities and counties of the proceeding, and include a summary of the proceeding with the commission's next available weekly calendar.

Subp. 4. Answer. Respondent shall file its answer to a formal complaint with the commission, with proof of service upon complainant, within 20 days after the day on which the complaint was served, exclusive of the day of service. Any respondent failing to serve and file an answer to a formal complaint within such period will be deemed to have denied the same, and issue as to such respondent will be thereby joined. Answers to a formal complaint should be drawn so as to fully and completely advise the parties and the presiding officer(s) of the nature of the defense, state that respondent has granted the relief demanded if such is the case, and should admit or deny specifically and in detail each material allegation of the pleading answered. Denial of an alleged discrimination or that an alleged preference or prejudice is undue or unreasonable should state fully the grounds relied upon in making such denial. Such answers shall be subscribed by the respondent or its attorney and verified.

Subp. 5. Reply. If the answer to a complaint alleges the granting of the relief demanded, the complainant shall within 20 days file with the commission, with proof of service upon respondent, a reply admitting or denying such allegation. If he fails to reply or admits the allegation, the proceeding shall be dismissed.

7829.1900 COMMISSION ACTION ON FORMAL COMPLAINTS.

Subp. 1. Nature of proceedings. The commission shall deal with formal complaints through contested case proceedings or through expedited or informal proceedings.

Subp. 2. Initial comments. Any person wishing to comment on a formal complaint shall do so within 30 days of the date on which its summary was published in the weekly calendar. All comments shall be served on complainant, respondent, the Department of Public Service, the Residential Utilities Division of the Office of the Attorney General, and any other known parties.

Subp. 3. Intervention. If a person filing initial or reply comments is not entitled to intervene in commission proceedings as of right, and desires full party status, the person shall file a petition to intervene before the expiration of the initial or reply comment period. The intervention petition may be combined with the comments on the complaint.

Subp. 4. Comments to include procedural recommendation. Persons commenting on complaints shall specify whether they believe the matter requires contested case proceedings, informal or expedited proceedings, or some other procedural treatment, together with their reasons for recommending a particular procedural treatment.

Subp. 5. Reply comments. Commenting parties shall have 10 days from the expiration of the original comment period to file reply comments. Reply comments shall be limited in scope to the issues raised in the initial comments.

Subp. 6. Comments on supplemental or corrected filings. The commission shall provide such opportunity for other parties to respond to supplemental or corrected filing when those filings raise new issues..

Subp. 7. Additional comments. On its own motion or at the request of any person, the commission may require or allow additional comments and may identify specific issues on which the parties should submit additional comments.

Subp. 8. Comment periods varied. Except for time periods set by statute, the

commission may vary the comment periods established by these rules at the request of any person for good cause shown. The commission may delegate the authority to vary time periods to the Executive Secretary.

Subp. 9. Notice. If the matter does not require a contested case hearing under Minn. Stat. Ch. 14, the complaint may come before the commission on at least 10 days' written notice to all parties. Under exigent circumstances the Executive Secretary may reduce the 10 day notice period. After an opportunity to be heard, the commission may issue an order disposing of the complaint.

Subp. 10. Contested case proceedings. If further proceedings are required, the commission shall issue a notice and order for hearing which shall be published in the commission's next weekly calendar. Further proceedings shall be conducted by the office of administrative hearings if a contested case is required by Minn. Stat. Ch. 14, or is desired by the commission.

Signature attachment to letter of March 11, 1992, from Gene R. Sommers to Mr. Richard R. Lancaster, Minnesota Public Utilities Commission, requesting a hearing in Docket No. U-999/R-86-147. The business address of the signators ia c/o Gene R. Sommers, Northern States Power Company Law Department, 414 Nicollet mall, Minneapolis, Minnesota 55401, and further, the undersigned authorize Gene R. Sommers to withdraw said request for hearing in this matter should he deem appropriate.

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Northern States Power Company
Law Department

Gary R. Johnson
Vice President—Law

Hollies M. Winston
Secretary

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TELECOPIER TRANSMISSION COVER PAGE

DATE 3-18-92 (19 Cec.)

TIME _____

TO Carol Casebolt TELECOPIER NO. 297-7073

COMPANY _____

FROM Gene Sommers PHONE (612) 330-6607

SUBJECT _____

COMMENTS _____

This cover page is Page 1 of 15 pages being transmitted.

We are transmitting from a Pitney Bowes 9200 facsimile machine. If you have any problems with this transmission or do not receive all the pages, please call at (612) 330-7577.

March 18, 1992

MEMORANDUM

From: Gene R. Sommers

To: Carol Casebolt

Re: Procedural Rules

As we discussed yesterday, I have enclosed a draft of the comments that NSP would finalize and present to Judge Campbell next week.

If the Commission is interested in addressing these concerns, I am available to work on this docket this week. I do have conflicts on March 23 and 24.

Please call when you have had a change to review this draft Thanks for your help.

Gene R. Sommers
330-6607

DRAFT 3-17-92

STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner

In the Matter of a Proposal to Adopt New Rules of Practice and Procedure

Docket No. U-999/R-86-147

STATEMENT OF NORTHERN STATES POWER COMPANY AT PUBLIC HEARING

TO: Honorable Bruce Campbell
Administrative Law Judge

Background

The Commission established an Advisory Task Force to draft new procedural rules to replace those adopted shortly after the Commission assumed rate and service jurisdiction over electric and gas public utilities in 1975. The rules adopted at that time were amendments to the existing telephone and railroad/warehouse rules. At that time the Commission held its own hearings, often en banc or with a staff Hearing Examiner.

The independent Office of Administrative Hearings now conducts contested case hearings for all agencies. The PUC has promulgated substantive rules, established certain de facto procedures, and there have been some changes to Minn.

Stat. 216 and Minn. Stat. 234 which make an overhaul of the existing rules appropriate.

The Task Force, of which NSP was an active participant, focused on creating procedures which would better notify interested parties of filings, make the timing of processes more efficient, provide for informal proceedings before the Commission, and to generally include in the rules all relevant information a practitioner would need to provide representation before the Commission. These objectives were accomplished in the main.

NSP's comments seek to conform the rules to the requirements in the statutes related to rate filings and complaints, and to suggest other changes that, in our view, further the Task Force objectives without creating substantial changes to the rules as noticed.[1]

> Page 1. 7829.0100. Complainant. "Complainant means a person who complains ~~formally or~~ informally of the alleged violation of any statute or rule within the Commission's jurisdiction, a utility tariff, or of any Commission order; or

[1] Portions of the proposed rule to be deleted are interlined, and additions are underlined.

persons or entities authorized to complain formally against a public utility under Minn. Stat. 216B.17 or Minn. Stat. 237.081.

Comment: The drafted rule would include as formal complainants "persons", a defined term. Formal complaints can only be made by 50 (gas and electric) or 100 (telephone) ratepayers, or by other entities described in the statutes. This change is necessary to make this distinction clear, and also to conform the rule to the statutes cited above.

Page 13, line 1. Informal Complaints. Persons engaged in disputes with utilities may submit informal complaints by letter or other writing, by telephone, or in person. Complaints related to customer service policies and procedures are governed solely by Minn. Rules Part 7820.0200 to 7820.5600. Commission staff shall accept other informal complaints and shall prepare a memorandum setting forth the substance of each complaint, and identifying the customer, the service address, and the utility.

Comment: As the statement of need and reasonableness indicates, the Consumer Affairs Department handles most customer/utility disputes. Rules 7820.0200 to 7820.5600 govern those processes.

This must be clearly stated in this rule. Other informal complaints would be covered by 7929.1500 and 7929.1600.

Page 13, line 16. Treatment of Informal Complaints. Commission staff shall try to help resolve informal complaints by correspondence, mediation, arbitration, and other informal means. If the complainant desires formal action by the Comission, a formal complaint must be initiated by the Commission, or filed by a qualified complainant.

Comment: If an informal complaint is not resolved, the only way that it can get before the Commission as a formal complaint is if the Commission, after investigation, serves a formal complaint on its own motion on behalf of the aggrieved party, or the persons and entities set out in Minn. Stat. 216B.17 or 237.081(a) file a formal complaint.

Page 13, line 21. 7829.1700. Formal Complaint.

Subpart 1. Content. Formal complaints properly filed by qualifying parties pursuant to Minn. Stat. 216B.17, or Minn. Stat. 237.081(a), or ~~upon~~ by the Commission on its own motion, must include the following information: the name and address of the

complainant; the name and address of complainant's counsel, if any; the name and address of respondent; the name and address of respondent's counsel, if known; the statute, rule, tariff, or Commission order alleged to have been violated; the facts constituting the alleged violation; and the relief sought by complainant.

Comment: This conforms the rule to the statute and clarifies to a practitioner, or individual rate payer the requirements of formal complaints.

Page 13, line 29.

Subpart 2. ~~Service~~ Mailing and Filing. ~~A~~ Formal complaints ~~must~~ shall be mailed to the respondent, the department, and the Residential Utilities Division of the Office of the Attorney General, as well as filed with the Commission.

Comment: The complainant should mail to the parties indicated and file with the Commission. Only the Commission can serve the complaint. See Subp. 2 of the proposed rule. The Commission must first make an investigation before commencing a hearing.

Page 14, line 7. Delete through line 29 and insert the following:

Subpart 2. Investigation. Complaints not dismissed pursuant to Subp. 1 shall first be investigated by the Commission. The Commission shall notify the affected utility, municipally owned gas or electric utility, or cooperative electric association of the complaint against it, and that its staff shall investigate the matter. If, after investigation, the Commission determines that a hearing on the complaint is not in the public interest, it shall dismiss the complaint.

Subpart 3. Service and Notice. If the Commission has determined that a hearing on the complaint is in the public interest, it shall serve the complaint on the respondent, notify the governing bodies of affected municipalities and counties of the proceeding, and include a summary of the proceeding with the Commission's next available weekly calendar.

Subpart 4. Answer. Respondent shall file its answer to a formal complaint with the Commission, with proof of service upon complainant, within 20 days after the day on which the complaint was served. Any respondent failing to serve and file an

answer to a formal complaint within such period will be deemed to have denied the same, and issue as to such respondent will be thereby joined. Answers to a formal complaint should be drawn so as to fuly and completely advise the parties and the presiding officer(s) of the nature of the defense, state that respondent has granted the relief demanded if such is the case, and should admit or deny specifically and in detail each material allegation of the pleading answered. Denial of an alleged discrimination or that an alleged preference or prejudice is undue or unreasonable should state fully the grounds relied upon in making such denial. Such answers shall be subscribed by the respondent or its attorney and verified.

Subpart 5. Reply. If the answer to a complaint alleges the granting of the relief demanded, the complainant shall within 20 days file with the Commission, with proof of service upon respondent, a reply admitting or denying such allegation. If complainant fails to reply or admits the allegation, the proceeding shall be dismissed.

Comment: Under Minn. Stat. 216B.17(1) the Commission must make such investigation as it deems necessary, and under 216B.17(8) the investigation is mandatory. The proposed rule requires the respondent to show cause why the relief should not be granted. There is no statutory authority for the Commission to issue show cause orders. The burden of proof is always on the Commission or complainant in complaint proceedings.

Page 14, line 29. 7820.1900. COMMISSION ACTION ON FORMAL COMPLAINTS.

Subpart 1. Nature of Proceedings. The Commission shall deal with formal complaints through contested case proceedings or through expedited or informal proceedings.

Subpart 2. Initial Comments. Any person wishing to comment on a formal complaint shall do so within 30 days of the date on which its summary was published in the weekly calendar. All comments shall be served on complainant, respondent, the department, the Residential Utilities Division of the Office of the Attorney General, and any other known parties.

Page 16, line 4, insert:

Subpart 10. Notice. If the matter does not require a contested case hearing under Minn. Stat. Ch. 14, the complaint may come before the Commission on at least 10 days' written notice to all parties. Under exigent circumstances the Executive Secretary may reduce the 10 day notice period. After an opportunity to be heard, the Commission may issue an order disposing of the complaint.

Subpart 11. Contested Case Proceedings. Except as provided in Subp. 11, if further proceedings are required, the Commission shall issue a notice and order for hearing which shall be published in the Commission's next weekly calendar. Further proceedings shall be conducted by the Office of Administrative Hearings if a contested case is required by Minn. Stat. Ch. 14, or is desired by the Commission.

Subpart 12. Investigations Concerning Rates. If the complaint and investigation concerned the reasonableness of rates, and the Commission has not been able to resolve the matter with the utility, the Commission shall proceed pursuant to Minn. Stat. 216B.17(8)(1) or Minn. Stat. 237.081(2)(b).

Comment: The complaint sections of the relevant statutes are less than models of clarity. NSP believes these changes reflect the legislative intent that the Commission is not bound to grant hearings on complaints unless it has had the matter investigated, had a chance to determine if the matter warrants the expenditure of resources for itself and the parties involved, and then to determine what process is in the public interest.

Page 16. 7829.2100. Add "Electric" in heading.

Comment: Clarity.

Page 18. 7829.2400. Add the following subparts:

Subpart 4. Notice of Deficiencies. The Commission shall inform the petitioner of any deficiencies in the filing, the summary provided for in subp. 2 hereof, or the service thereof, within 7 days of the filing or service. The Executive Secretary is delegated this duty.

Renumber present subp. 4 as subp. 5.

Subpart 6. Correction or Supplement of Filing. Filings may be supplemented or corrected within 15 days of filing, and

thereafter for good cause shown to the Commission. Acceptance of said filings is delegated to the Executive Secretary.

Renumber and reword Subp. 5 as:

Subpart 7. Rejection of Filings. The Commission ~~shall~~ may reject any filing under this section which, after opportunity to correct or supplement, is found to be substantially out of compliance with Minn. Stat. 216B.16 or 237.075 or any other requirements imposed by rule, statute or previous Commission order. Any filing not rejected within 30 days of filing shall be deemed accepted as in substantial compliance with the applicable filing requirements.

Add the following:

Subpart 8. Unless it determines the filing need not be suspended, the Commission shall issue its order on interim rates and its order for hearing within 30 days of the initial filing for general rate increase filings. Interim rates shall be set ex parte pursuant to Minn. Stat. 216B.16(3) and 237.075(3) and shall go into effect not later than 60 days after the initial filing date.

Renumber present Subparts 6 and 7 to Subparts 9 and 10.

Comment: There presently is a great deal of time lost at the beginning of a rate case. The intent of the interim rate provisions was to have the Commission staff do a summary review of the filing to be sure it conforms to the rate case filing rules. The matter should then be processed so that interim rates are ordered and the case sent to the ALJ as soon as possible. The proposed changes will expedite these processes and get the case to the ALJ so that all parties and the Commission have adequate time to settle or litigate the matter.

Page 26, line 7829.3200.

Subpart 3. Duration. Unless the Commission orders otherwise, variances automatically expire in one year, unless a petition to renew the variance has been filed.

Comment: Experience has been that the processing of variance renewals (such as purchase gas adjustment clause annual period filing dates) although routinely approved, were processed beyond the one year cutoff. The rationale for variance expiration has never been clear. In any event, since the initial determination was

that the criteria for a variance were met, it does not seem illogical to allow continuity until the contrary is found.

MAR 23 1992

Northern States Power Company
Law Department

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330-6607

March 20, 1992

Ms. Carol Casebolt
Staff Attorney
Minnesota Public Utilities Commission
780 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

Re: In the Matter of the Proposed Rules Governing Practice and Procedure, Minnesota Rules, parts 7829.0100 through 7829.3200
Docket No. U-999/R-86-147

Dear Ms. Casebolt,

This will confirm our conversations of yesterday and today related to NSP's concerns about the above rules and our request of March 11 for a hearing.

We have agreed that you will recommend the following changes to the proposed rules:

Page 13, Line 20 strike:

filed. and insert initiated by the commission, or filed by a qualified complainant.

Page 13, Line 29 change:

service to mailed

Page 13, Line 30 change:

served on to mailed to

Page 14, Lines 10 to 12 shall read:

with an order requiring the respondent to file an answer either stating that it has granted the relief the complainant requests, or responding to the allegations of the complaint.

With these changes NSP withdraws its request for a hearing.

I would respectfully ask you to also bring to the Commission our concerns related to 7829.3200(3) with an explanation of the concerns I discussed with you.

Thanks again for your cooperative assistance.

Very truly yours,

Gene R. Sommers
Senior Attorney

cc: Judge Bruce Campbell

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

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March 11, 1992

MAR 11 1992

Carol Casebolt
Staff Attorney
Minnesota Public Utilities Commission
780 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101

Re: Proposed Rules Governing Practice and Procedure,
Minn. Rules parts 7829.0100 through 7829.3200,
Docket No. U999/R-86-147

Dear Ms. Casebolt:

Enclosed are the Comments of the Department of Public Service on the above-referenced rules.

Sincerely,

DENNIS D. AHLERS
Special Assistant
Attorney General

(612) 296-3701

DDA:bl:.DF8

Enclosures

cc: All Parties

Proposed Rules Governing Practice and Procedure Minn. Rules parts 7829.0100 through 7829.3200, Docket No. U999/R-86-147

Comments of the Department of Public Service

The Department of Public Service (Department) submits these comments in response to the above-referenced proposed rules. The Department is in general agreement with the proposed rules and supports their adoption. These comments will address one relatively minor modification which, in the Department's opinion, would not constitute a substantial change in the proposed rule as noticed.

The Department suggests that the proposed rules be modified to require that service on the Department be contemporaneous with service on the Commission. This will allow the Department to adequately respond to filings which in some cases have response times as short as ten days. See Proposed Rule 7829.1300, subp. 6. Absent such a provision, since the reply dates are calculated from the date of filing with the Commission, should a party file personally with the Commission but serve the Department by mail, the Department may lose as much as three days of response time due to delays in mail delivery.

The Department is the only potential party that has a duty to respond to each and every filing before the Commission. Because of this duty and the sheer volume of filings it entails, it is necessary that the Department have the maximum time necessary to prepare a response to each filing. Therefore, the Department proposes the that all documents be served on the

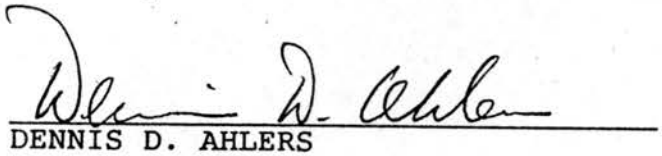
Department so they are received by the Department at the same time they are filed with the Commission. The Department would suggest addition of one phrase to 7829.0400, subp. 5 so that it would read as follows:

> Subp. 5. Service. A document filed with the commission must be served the same day on the persons listed on the appropriate service list, except when this chapter permits service of a summary of the filing. Service may be accomplished by first class mail or by delivery in person, unless otherwise provided by law or commission order. Service may also be accomplished by facsimile transmission, followed by first class mail. Service on the Department is complete upon receipt by the Department. For all other persons, service by mail or facsimile transmission plus mail is complete upon mailing, unless the executive secretary directs otherwise for specific documents. When a party or participant is represented by an attorney, service upon the attorney is considered service upon the party or participant.

Since documents will be filed on the Commission on the same day and the Commission and Department are in close proximity, this does not impose an undue burden on any party. In fact, it reflects what is the usual current practice. The Department simply requests that this practice be codified in the rules. This is not a substantial change in the rules.

Dated: March 11, 1992.

Respectfully submitted,
HUBERT H. HUMPHREY, III
Attorney General



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.de6

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

I, **Linda Chavez**, being first duly sworn, deposes and says:

That on the **11th** day of **March**, **1992**, she served the attached **Department Comments**

Docket No. **U999/R-86-147**

X by depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid.

X by personal service

by express mail

by delivery service

to all persons at the addresses indicated below or on the attached list:

Linda Chavez

Subscribed and sworn to before me
this 11th day of March, 1992
Carol T Nelson

CAROL T. NELSON
NOTARY PUBLIC—MINNESOTA
WASHINGTON COUNTY
MY COMMISSION EXPIRES 1-14-98

RULES OF PRACTICE & PROCEDURE
U-999/R-86-147
FEBRUARY 8 1992 KK

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March 11, 1992

VIA TELEFAX

Carol Casebolt
Staff Attorney
Minnesota Public Utilities Commission
780 American Center Building
150 E Kellogg Blvd.
St. Paul, MN 55101

Re: Comments Concerning Proposed Permanent Rules Relating To Practice And Procedure filed on behalf of the Minnesota Independent Coalition

Dear Ms. Casebolt:

The following comments are provided to the Minnesota Public Utilities Commission (the "Commission") on behalf of the Minnesota Independent Coalition ("MIC") in regards to the Proposed Permanent Rules Relating to Practice and Procedure. The MIC has not requested a formal rulemaking hearing. That fact does not indicate that the following concerns are unimportant to the MIC. Rather, it reflects the fact that the MIC's suggested changes are neither controversial nor complex.

The following comments will be provided sequentially in order of affected proposed rules.

Proposed Rule 7829.0100, Definitions, subp. 11, Miscellaneous Tariff Filing. The last sentence of the definition for a "Miscellaneous Tariff Filing" expresses the definite intent not to expand the category of Commission filings or proceedings required. That sentence reads as follows:

> "The inclusion of a particular type of filing in this list does not require a filing that would not otherwise be required or confer jurisdiction that would not otherwise be present."

While the intent is definite, the other language in the proposed Rule would benefit from clarification to conform to that intent. Accordingly, the MIC suggests that the first sentence of the definition be amended as follows:

> "Miscellaneous Tariff Filing" means a request or a notice that commences a required commission proceeding that does not require a determination of the utility's revenue requirement. (Remainder of the definition unchanged.)

(Underlining represents new language.)

The proposed change is completely consistent with the intent expressed by the last sentence of the definition. The proposed change also clarifies that a "Miscellaneous Tariff Filing" refers to filings that initiate a proceeding, as opposed to filings made for other purposes or subsequent filings in an ongoing proceeding which may involve the listed subject matters. The use of the term "proceeding" within the first sentence of the definition also provides clarification because it incorporates the definition of that term contained in proposed rule 7829.0100, subp. 18.

Proposed Rule 7829.0200, subp. 2. This proposed rule indicates that "this chapter governs practice and procedure" unless it is "in direct conflict" with a statute or a rule on a specific topic. The word "direct" raises as many questions as it resolves. Accordingly, it is recommended that the word "direct" be omitted.

Proposed Rule 7829.0600, subp. 1, Establishing List. The following proposed amendment clarifies obligations regarding the General Service List and makes those obligations consistent with the scope of the rules:

> Persons desiring to receive notice of particular types of filings within the scope of parts 7829.0100 through 7829.3200 and who are qualified to intervene under part 7829.0800 . . . (balance of the rule is unchanged).

(Underlining represents new language.)

This change will facilitate the consistent application of rules relating to the General Service List to the filings

intended by the Commission rather than a fragmentary application to matters outside of the scope of the Commission's intent and proposed Rules.

Propose Rule 7829.0600, subp. 4, Jurisdiction Unaffected. The following proposed additional language clarifies the intent that defects relating to the lists do not affect either the Commission's jurisdiction or the validity of its decision. This intent can be better accomplished by adding the following language to the last sentence of subpart 4:

> The requirements of this part do not displace or add to legal notice requirements, and a utility's failure to comply with this part does not deprive the commission of jurisdiction over a matter of which it would otherwise have jurisdiction, render a filing ineffective, or invalidate any determination made by the commission in such a matter.

(Underlining represents new language.)

Proposed Rule 7829.0800, subp. 2, Grounds for Intervention. This proposed rule denies intervention to a person with "an interest common to the public or other ratepayers in general." This rule may be inconsistent with the current standards for intervention.

The current standard is reflected in the Office of Administrative Hearings Minn. Rule, pt. 1400.6200, subpart 3, which grants the Administrative Law Judge authority to deny a petition for intervention if "the petitioner's interest is adequately represented by one or more parties participating in the case." That standard has adequately protected against participation by large numbers of individual ratepayers. Therefore, it is recommended that the last clause of Proposed Rule 7829.0800, subp. 2, be amended to read:

> or the outcome of the proceeding will bind or effect the person with respect to an interest [peculiar to that] of that person [, as distinguished from an interest common to the public or other ratepayers in general]. A petition may be denied if the petitioner's interest is adequately represented by one or more parties participating in the case.

(Underlining represents new language, bracketed material is to be omitted.)

Proposed Rule 7829.1000, Referral for Contested Case Proceeding. This proposed rule requires the Commission to order a contested case if "a proceeding involves contested material facts." Requiring a contested case merely because a party contests a material fact may be inconsistent with statutory standards. Minn. Stat. § 237.081, subd. 2, requires a contested case only if "the commission finds that a significant factual issue raised has not been resolved to its satisfaction". Minn. Stat. § 237.075, subd. 2 reflects the same standard. As a result, the Commission has authority to determine that it has resolved a "significant factual issue" to its satisfaction, and thereby avoid a contested case.

Accordingly, the proposed rule should be amended to read:

> If [a proceeding involves contested material facts or] the commission finds that all significant issues have not been resolved to its satisfaction, . . . (remainder of the rule is unchanged).

(Bracketed material should be omitted.)

Proposed Rule 7829.1200, subpart 1, A. This proposed rule allows an informal or expedited proceeding when "there are no material facts in dispute". For the same reasons set forth with respect to Proposed Rule 7829.1000, subpart 1, A, should be stricken.

Proposed Rule 7829.1300, subpart 2, Service. The proposed rule establishes a mechanism by which initial notice is provided to potential parties in both matters "on which commission action is required within 60 days" and in other matters. Clearly, the intent is to facilitate orderly handling of matters that come before the Commission for resolution. The proposed rule would benefit from clarification, however, to achieve this objective.

The proposed rule should be clarified to specifically limit its application to filings on which Commission action is required. Otherwise, notice requirements beyond the scope of proceedings within the rules could result. As a result, the second sentence of Subp. 2 should be amended to follow the pattern of the first sentence as follows:

> "For other filings on which Commission action is required, the utility may serve the summary described in subpart 1 on persons on the applicable general service list."

(Underlining represents new language.)

Proposed Rule 7829.1400, subpart 1. Subpart 1 provides for comments on miscellaneous tariff or price list filings. There is, however, no specific requirement that these comments be served on the utilities, unlike Subpart 2 which requires such service of Reply Comments. Therefore, it is recommended that the following sentence be added to Subpart 1:

> A copy of all comments shall be served on the utility.

Proposed Rules 7829.1400, subpart 6, and 7829.1900, subpart 9. Both of these rules require the Commission to grant the Department of Public Service ("Department") a 30 day extension when requested by the Department. The Commission should preserve its discretion both as to the Department and other parties. Therefore, it is requested that both subparts be amended to read:

> At the request of a party [the department], commission may [shall] extend the comment periods (the remainder of the rule is unchanged).

(Underlining represents new language, brackets represent language to be omitted.)

Proposed Rule 7828.2600, Staff Comments. The last sentence allows oral argument if the Commission Staff recommend action "not advocated by any party." The proposed rule fails to recognize the very significant impact of the Commission Staff when it advocates the position of a party, sometimes adding a new rationale in support that position. Accordingly, parties should be entitled to respond whenever the Commission Staff takes the additional step of recommending action. Further, it will be difficult, in many cases, to determine whether the action has been advocated by any party, and disputes concerning this point seems likely. Therefore, it is recommended that the language be amended as follows:

> If commission staff recommend <u>specific</u> action [not advocated by any party,] all parties must be granted oral argument at the request of any party.

(Underlining represents new language, bracketed material should be omitted.)

The MIC appreciates this opportunity to file comments and would be happy to work further with Commission Staff concerning these rules.

Respectfully submitted,

Richard J. Johnson

MJB/jdh
410ZJJH

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RECEIVED
MAR 12 1992
MINNESOTA PUBLIC UTILITIES COMMISSION

March 11, 1992

Carol Casebolt
Staff Attorney
Minnesota Public Utilities Commission
780 American Center Building
150 E Kellogg Blvd.
St. Paul, MN 55101

Re: Comments By Vista Telephone Company of Minnesota Concerning Proposed Permanent Rules Relating To Practice And Procedure

Dear Ms. Casebolt:

The following is provided on behalf of Vista Telephone Company of Minnesota ("Vista") in response to the Minnesota Public Utilities Commission ("Commission") request for comments concerning the proposed practice and procedure rules. Vista has not requested a formal rulemaking proceeding because its suggested changes are neither controversial nor complex. The following comments will follow the numerical order of the proposed rules.

Proposed Rule 7829.0100 Definitions, subp. 11, Miscellaneous Tariff Filing.

It is apparent that the definition of a "miscellaneous tariff filing" is not intended to expand or otherwise affect the Commission's jurisdiction. (See the last sentence of the proposed rule.) While the intent is relatively clear, the language expressing that intent is somewhat ambiguous. To reduce that ambiguity it is suggested that the first sentence of the definition be amended using either of the following alternatives:

> "Miscellaneous Tariff Filing" means a request or a notice that commences a required commission proceeding that does not require a determination of the utility's revenue requirement. (Remainder of the rule is unchanged.)
>
> Or
>
> "Miscellaneous Tariff Filing" means a request for a commission proceeding or a statutorily required notice that does not require determination of the utility's revenue requirement. (Remainder of the rule is unchanged.)

(Underlining represents new language.)

Both alternatives maintain the intent expressed in the last sentence of the definition not to change the commission's jurisdiction as a result of this definition. The use of the term "proceeding" within the definition is beneficial because it automatically incorporates the definition of that term as contained in proposed rule 7829.0100, subp. 18.

Proposed Rule 7829.0200, subp. 2.

This proposed rule indicates that "this chapter governs practice and procedure" unless it is in "direct" conflict with a statute or a rule on a specific topic. Use of the word "direct" unnecessarily raises questions concerning how strong a conflict must be before the rules are superseded. Therefore, it is recommended that the word "direct" be omitted. Thus, these rules will control unless there is a conflict with a statute or a rule on a specific topic.

Proposed Rule 7829.0600, subp. 1, Establishing List.

The following alternatives are intended to clarify the application of the general service list and to provide internal consistency within the rules. Either of the following clarifications would satisfy that purpose:

> Persons desiring to receive notice of particular types of filings within the scope of parts 7829.0100 through 7829.3200 (balance of the rule is unchanged).

Or

> Persons desiring to receive notice of particular types of filings within the scope of this chapter (balance of the rule is unchanged).

(Underlining represents new language.)

Propose Rule 7829.0600, subp. 4, Jurisdiction Unaffected.

The proposed rule provides that defects in providing notice do not affect the Commission's jurisdiction. However, because a defect could be discovered after a Commission's decision had been rendered, it is also desirable to set forth in the rule that a possible defect in the notice does not automatically invalidate the Commission's decision. Parties who failed to receive notice may still file a complaint with the Commission, and the Commission can review any new issues not raised in the initial proceeding. In this manner, the original decision will only be affected if the merits of the new claims justify a modification.

This can be accomplished by adding the following language to the last sentence of subpart 4:

> The requirements of this part do not displace or add to legal notice requirements, and a utility's failure to comply with this part does not deprive the commission of jurisdiction over a matter of which it would otherwise have jurisdiction, and does not require dismissal of the filing or invalidate any determination made by the commission in such a matter.

(Underlining represents new language.)

Proposed Rule 7829.1000, Referral for Contested Case Proceeding.

The proposed rule requires the Commission to order a contested case if "a proceeding involves contested material facts." Adoption of this rule would result in a significant change in the existing practice of the Commission. Currently, the Commission has authority to determine, despite the existence of a contested material fact, that it has resolved an issue to its satisfaction, and thereby avoid a contested case. In essence, the Commission, without the necessity of a

contested case, can resolve a dispute over a material fact if it feels that it has sufficient information. The proposed rule removes that ability.

The proposed rule is also in conflict with Minn. Stat. §§ 237.075, subd. 2, and 237.081, subd. 2. Section 237.075, subd. 2, relates to rate change filings and expressly limits the right to a contested case proceeding to those instances where "all significant issues raised have not been resolved to (the Commission's) satisfaction." Similarly, the complaint procedures contained in Section 237.081, subd. 2, require a contested case only if "the commission finds that a significant factual issue raised has not been resolved to its satisfaction".

To be consistent with the above statutes and current practice, the proposed rule should be amended to read:

> If [a proceeding involves contested material facts or] the commission finds that all significant issues have not been resolved to its satisfaction, . . . (remainder of the rule is unchanged).

(Bracketed material should be omitted.)

Proposed Rule 7829.1200, subpart 1, A.

The proposed rule allows an informal or expedited proceeding when "there are no material facts in dispute". For the reasons explained with respect to Proposed Rule 7829.1000, this standard is inappropriate.

The Commission should be able to use an informal or expedited proceeding when there is a material fact in dispute. If the Commission is unable, through those proceedings, to resolve the dispute to its satisfaction, it may be appropriate to then refer the matter to the Office of Administrative Hearings for a contested case proceeding.

Therefore, subpart 1, A, should be stricken from the proposed rule.

Proposed Rule 7829.1400, subpart 1.

The proposed rule provides for comments on miscellaneous tariff or price list filings. There is, however, nothing requiring that these comments be served on the utilities.

Therefore, it is recommended that the following sentence be added to both subparts:

> A copy of all comments shall be served on the utility.

Proposed Rules 7829.1400, subpart 6, and 7829.1900, subpart 9.

Both proposed rules require the Commission, upon request, to grant the Department a 30 day extension. It is inappropriate to grant the Department such an exclusive right, and it is also inappropriate to remove the Commission's discretion to require the Department to act in a more timely manner. Therefore, Vista requests that both subparts be amended to read:

> At the request of a party [the department], commission may [shall] extend the comment periods (the remainder of the rule is unchanged).

(Underlining represents new language, brackets represent language to be omitted.)

Proposed Rule 7829.1800, subpart 4, Failure to Answer.

The proposed rule contains the language "and issue is joined." The language is confusing and omitting this language makes the rule more understandable.

Proposed Rule 7828.2600, Staff Comments.

The proposed rule allows oral argument if the Commission Staff recommend action "not advocated by any party." While such an occurrence does necessitate oral argument, there are other instances where Commission Staff activity necessitates the granting of oral argument. In particular, whenever the Commission Staff advocates a specific resolution of an issue, it will articulate its reasoning for that support. Such reasoning often incorporates a different viewpoint not previously addressed by the parties. Consequently, the parties should, at a minimum, be allowed to respond to those new arguments.

Therefore, it is recommended that the language be amended as follows:

> If commission staff recommend <u>specific</u> action [not advocated by any party,] all parties must be granted oral argument at the request of any party.

(Underlining represents new language, bracketed material should be omitted.)

Vista appreciates this opportunity to file these comments and is prepared to work with Commission Staff or the Commission directly to develop alternative language that satisfies the intent of these comments.

Respectfully submitted,

Michael J. Bradley

ON BEHALF OF
VISTA TELEPHONE COMPANY OF MINNESOTA

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RECEIVED
MAR 11 1992
MINNESOTA PUBLIC
UTILITY COMMISSION

HAND DELIVERED

March 11 , 1992

Richard R. Lancaster
Executive Secretary
Minnesota Public Utilities Commission
780 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

Re: Minnesota Docket No. U-999/R-86-147

Dear Mr. Lancaster:

Enclosed for filing please find the original and thirteen (13) copies of the Comments of AT&T in this case.

Very truly yours,

Larry Salustro

Larry Salustro

LS/plj

Enclosures

cc: Carol Casebolt

AFFIDAVIT OF SERVICE

In the Matter of Proposed Rules Governing Practice and Procedure

MPUC Docket No. U-999/R-86-147

State of Minnesota)
) ss
County of Ramsey)

Laurie J. Dimond, being first sworn on oath, deposes and states that on the Eleventh day of March, 1992, at the City of St. Paul, County of Ramsey, State of Minnesota, hand carried a copy of the Comments of AT&T in the above referenced docket to the parties listed below:

Richard R. Lancaster
Executive Secretary
Minnesota Public Utilities Commission
780 American Center Building
150 E. Kellogg Boulevard
St. Paul, MN 55101

Carol Casebolt
Attorney
Minnesota Public Utilities Commission
780 American Center Building
150 E. Kellogg Boulevard
St. Paul, MN 55101

Laurie J. Dimond

Subscribed and sworn before me on
this Eleventh day of March, 1992.

Notary Public

A. RUKAVINA FLEMING
NOTARY PUBLIC—MINNESOTA
HENNEPIN COUNTY
My Commission Expires Oct. 3, 1994

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner

Proposed Rules Governing
Practice and Procedure

MPUC Docket No. U-999/R-86-147

COMMENTS OF AT&T

AT&T Communications of the Midwest, Inc. ("AT&T") submits these comments in response to the Commission's solicitation of public comment on its proposed rules governing practice and procedure, Minn. Rules, Parts 7829.0100 through 7829.3200. AT&T's comments are directed primarily to the provisions concerning miscellaneous tariff and price list filings, Minn. Rule 7829.1300, although other matters are discussed also.

MINN. RULE 7829.1300

All of AT&T's Minnesota services are subject to emerging competition under Minn. Stat. § 237.59.* Emerging competitive services are recognized by Minnesota law as competitive services, Minn. Stat. § 237.57, subd. 2. The statutory rate change and price list filing requirements for emerging competitive services are

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* AT&T's operator services were recently found to be emerging competitive by the Commission in Docket No. P-999/CI-88-917.

accelerated compared to those applicable to noncompetitive services. Through these procedures, the Legislature has recognized the important interest in permitting telecommunications providers to adjust quickly to changing market conditions, provide new services without delays, and continuously modify existing services to meet customer preferences. These procedures also prevent undue administrative delay and shorten the time between public announcement (though tariff filings) of service modifications and new service offerings and the actual offering of service to the public. These short timeframes reward innovation and minimize the opportunity for competitors to use the regulatory process to delay a competitor's service offering while adjusting its own terms and conditions of service.

The rule proposed in Minn. Rule 7829.1300 must be measured against the statutory preference for minimal delay and expedited service and rate change implementation. Against that standard, the possibility exists that the proposal would result in more regulation rather than less and more delay in adjusting emerging competitive services to changing market conditions. Therefore, these provisions should be reviewed by the Commission, clarified if necessary, and modified if deemed inconsistent with the overall statutory scheme for emerging competitive services.

Subpart 2 - Service

A major complication introduced into the tariff process is the "general service list" notification procedure applicable to services subject to competition. Under the existing procedure, as AT&T understands it, AT&T files its rate change proposals with the Commission, the Department of Public Service ("DPS"), and the Office of

Attorney General. Filings are noticed weekly in the Minnesota Public Utilities Commission's weekly calendar; through this publication potentially interested persons learn of the filing and have the opportunity to pursue the matter further through the DPS or AT&T directly. The process is informative and effective and does not delay matters.

Under the "general service list" proposal, however, AT&T would be required to provide notice to a virtually unlimited number of individuals and entities, including competitors, transmitting the filing itself with whatever detailed support is required by Commission rules. For carriers such as AT&T, whose services are subject to competition, a general mailing of this type is unnecessary and inappropriate. This requirement should be deleted by the Commission. Alternatively, the requirement should be limited to noncompetitive services, thereby providing this type of notice to customers who have no alternative but to purchase the service from the single provider requesting the change.

Subparts 3(B); 4(B) - Utility Attorney

These subparts require identification of counsel, if any, in addition to "the utility employee responsible for the filing." The attorney requirement should be deleted, and the utility should be permitted to identify a single point of contact for all questions. If legal questions arise, the representative will direct the inquiry in an appropriate and responsive manner, including referral to the utility's counsel, if necessary.

Subpart 5 - Rejection of Filing

This rule pertaining to tariff rejections should be clarified to specify the grounds for the action, and the particular consequences for services subject to emerging competition.

This section appears to be directed only to "formal" requirements, such as those specified in 7829.1300 itself ("... considered accepted as to form"). However, the phrase "substantially out of compliance with this chapter or applicable statutory requirements" leaves open the possibility that a review of the merits of the filing could lead to "rejection". If this subpart envisions only a review as to form, then the rule should be clarified accordingly.

Separately, special provision should be made in the event that the only reason for the rejection is improper designation of the filing as a new service rather than a service modification. In that case, the effective date should be automatically corrected (30 days from filing instead of 10), and the company should not be required to refile, thereby commencing a new review period prior to being effective.

Subpart 6 - Initial Comments

The length of the comment period appears reversed for competitive versus noncompetitive services. The miscellaneous tariff and price list filings should have a shorter time period than the noncompetitive filings. These comment periods should be revised so that shorter time periods run for the more competitive service filings, and longer periods are available for comment on noncompetitive services.

ADDITIONAL RECOMMENDATIONS

MINN. RULE 7829.0400. This rule appears to require Executive Secretary approval if documents are "delivered in person" rather than received in the Commission's office by mail. Receipt by in-person delivery should be considered the same as receipt by mail and no special permission should be required from the Executive Secretary.

MINN. RULE 7829.0600 - SERVICE LIST.

See comments to Minn. Rule 7829.1300, subp. 2.

Providers of emerging competitive services should not be required to maintain service lists based on a person's (including a competitor's) general request to receive copies of all filings. Further, emerging competitive service providers should not be required to list persons intervening in the last general rate case if they are no longer regulated on a rate-case basis. Therefore, this requirement should be deleted from services subject to emerging competition.

In the alternative, if the procedure is retained, the list should include only intervenors on the official service list for the last filing of the same type. Therefore, the rule should be revised to read "Notwithstanding the above, the service list for services subject to competition need include only the official service list for the company's last filing of the same type."

MINN. RULE 7829.0800, SUBPART 2. The rule as drafted leaves open the possibility that a customer, including AT&T as a customer of access services, would be denied intervention because the customer does not have "an interest peculiar to that person, as distinguished from an interest common to the public or other ratepayers in general." For customers of access services, intervention should be permitted if the interest asserted is one not adequately represented by the other parties to the proceeding, even if "ratepayers in general" are represented.

MINN. RULE 7829.1000. The initial paragraph of this rule, line 4, directs that the matter will be referred to a contested case proceeding if it "involves contested material facts." This standard is overbroad and would lead to unnecessary contested case proceedings. The Commission should determine that a fact is not merely "material" but "cannot be adequately resolved without a contested hearing process." Thus, the Commission could determine that an expedited proceeding would be in the public interest even if a contested material fact were involved.

MINN. RULES 7829.1400, SUBPART 6; 7829.1900, SUBPART 9. In both places, extensions for comments are available to the Department of Public Service alone under the circumstances set out in those rules. The rules should be revised to clarify that any party may request an additional thirty day time period in the circumstances set out by those rules, and that the Commission may grant any such request. In any event, the Commission should require that the party requesting the extension give notice, that is reasonable under the circumstances, to all other commenting parties that the extension is being requested.

WHEREFORE, AT&T requests that the proposed rules be amended as recommended herein.

Respectfully submitted,

AT&T COMMUNICATIONS OF THE MIDWEST, INC.

By Its Attorney

Larry Salustro /B

Larry Salustro (95369)
AT&T
227 West Monroe Street
6th Floor
Chicago, Illinois 60606
(312) 230-2664

DATED: March 11, 1992

MAUN & SIMON

LAWRENCE J. HAYES*
JEROME B. SIMON
JOHN C. JOHANNESON
JAMES W. BREHL*
BRUCE G. ODLAUG
ALBERT A. WOODWARD
GARRETT E. MULROONEY*
WILLIAM J. HASSING*
JAMES A. GALLAGHER
CHARLES BANS
BARRY A. GERSICK
GEOFFREY P. JARPE*
RICHARD M. GAALSWYK
LARRY B. GUTHRIE
SETH M. COLTON

*ALSO ADMITTED IN WISCONSIN

REPLY TO:
St. Paul

SAINT PAUL OFFICE
2300 WORLD TRADE CENTER
30 EAST 7TH STREET
SAINT PAUL, MINNESOTA 55101-4904
TELEPHONE: 612-229-2900
TELECOPIER: 612-229-2800

MINNEAPOLIS OFFICE
2900 NORWEST CENTER
90 SOUTH SEVENTH STREET
MINNEAPOLIS, MINNESOTA 55402-4133
TELEPHONE: 612-338-1113
TELECOPIER: 612-338-2271

HAROLD LEVANDER, JR.
JOHN J. BOWDEN
TREVOR R. WALSTEN
GORDON J. APPLE*
STEVEN E. RAU
PHILIP T. COLTON
RUTH SILSETH MARCOTT
MARK R. GLEEMAN
LAURA J. DAVIS
JOHN D. NORQUIST
STEPHEN E. YOCH
JENNIFER A. LEW
AVIDA R. LAZO

RETIRED:
MERLYN C. GREEN

JOSEPH A. MAUN
1909-1991

March 11, 1992

VIA MESSENGER

Ms. Carol Casebolt, Staff Attorney
Minnesota Public Utilities Commission
780 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

Re: Permanent Rules Relating to Practice and Procedure
Document No. U-999/R-86-147

Dear Ms. Casebolt:

I represent the Minnesota Rural Electric Association and have reviewed the proposed permanent rules relating to practice and procedure before the Commission. The proposed rules are acceptable from my viewpoint except for the following exceptions.

Rule 7829.2000 and .2100 refer to electric service area complaints. Subpart 1 of Rule 7829.2000 requires that a complaint alleging a service area violation must include a copy of the official service area map of the area at issue. The purpose of including a copy of the service area map is obvious. My concern, based on extensive experience with such complaints, however, is whether there always exists an official service area map in a given case. The Commission's files should contain the official service area map, but that has not always been the case. In other instances utilities have used maps mutually agreed to in 1974, which maps are different from those on file with the Commission.

I certainly support the idea that there should be official service area maps for all utilities on file at the Commission. To the extent that this is not the case today, or to the extent that utilities have used mutually agreed maps different from the maps

that the Commission has, I believe this proposed rule should be changed. I would propose the following:

> A complaint alleging violation of an electric utility's assigned service area must include a map which the complainant reasonably believes to be a copy of the official service area map of an area at issue, with the area of the alleged violation clearly marked.

My second comment relates to the requirement in the proposed rules for electric service area complaints that pleadings must be served upon the Residential Utilities Division of the Office of the Attorney General. Service area disputes frequently arise over non-residential property. I have had experience with service area issues over Walmart and Target stores as well as commercial or industrial parks. In those instances I don't see any point in serving pleadings on the Office of the Attorney General. Service of the pleadings on the Department of Public Service as the proposed rules provide should be sufficient.

Thank you very much, and please call with any questions.

Yours very truly,

Harold LeVander, Jr.

Hap/kjp
cc: Mr. Lee Sundberg

3/11/92,HL,11477_1S

U S WEST Communications, Inc.
200 South 6th Street Room 1800
Minneapolis, Minnesota 55402
612 344-2844 (Bus)
612 344-4767 (Fax)

William M. Ojile, Jr.
Counsel

U S WEST COMMUNICATIONS

February 28, 1992

VIA FAX

Margie Hendriksen, Esq.
Minnesota Public Utilities Commission
780 American Center Building
160 East Kellogg Boulevard
St. Paul, MN 55101

Dennis Ahlers, Esq.
Special Assistant Attorney General
1100 Bremer
7th Place and Minnesota Street
St. Paul, MN 55101

Amy Kvalseth, Esq.
Special Assistant Attorney General
1100 Bremer
7th Place and Minnesota Street
St. Paul, MN 55101

Re: Miscellaneous Tariff Filing Procedures

Dear Margie, Dennis and Amy:

Arnie Albrecht and I appreciated the opportunity to meet with you and your clients last week to discuss USWC's concerns regarding procedures for miscellaneous tariff/price list filings. I hope you share my opinion that our discussion was constructive.

As promised, the following is USWC's proposal on how the proposed Rules of Practice and Procedure could be amended to address some of the issues we raised at the February 19 meeting. Only two changes would need to be made to the proposed Rules:

1. Proposed Rule 7829.1300, subp. 6 would be changed to require initial comments on filings subject to a statutory deadline within 20 days. Proposed Rule 7829.1400, subp. 1 requires a party to make a procedural recommendation, including whether a contested case is required, in the party's initial comments.

2. The following would be added as an additional subpart to proposed Rule 7829.1400:

   Upon receipt of initial comments requesting a contested case proceeding on a miscellaneous tariff filing or price list filing, the Commission shall immediately set

MAR-02-'92 MON 07:33M ID:USWC MPLS REGULATORY FAX NO:612-344-7969 #477 P02

the matter on for hearing on a date after the time period for reply comments has run. If the Commission finds a contested case proceeding is required, the matter shall be referred to the Office of Administrative Hearings pursuant to Rule 7829.1000, and the utility shall file its direct testimony in question and answer form within 20 days of the Commission's Notice and Order for Hearing.

The USWC proposal addresses the Commission Staff's concern about advancing cases subject to statutory deadlines, while eliminating the need for USWC to guess which miscellaneous filings would require Q & A testimony. Under the USWC proposal, USWC would file its miscellaneous tariff/price list filings in descriptive narrative form, and it would only file Q & A testimony if the Commission orders a contested case. The timeframes provided in the USWC proposal should allow the case to move from the Commission to the ALJ in ample time for the case to be concluded within any statutory deadline.

I would appreciate your input on the USWC proposal as soon as possible. Time is of the essence since a hearing must be requested and comments filed on the proposed rules by March 11. Thank you for your consideration of this proposal.

Sincerely,

William M. O'File, Jr.

cc: Arnie Albrecht

[1] The proposed rules also reduce the time for exceptions and replies to exceptions when a case is under a statutory deadline. Proposed Rule 7829.2700, subp. 1 reduces the time period for exceptions from 20 to 15 days when a case is under a statutory deadline. Proposed Rule 7829.2700, subp. 2 does not allow replies to exceptions when a case is under a statutory deadline. While USWC opposes Proposed Rule 7829.2700, subp. 2, and believes replies to exceptions should be allowed in all cases, the current 30 day period for exceptions and replies to exceptions will be substantially reduced by the proposed rules if a case is under a statutory deadline.

MAR-02-'92 MON 07:33M ID:USWC MPLS REGULATORY FAX NO:612-344-7969 #477 P03

U S WEST Communications, Inc.
200 South 5th Street Room 1800
Minneapolis, Minnesota 55402
612 344-2844 (Bus)
612 344-4767 (Fax)

William M. Ojile, Jr.
Counsel

U S WEST COMMUNICATIONS

March 11, 1992

Mr. Richard Lancaster
Executive Secretary
Minnesota Public Utilities Commission
780 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

Re: In the Matter of a Proposal to Adopt New Rules of Practice and Procedure
Docket No. U-999/R-86-147

Dear Mr. Lancaster:

Enclosed and filed with the Commission is the Request for Hearing and Comments of U S WEST Communications, Inc. in the above-referenced matter.

Sincerely,

William M. Ojile, Jr.

Enclosure

cc: Dennis Ahlers
Richard Johnson
Gary Cunningham

STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner

In the Matter of a Proposal to Adopt New Rules of Practice and Procedure

DOCKET NO. U-999/R-86-147

REQUEST FOR HEARING AND COMMENTS OF U S WEST COMMUNICATIONS, INC.

REQUEST FOR HEARING

Pursuant to Minn. Stat. § 14.25, U S WEST Communications, Inc. ("USWC") requests a hearing on the proposed Rules of Practice and Procedure ("proposed rules"). USWC will withdraw its Request for Hearing if the Commission adopts the additions proposed by USWC in advance of the March 25 Hearing.

COMMENTS

USWC commends the Commission staff and the advisory panel participants for developing proposed rules which are fair and provide an increased level of certainty regarding practice and procedure before the Commission. USWC proposes two additions to the proposed rules that are consistant with the intent of promoting certainty and efficiancy in matters before the Commission.

Proposed Rule 7829.1400, subp. 7. USWC proposes the following addition be made to proposed Rule 7829.1400:

> **Subp. 7. Contested Case Ordered.** Upon receipt of initial comments requesting a contested case proceeding on a miscellaneous tariff filing or price list filing, the Commission shall schedule a hearing to determine whether a contested case proceeding is required as soon as practicable after the expiration of the time period for reply comments. If the Commission finds that a

> contested case proceeding is required, the utility shall file its direct testimony in question and answer form within 20 days of the Commission's Notice and Order for Hearing.

Proposed Rules 7829.1300 and 7829.1400 generally prescribe the procedures applicable to miscellaneous tariff filings. Minn. Stat. § 237.63 governs miscellaneous tariff filings by telephone companies. Recently, procedural disputes have arisen in several dockets involving miscellaneous tariff filings for rate increases under Minn. Stat. § 237.63. That statute provides:

> A tariff change not covered by subd. 1 to 4b and not requiring a review of a telephone company's gross revenues must be reviewed in accordance with § 237.075, subd. 1 and 2, except that the Commission may order the company to provide whatever notice to potentially effected customers that the Commission considers appropriate.

Minn. Stat. § 237.63, subd. 4(c). The procedural disputes have concerned the portion of Minn. Stat. § 237.075, subd. 1, which provides in part:

> The [telephone company rate change] notice shall include statements of facts, expert opinions, substantiating documents, and exhibits, supporting the change requested, and state the change proposed to be made in the rates then in force at the time when the modified rates will go into effect.

Minn. Stat. 237.075, subd. 1. Specifically, the issue is in what form must "expert opinions" supporting a miscellaneous tariff change filing be provided.

The recently adopted filing rules attempted to resolve this issue by defining "expert opinion." The rule provides in part:

> The written statements, opinions and explanations must be in either a question-and-answer format or a descriptive narrative, and must identify the

> preparer or person under whose supervision they were prepared.

Minn. Rule Part 7810.8710(b). Since the filing rules are directed at telephone companies, USWC believes that it has the option to decided whether expert opinions should be filed in either a question and answer or a narrative format. However, some parties have argued to the Commission that descriptive narratives are inappropriate under some subjective circumstances.

USWC traditionally files a descriptive narrative with its miscellaneous tariff filings. It does not provide expert opinions in question and answer form in support of a miscellaneous tariff filing until the matter has been referred to the Office of Administrative Hearings for a contested case proceeding. The filing rules makes the filing of expert opinions in question and answer format optional. However, USWC recently had a tariff filing supported by a descriptive narrative rejected by the Commission because USWC did not provide its expert opinions in question and answer form.[1] Thus, USWC is put in the position of having to guess when expert opinions in a narrative form will be sufficient or when expert opinions in a question and answer format will be required.

A telephone company making a miscellaneous tariff filing under Minn. Stat. § 237.63 should not have uncertainty regarding what constitutes a complete filing. USWC's proposed addition to

---

[1] Commission deliberation on the procedural recommendations in Docket No. P-421/EM-91-1002, February 11, 1992.

7829.1400 would provide procedural certainty for miscellaneous tariff filings under Minn. Stat. 237.63.

This addition to the proposed rules should balance the concerns of both USWC and the Commission. USWC and other utilities will have certainty with respect to what must be filed with a miscellaneous tariff change filing, eliminating the need to predict when expert opinion in question and answer form must be filed. USWC's proposed addition will also stream-line Commission proceedings by eliminating needless controversy over the form of filings and establishing procedures which will insure resolution of miscellaneous tariff filings within statutory deadlines.

The USWC addition to the proposed rules is not a substantial change. The OAH Rules define a substantial change as:

> In determining whether a proposed final rule or rule as adopted is substantially different, the Administrative Law Judge or the Chief Administrative Law Judge shall consider the extent to which it affects classes of persons who could not reasonably been expected to comment on the proposed rule at the rule making hearing, or goes to a new subject matter of significant substantive effect, or makes a major substantive change that was not raised by the original notice of hearing in such a way as to invite reaction at the hearing, or results in a rule fundamentally different in effect from that contained in the Notice of Hearing.

Minn. Rules Part 1400.1100, subp. 2. USWC's addition to proposed Rule 7829.1400 will not affect classes of persons who have not participated in the advisory panel meetings and other discussions surrounding the proposed rules. The proposed addition does not introduce a new subject matter of significant substantive effect.

The proposed rules define what is to be included in a miscellaneous tariff filing and provide for comments on procedural matters, including whether a contested case proceeding is required. With the USWC proposed addition, the proposed rules are not fundamentally different from the proposed rules contained in the Notice of Hearing. For these reasons, the USWC addition to proposed rule 7829.1400 is not a substantial change. The Commission should adopt USWC's proposal in order to create certainty and the orderly consideration of miscellaneous tariff filings under Minn. Stat. § 237.63.

Proposed Rule 7829.3000, subp. 7. This proposed rule deals with petitions for rehearing, amendment, vacation, reconsideration and reargument. A comparable rule is contained in the existing Commission Rules of Practice and Procedure. The existing rules also prohibit second petitions for rehearing, amendment, vacation, reconsideration or reargument. Minn. Rule, Part 7830.4300. This current rule provides necessary finality to Commission orders, and prevents parties from raising the same issues after a Commission decision on the issue. The proposed rules eliminate the current rule which prohibits second petitions for reconsideration.

USWC proposes the following addition to Proposed Rule 7829.3000:

> **Subp. 7. Second petition upon same grounds not entertained.** A second petition for rehearing, amendment, vacation, reconsideration or reargument by the same party or parties and upon the same grounds as a former petition which has been considered and denied, will not be entertained by

the Commission.

This is a nonsubstantial change because the USWC modification incorporates an existing rule into the section of the proposed rules dealing with the same topic.

CONCLUSION

USWC requests a hearing on its two proposed additions to the proposed Rules of Practice and Procedure. The USWC proposal will streamline the Commission's consideration of miscellaneous tariff filings and provide certainty to parties making filings.

Date: March 11, 1992

Respectfully submitted,

U S WEST Communications, Inc.

David G. Seykora (#122191)
William M. Ojile, Jr. (#174102)
200 South 5th Street, Room 1800
Minneapolis, Minnesota 55402
(612) 344-4967

U S WEST Communications
200 South 5th Street Room 3A75
Minneapolis, Minnesota 55402
612 344-5247

A. A. Albrecht
Director - Regulatory Affairs

U S WEST COMMUNICATIONS

March 11, 1992

RECEIVED
MAR 12 1992
MINNESOTA PUBLIC
UTILITIES COMMISSION

Richard Lancaster, Exec Secy
Public Utilities Commission
780 American Center Building
150 East Kellogg Boulevard
St Paul MN 55101

RE: Docket No. U-999/R-86-147

Dear Mr. Lancaster:

Attached are requests signed by 25 people for a public hearing regarding a proposal to adopt new rules of practice and procedure in the above Docket No. U-999/R-86-147. This request is in accordance with Minnesota Statutes 14.22 and 14.25.

Sincerely,

R. H. Lawson for

A. A. Albrecht
General Manager - Regulatory

Attachment

c: Ms. J. Peterson, Attorney General's Office
Ms. L. Chavez, Minnesota Department of Public Service
Mr. W. Flynn, Minnesota Business Utilities Users Council
All Parties of Record in Docket

SERVICE LIST FOR
RULES OF PRACTICE & PROCEDURE
U-999/R-86-147

CAROL CASEBOLT CHAIR
Staff Attorney
MN Public Utilities Commission
780 American Center Building
St Paul MN 55101

LINDA CHAVEZ
Department of Public Service
790 American Center Building
150 East Kellogg Boulevard
St Paul MN 55101

JUDY POFERL
Department of Public Service
790 American Center Building
150 East Kellogg Boulevard
St Paul MN 55101

ARNOLD A ALBRECHT
U S WEST Communications Inc
General Manager - Regulatory
200 South 5th Street - Suite 3A75
Minneapolis MN 55402

GENE SOMMERS
Law Department
Northern States Power Company
414 Nicollet Mall
Minneapolis MN 55401

KATHERINE E SASSEVILLE
Otter Tail Power Company
215 South Cascade Street
Fergus Falls MN 56537

RICHARD J JOHNSON
Moss & Barnett
4800 Norwest Center
90 South 7th Street
Minneapolis MN 55402-4119

DOUGLAS W PETERSON
Minnesota Power Company
30 West Superior Street
Duluth MN 55802

JOHN B VAN DE NORTH
Briggs & Morgan
2400 IDS Center
Minneapolis MN 55402

TRACY B BRIDGE
Directory of Rates & Tariffs
Minnegasco Inc
202 South 7th Street
Minneapolis MN 55402

MINNEASOTA PUBLIC INTEREST
RESEARCH GROUP
2512 Delaware Street SE
Minneapolis MN 55414

LAWRENCE MCDONOUGH
Legal Aid Society of Mpls
222 Grain Exchange Building
323 Fourth Avenue South
Minneapolis MN 55415

ROBERT S LEE
Mackall Crounse & Moore
1600 TCF Tower
121 South 8th Street
Minneapolis MN 55402

CARLA KJELLBERG
2512 Delaware Street SE
Minneapolis MN 55414-3432

WILLIAM FLYNN
Lindquist & Vennum
4200 IDS Center
80 South 8th Street
Minneapolis MN 55402

JOAN VOLZ
U S WEST Communications Inc
150 So 5th St - Floor 32
Minneapolis MN 55402

MIGGIE CRAMBLIT
Legal Department
Minnegasco Inc
201 So 7th Street
Minneapolis MN 55402

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION
8 Old Suncook Road
Concord NH 03301-5185

MR THOMAS S KOHLBRY JR
Sales & Marketing Director
MN Independent Interexchange Corp
10300 - 6th Avenue North
Plymouth MN 55441

HOWARD BELL
AT&T
400 No Robert St - Suite 950
St Paul MN 55101

DATE: March 10, 1992

TO: Minnesota Public Utilities Commission

RE: Docket No. U-999/R-86-147

I request the Minnesota Public Utilities Commission conduct a hearing in the Matter of a Proposal to Adopt New Rules of Practice and Procedure in the above Docket (No. U-999/R-86-147). This request is in accordance with Minnesota Statutes 14.22 and 14.25.

SIGNED: Kathleen Williams

ADDRESS: 3207 Bryant Ave No.
Mpls, Mn. 55412

1100R/49

DATE: March 10, 1992

TO: Minnesota Public Utilities Commission

RE: Docket No. U-999/R-86-147

I request the Minnesota Public Utilities Commission conduct a hearing in the Matter of a Proposal to Adopt New Rules of Practice and Procedure in the above Docket (No. U-999/R-86-147). This request is in accordance with Minnesota Statutes 14.22 and 14.25.

SIGNED: Bonnie Glen

ADDRESS: 6624 Waterman Ave.
Edina, MN 55343

1100R/49

DATE: March 10, 1992

TO: Minnesota Public Utilities Commission

RE: Docket No. U-999/R-86-147

I request the Minnesota Public Utilities Commission conduct a hearing in the Matter of a Proposal to Adopt New Rules of Practice and Procedure in the above Docket (No. U-999/R-86-147). This request is in accordance with Minnesota Statutes 14.22 and 14.25.

SIGNED: Thomas A. Jordan

ADDRESS: 7936 Lower Hamlet Court

Apple Valley

Mn., 55124

1100R/49

DATE: March 10, 1992

TO: Minnesota Public Utilities Commission

RE: Docket No. U-999/R-86-147

I request the Minnesota Public Utilities Commission conduct a hearing in the Matter of a Proposal to Adopt New Rules of Practice and Procedure in the above Docket (No. U-999/R-86-147). This request is in accordance with Minnesota Statutes 14.22 and 14.25.

SIGNED: Marilyn Dorrell

ADDRESS: 150 E Park Street
#219
White Bear Lake, MN 55110

DATE: March 10, 1992

TO: Minnesota Public Utilities Commission

RE: Docket No. U-999/R-86-147

I request the Minnesota Public Utilities Commission conduct a hearing in the Matter of a Proposal to Adopt New Rules of Practice and Procedure in the above Docket (No. U-999/R-86-147). This request is in accordance with Minnesota Statutes 14.22 and 14.25.

SIGNED: Beverly J. Nagel

ADDRESS: 6475 Riverview Terrace

Shakopee, MN 55432

DATE: March 10, 1992

TO: Minnesota Public Utilities Commission

RE: Docket No. U-999/R-86-147

I request the Minnesota Public Utilities Commission conduct a hearing in the Matter of a Proposal to Adopt New Rules of Practice and Procedure in the above Docket (No. U-999/R-86-147). This request is in accordance with Minnesota Statutes 14.22 and 14.25.

SIGNED: John H. O'Brien

ADDRESS: 1911 Eberly Court

St. Paul, Minn. 55119

1100R/49

DATE: March 10, 1992

TO: Minnesota Public Utilities Commission

RE: Docket No. U-999/R-86-147

I request the Minnesota Public Utilities Commission conduct a hearing in the Matter of a Proposal to Adopt New Rules of Practice and Procedure in the above Docket (No. U-999/R-86-147). This request is in accordance with Minnesota Statutes 14.22 and 14.25.

SIGNED: Hazel M. Newman

ADDRESS: 17920 Comstock Rd.
Wayzata, MN 55391

1100R/49

DATE: March 10, 1992

TO: Minnesota Public Utilities Commission

RE: Docket No. U-999/R-86-147

I request the Minnesota Public Utilities Commission conduct a hearing in the Matter of a Proposal to Adopt New Rules of Practice and Procedure in the above Docket (No. U-999/R-86-147). This request is in accordance with Minnesota Statutes 14.22 and 14.25.

SIGNED: Barbara J Dick

ADDRESS: 803 Newell Dr
Apple Valley, MN 55124

1100R/49

DATE: March 10, 1992

TO: Minnesota Public Utilities Commission

RE: Docket No. U-999/R-86-147

I request the Minnesota Public Utilities Commission conduct a hearing in the Matter of a Proposal to Adopt New Rules of Practice and Procedure in the above Docket (No. U-999/R-86-147). This request is in accordance with Minnesota Statutes 14.22 and 14.25.

SIGNED: Nancy J Kienz

ADDRESS: 1904 E 115TH ST

Burnsville, MN 55337

1100R/49

DATE: March 10, 1992

TO: Minnesota Public Utilities Commission

RE: Docket No. U-999/R-86-147

I request the Minnesota Public Utilities Commission conduct a hearing in the Matter of a Proposal to Adopt New Rules of Practice and Procedure in the above Docket (No. U-999/R-86-147). This request is in accordance with Minnesota Statutes 14.22 and 14.25.

SIGNED: Brian E. Mohnes

ADDRESS: 10370 Bunday Creek Terrace
Maple Grove, MN 55369

1100R/49

DATE: March 10, 1992

TO: Minnesota Public Utilities Commission

RE: Docket No. U-999/R-86-147

I request the Minnesota Public Utilities Commission conduct a hearing in the Matter of a Proposal to Adopt New Rules of Practice and Procedure in the above Docket (No. U-999/R-86-147). This request is in accordance with Minnesota Statutes 14.22 and 14.25.

SIGNED: Linda Wyn

ADDRESS: 1201 York Pkwy #1111

Inver Grove Hts MN

55403

DATE: March 10, 1992

TO: Minnesota Public Utilities Commission

RE: Docket No. U-999/R-86-147

I request the Minnesota Public Utilities Commission conduct a hearing in the Matter of a Proposal to Adopt New Rules of Practice and Procedure in the above Docket (No. U-999/R-86-147). This request is in accordance with Minnesota Statutes 14.22 and 14.25.

SIGNED: Kim Ogren

ADDRESS: 816 - 22nd Ave NE
Mpls, MN 55418

1100R/49

DATE: March 10, 1992

TO: Minnesota Public Utilities Commission

RE: Docket No. U-999/R-86-147

I request the Minnesota Public Utilities Commission conduct a hearing in the Matter of a Proposal to Adopt New Rules of Practice and Procedure in the above Docket (No. U-999/R-86-147). This request is in accordance with Minnesota Statutes 14.22 and 14.25.

SIGNED: Carol Richardson

ADDRESS: 3845-119th Ave NW #39
Coon Rapids, MN 55433

1100R/49

DATE: March 10, 1992

TO: Minnesota Public Utilities Commission

RE: Docket No. U-999/R-86-147

I request the Minnesota Public Utilities Commission conduct a hearing in the Matter of a Proposal to Adopt New Rules of Practice and Procedure in the above Docket (No. U-999/R-86-147). This request is in accordance with Minnesota Statutes 14.22 and 14.25.

SIGNED: Virginia Kraemer

ADDRESS: 2020 Nicollet Ave So - #117

Minneapolis MN 55404

1100R/49

DATE: March 10, 1992

TO: Minnesota Public Utilities Commission

RE: Docket No. U-999/R-86-147

I request the Minnesota Public Utilities Commission conduct a hearing in the Matter of a Proposal to Adopt New Rules of Practice and Procedure in the above Docket (No. U-999/R-86-147). This request is in accordance with Minnesota Statutes 14.22 and 14.25.

SIGNED: Mary J. Rose

ADDRESS: 1755 Stanbridge Ave
Roseville, Mn 55113

1100R/49

DATE: March 10, 1992

TO: Minnesota Public Utilities Commission

RE: Docket No. U-999/R-86-147

I request the Minnesota Public Utilities Commission conduct a hearing in the Matter of a Proposal to Adopt New Rules of Practice and Procedure in the above Docket (No. U-999/R-86-147). This request is in accordance with Minnesota Statutes 14.22 and 14.25.

SIGNED: Kathleen Faulds

ADDRESS: 4427 Newton Ave No.

Minneapolis, MN 55412

1100R/49

DATE: March 10, 1992

TO: Minnesota Public Utilities Commission

RE: Docket No. U-999/R-86-147

I request the Minnesota Public Utilities Commission conduct a hearing in the Matter of a Proposal to Adopt New Rules of Practice and Procedure in the above Docket (No. U-999/R-86-147). This request is in accordance with Minnesota Statutes 14.22 and 14.25.

SIGNED: Barbara Johnson

ADDRESS: 4421-16 Ave. So

Mpls Mn. 55407

1100R/49

DATE: March 10, 1992

TO: Minnesota Public Utilities Commission

RE: Docket No. U-999/R-86-147

I request the Minnesota Public Utilities Commission conduct a hearing in the Matter of a Proposal to Adopt New Rules of Practice and Procedure in the above Docket (No. U-999/R-86-147). This request is in accordance with Minnesota Statutes 14.22 and 14.25.

SIGNED: Deborah M. Davis

ADDRESS: 200 South Fifth Street
Room 1800
Mpls, MN

DATE: March 10, 1992

TO: Minnesota Public Utilities Commission

RE: Docket No. U-999/R-86-147

I request the Minnesota Public Utilities Commission conduct a hearing in the Matter of a Proposal to Adopt New Rules of Practice and Procedure in the above Docket (No. U-999/R-86-147). This request is in accordance with Minnesota Statutes 14.22 and 14.25.

SIGNED: Evalle R. McSwan

ADDRESS: 10533 Xavier St. N.W.
Coon Rapids, MN 55433

1100R/49

DATE: March 10, 1992

TO: Minnesota Public Utilities Commission

RE: Docket No. U-999/R-86-147

I request the Minnesota Public Utilities Commission conduct a hearing in the Matter of a Proposal to Adopt New Rules of Practice and Procedure in the above Docket (No. U-999/R-86-147). This request is in accordance with Minnesota Statutes 14.22 and 14.25.

SIGNED: _____

ADDRESS: _____

_____

_____

DATE: March 10, 1992

TO: Minnesota Public Utilities Commission

RE: Docket No. U-999/R-86-147

I request the Minnesota Public Utilities Commission conduct a hearing in the Matter of a Proposal to Adopt New Rules of Practice and Procedure in the above Docket (No. U-999/R-86-147). This request is in accordance with Minnesota Statutes 14.22 and 14.25.

SIGNED: Linda C Richards

ADDRESS: 4707 175 Av NW
Andover Mn 55304

1100R/49

DATE: March 10, 1992

TO: Minnesota Public Utilities Commission

RE: Docket No. U-999/R-86-147

I request the Minnesota Public Utilities Commission conduct a hearing in the Matter of a Proposal to Adopt New Rules of Practice and Procedure in the above Docket (No. U-999/R-86-147). This request is in accordance with Minnesota Statutes 14.22 and 14.25.

SIGNED: Mary Ann Smeed

ADDRESS: 4603 3rd St. NE.
Minneapolis Mn 55421

1100R/49

DATE: March 10, 1992

TO: Minnesota Public Utilities Commission

RE: Docket No. U-999/R-86-147

I request the Minnesota Public Utilities Commission conduct a hearing in the Matter of a Proposal to Adopt New Rules of Practice and Procedure in the above Docket (No. U-999/R-86-147). This request is in accordance with Minnesota Statutes 14.22 and 14.25.

SIGNED: R. A. Larson

ADDRESS: 6044 Olinger Circle
Edina, Minn. 55436

1100R/49

DATE: March 10, 1992

TO: Minnesota Public Utilities Commission

RE: Docket No. U-999/R-86-147

I request the Minnesota Public Utilities Commission conduct a hearing in the Matter of a Proposal to Adopt New Rules of Practice and Procedure in the above Docket (No. U-999/R-86-147). This request is in accordance with Minnesota Statutes 14.22 and 14.25.

SIGNED: Cheryl J. Yellow Bird

ADDRESS: 2704 East 37th Street
Minneapolis, Minnesota 55406

1100R/49

DATE: March 10, 1992

TO: Minnesota Public Utilities Commission

RE: Docket No. U-999/R-86-147

I request the Minnesota Public Utilities Commission conduct a hearing in the Matter of a Proposal to Adopt New Rules of Practice and Procedure in the above Docket (No. U-999/R-86-147). This request is in accordance with Minnesota Statutes 14.22 and 14.25.

SIGNED: Mary H. Gladmark

ADDRESS: 4316 Mitchell Drive
Eagan, MN 55122

1100R/49

U S WEST Communications, Inc.
200 South 5th Street Room 1800
Minneapolis, Minnesota 55402
612 344-2844 (Bus)
612 344-4767 (Fax)

William M. Ojile, Jr.
Counsel

(36)

Comm'k
Carol
Margie
Dan

USWEST COMMUNICATIONS

March 13, 1992



Mr. Richard Lancaster
Executive Secretary
Minnesota Public Utilities Commission
780 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

Re: In the Matter of a Proposal to Adopt New Rules of Practice and Procedure
Docket No. U-999/R-86-147

Dear Mr. Lancaster:

Enclosed is the original and thirteen copies of the Withdrawal of Request For Hearing of U S WEST Communications, Inc.

Sincerely,

William M. Ojile, Jr.

Enclosure

cc: Dennis Ahlers
Carol Casebolt
Gary Cunningham
Richard Johnson

STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner

In the Matter of a Proposal to Adopt New Rules of Practice and Procedure

DOCKET NO. U-999/R-86-147

WITHDRAWAL OF REQUEST FOR HEARING OF U S WEST COMMUNICATIONS, INC.

U S WEST Communications, Inc. hereby withdraws its Request for Hearing in the above-captioned matter dated March 11, 1992.

Date: March 13, 1992

Respectfully submitted,

U S WEST Communications, Inc.

David G. Seykora (#122191)
William M. Ojile, Jr. (#174102)
200 South 5th Street, Room 1800
Minneapolis, Minnesota 55402
(612) 344-4967

OFFICE OF THE CITY ATTORNEY
JANE A. MC PEAK, CITY ATTORNEY

CITY OF SAINT PAUL
James Scheibel, Mayor

800 Landmark Towers
345 St. Peter Street
Saint Paul, Minnesota 55102

Telephone
Civil: 298-5121
Criminal: 298-4271
Facsimile: 612-298-5619

RECEIVED
FEB 12 1992
MINNESOTA PUBLIC UTILITIES COMMISSION

February 11, 1992

Bruce D. Campbell
Office of Administrative Hearings
500 Flour Exchange Building
310 Fourth Avenue So.
Minneapolis, MN 55415

Re: Proposed Rules Governing Practice and Procedure, Minn. Rules, Parts 7829.0100 through 7829.3200
Docket No. U-999/R-86-147

Dear Judge Campbell:

In reviewing the proposed rules I thought one additional requirement would be wise. Rule 7829.2400 Subp. 3 requires filing notice of proposed rate changes with public and governing bodies. A similar requirement should be inserted in Rule 7829.1300, Miscellaneous Tariff and Price List Filings; 7829.2000 Electric Service Area Complaint; 7829.2200 Telephone Incentive Plan Filing; 7829.2300 Classification Petition; and 7829.2500, Certificate of Need Filing.
My involvement in utility issues on the municipal level has exposed me to a number of professionals who have an interest in the field. The concerns of urban planners, public works, water and sewer utilities, and cable television operators should be expressed in these cases. Requiring notification to municipal governments by a utility seeking to operate within that municipality is not overly burdensome and should be required.

Thank you for your consideration in this matter.

Please note the change in address as noted above for the service list in this matter.

Sincerely

Thomas J. Weyandt

Thomas J. Weyandt
Assistant City Attorney

CC: Carol Casebolt

(29d)

MAUN & SIMON

LAWRENCE J. HAYES*
JEROME B. SIMON
JOHN C. JOHANNESON
JAMES W. BREHL*
BRUCE G. ODLAUG
ALBERT A. WOODWARD
GARRETT E. MULROONEY*
WILLIAM J. HASSING*
JAMES A. GALLAGHER
CHARLES BANS
BARRY A. GERSICK
GEOFFREY P. JARPE*
RICHARD M. GAALSWYK
LARRY B. GUTHRIE
SETH M. COLTON

*ALSO ADMITTED IN WISCONSIN

REPLY TO:
St. Paul

SAINT PAUL OFFICE
2300 WORLD TRADE CENTER
30 EAST 7TH STREET
SAINT PAUL, MINNESOTA 55101-4904
TELEPHONE: 612-229-2900
TELECOPIER: 612-229-2800

MINNEAPOLIS OFFICE
2900 NORWEST CENTER
90 SOUTH SEVENTH STREET
MINNEAPOLIS, MINNESOTA 55402-4133
TELEPHONE: 612-338-1113
TELECOPIER: 612-338-2271

HAROLD LEVANDER, JR.
JOHN J. BOWDEN
TREVOR R. WALSTEN
GORDON J. APPLE*
STEVEN E. RAU
PHILIP T. COLTON
RUTH SILSETH MARCOTT
MARK R. GLEEMAN
LAURA J. DAVIS
JOHN D. NOROUIST
STEPHEN E. YOCH
JENNIFER A. LEW
AVIDA R. LAZO

RETIRED:
MERLYN C. GREEN

JOSEPH A. MAUN
1909-1991

March 11, 1992

VIA MESSENGER

Ms. Carol Casebolt, Staff Attorney
Minnesota Public Utilities Commission
780 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

Re: Permanent Rules Relating to Practice and Procedure
Document No. U-999/R-86-147

Dear Ms. Casebolt:

I represent the Minnesota Rural Electric Association and have reviewed the proposed permanent rules relating to practice and procedure before the Commission. The proposed rules are acceptable from my viewpoint except for the following exceptions.

Rule 7829.2000 and .2100 refer to electric service area complaints. Subpart 1 of Rule 7829.2000 requires that a complaint alleging a service area violation must include a copy of the official service area map of the area at issue. The purpose of including a copy of the service area map is obvious. My concern, based on extensive experience with such complaints, however, is whether there always exists an official service area map in a given case. The Commission's files should contain the official service area map, but that has not always been the case. In other instances utilities have used maps mutually agreed to in 1974, which maps are different from those on file with the Commission.

I certainly support the idea that there should be official service area maps for all utilities on file at the Commission. To the extent that this is not the case today, or to the extent that utilities have used mutually agreed maps different from the maps

that the Commission has, I believe this proposed rule should be changed. I would propose the following:

> A complaint alleging violation of an electric utility's assigned service area must include a map which the complainant reasonably believes to be a copy of the official service area map of an area at issue, with the area of the alleged violation clearly marked.

My second comment relates to the requirement in the proposed rules for electric service area complaints that pleadings must be served upon the Residential Utilities Division of the Office of the Attorney General. Service area disputes frequently arise over non-residential property. I have had experience with service area issues over Walmart and Target stores as well as commercial or industrial parks. In those instances I don't see any point in serving pleadings on the Office of the Attorney General. Service of the pleadings on the Department of Public Service as the proposed rules provide should be sufficient.

Thank you very much, and please call with any questions.

Yours very truly,

Harold LeVander, Jr.

Hap/kjp
cc: Mr. Lee Sundberg

3/11/92,HL,11477_1S

(296)

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

780 American Center Building
150 E. Kellogg Boulevard
St. Paul, Minnesota 55101

Don Storm	Chair
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner
Darrell L. Peterson	Commissioner

In the Matter of Proposed Rules Governing Practice and Procedure, Minn. Rules, parts 7829.0100 through 7829.3200

Docket No. U-999/R-86-147

COMMENTS OF GTE NORTH, INC. AND GTE MINNESOTA

GTE North, Inc. and GTE Minnesota (herein collectively referred to as "GTE") hereby submit the following comments concerning the Proposed Rules Governing Practice and Procedure. As a general matter, GTE supports the Proposed Rules and suggests the following three revisions:

I. PROPOSED RULE 7829.0400, SUBP. 1, SHOULD BE CLARIFIED TO PROVIDE THAT SPECIFIC DOCUMENTS MAY BE FILED BY FACSIMILE TRANSMISSION OR IN PERSON WITH THE CONSENT OF THE EXECUTIVE SECRETARY, NOT SIMPLY AT HIS OR HER DIRECTION.

In order to clarify that a party may obtain the consent of the Executive Secretary as opposed to simply waiting for the Executive Secretary to affirmatively direct or initiate when documents may be filed by facsimile transmission or filed when mailed or delivered in person, the following revision is proposed: amend Proposed Rule 7829.0400, Subp. 1 (page 4, line 23) by striking "if the executive secretary so directs" and inserting "with the agreement of the executive secretary."

II. PROPOSED RULE 7829.1300, SUBP. 5, SHOULD BE CLARIFIED CONCERNING A FILING'S ACCEPTANCE AS TO FORM TO CONFORM THE LANGUAGE TO OTHER CORRESPONDING PROVISIONS IN THE PROPOSED RULE.

In order to conform the language contained in Proposed Rule 7829.1300, Subp. 5, concerning a filing's acceptance as to form with similar language in corresponding provisions in the proposed rules, the following revision is proposed: amend Proposed Rule 7829.1300, Subp. 5 (page 11, lines 26 and 27) by striking "must be considered accepted as to form" and inserting "is considered accepted as in substantial compliance with applicable filing requirements."

III. PROPOSED RULE 7829.2800 SHOULD BE AMENDED TO EXCLUDE SATURDAYS, SUNDAYS AND LEGAL HOLIDAYS FROM THE TEN DAY NOTICE REQUIREMENT.

In order to receive adequate notice and to provide the time necessary to formulate adequate responses to matters that come before the Commission, GTE urges the Commission to exclude Saturdays, Sundays and legal holidays from the calculation of the ten day notice period under Proposed Rule 7829.2800. This exclusion will not unduly delay matters and it is fair, particularly considering that the ten day notice period may be reduced from time to time by unavoidable delay in the receipt of actual notice due to the method of notification. Accordingly, GTE submits that Proposed Rule 7829.2800 be revised on page 25, line 6, after the word "days" by adding the words "excluding Saturdays, Sundays and legal holidays."

CONCLUSION

The rules, as drafted, should be amended to make the above-requested changes.

Dated: March 10, 1992

Respectfully submitted,

GTE NORTH, INC.
GTE MINNESOTA

By William D. Kolb

William D. Kolb
1000 GTE Drive
P. O. Box 307
Wentzville, MO 63385
Telephone: (314) 639-3607

Attorney for GTE North, Inc.
and GTE Minnesota

AFFIDAVIT OF SERVICE

STATE OF MISSOURI)
) ss.
COUNTY OF ST. CHARLES)

In Re: In the Matter of
Proposed Rules Governing
Practice and Procedure,
Minn. Rules, parts 7829.0100
through 7829.3200

Docket No. U-999/R-86-147

William D. Kolb, being first duly sworn on oath, deposes and states that on the 10th day of March, 1992, a copy of the Comments of GTE North, Inc. and GTE Minnesota relating to the above-referenced matter, along with this Affidavit of Service, was mailed by United States first class mail, postage prepaid thereon, to the parties listed on the attached distribution list.

William D. Kolb
William D. Kolb

Subscribed and sworn to before me
this 10th day of March, 1992.

Julia Mary Curley
Notary Public

JULIA MARY CURLEY
NOTARY PUBLIC STATE OF MISSOURI
ST LOUIS COUNTY
MY COMMISSION EXP MAY 24,1993