

Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: November 19, 2015..... *Agenda Item # **1**

Company: **All Utilities**

Docket No. **U-999/R-13-24**

In the Matter of Possible Amendments to Rules Governing Utility Proceeding, Practice, and Procedure, Minnesota Rules Chapter 7829, Excluding Part 7829.2550, Which is Subject to a Separate Pending Rulemaking

Issue(s): Should the Commission adopt the attached rule amendments?

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I. Relevant Documents

Proposed Rules published in the *State Register* June 12, 2015
Statement of Need and Reasonableness June 12, 2015
Comments, Minnesota Department of Commerce..... July 15, 2015
Comments, Minnesota Cable Communications Association..... July 17, 2015
Comments, Minnesota Department of Natural Resources..... July 17, 2015

The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

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II. Statement of the Issues

Should the Commission adopt the attached rule amendments?

III. Background

The Commission's current rules of Practice, Proceeding, and Procedure, Minn. R. ch. 7829, were adopted in 1994, with few modifications since.¹

The Commission directed staff to open a rulemaking to consider amending the Commission's rules of practice and procedure. The rulemaking is intended to eliminate outdated rule language, to address statutory changes, to clarify existing Commission procedures, and to establish procedural requirements that permit the Commission to more effectively perform its quasi-legislative and quasi-judicial functions.

The proposed rule has been through three public comment periods: following a February 19, 2013, Request for Comments; following an August 7, 2013, Notice of Comment Period; and following the June 12, 2015, publication of the Notice of Intent to Adopt. Each time, the draft language has been refined and revised in light of public comments and internal feedback. On June 12, 2015, the Commission issued a Statement of Need and Reasonableness for the proposed rules and published the proposed rules in the State Register.

The rules draft² reflects the proposed rules with adjustments made following input of Commissioners and Commission staff, the Revisor's office, and in light of the comments discussed below. The revisions are summarized in section IV.D.

At this stage in the proceeding, the Commission may adopt rule amendments that do not result in a substantially different rule than was published in the State Register on June 12, 2015. Or, if the Commission wishes to make substantial changes, it must do so based on comments or evidence in the record, and must undertake additional process to ensure adequate public notice and opportunity to comment.³ Prior to the rule going into effect, the rulemaking record will be reviewed by the Office of Administrative Hearings to determine if adoption is procedurally and substantively consistent with legal requirements, including the Administrative Procedure Act. Adopted rules are also subject to an opportunity for a gubernatorial veto.

¹ Rule parts concerning notice plans for transmission lines and pipelines were later added. One of those rule parts, Minn. R. 7829.2550, is currently the subject of another pending rulemaking and will likely be relocated. *See In the Matter of Possible Amendments to Rules Governing Certificates of Need and Site and Route Permits for Large Electric Power Plants and High-Voltage Transmission Lines; and to Rules Governing Notice Plan Requirements for High-Voltage Transmission Lines*, Docket. No. E,ET,IP-999/R-12-1246.

² The draft will be electronically filed as soon as it is received from the Revisor.

³ Minn. Stat. § 14.05, subd. 2, § 14.15, subd. 3, and Minn. R. 1400.2110.

IV. Parties' Comments

A. The Minnesota Department of Commerce

The Minnesota Department of Commerce (the Department) initially recommended a change to proposed rule part 7829.0400, subp. 5a. The Department recommended that the rule be modified to state that electronic service would be complete "upon receipt of confirmation of acceptance." The Minnesota Cable Communications Association (MCCA) opposed the Department's initial suggestion, stating that the proposal could create ambiguity about whether a party has met a filing deadline, and that it would result in a substantially different rule.

Upon further consultation with Staff, the Department agreed its initially proposed language could be improved. It indicated that its underlying concern was "to ensure that the full amount of time for review/comment on that filing is available" in cases where a submission is not accepted by the Department because the submission was, in fact, unreadable. In those cases, the Department staff contacts the filer to tell them to resubmit.

In an effort to address this concern, Staff proposes the following alternative to the Department's initial recommendation:

Unless the executive secretary directs otherwise for specific documents, electronic service is complete upon receipt of confirmation of submission. If the electronic filing system administrator requires that a document be resubmitted, electronic service is complete only upon receipt of a subsequent confirmation of submission.

The Department indicated an alternative in this vein would address its concern. Staff has incorporated this language into the amended proposed rule draft.

B. The Minnesota Cable Communications Association

The MCCA commented that it generally supports the rule amendments, and recommended one change:

7829.1050 UNCONTESTED PROCEEDING SUBCOMMITTEE

Subpart 1. Delegation of uncontested proceedings.

As authorized by Minnesota Statutes, section 216A.03, subdivision 8, the commission may establish by order a subcommittee to act on uncontested proceedings. This subcommittee will act on behalf of the commission only when:

- a) commission staff determines that a proceeding involves no disputed or novel issues, and
- b) no party, participant, or commissioner has requested that the proceeding not be delegated to a subcommittee.

The commission will maintain on its website a list of proceedings delegated under this subpart, and will indicate the subcommittee's disposition of each proceeding. Electronic filing and service of an order reflecting disposition by the subcommittee constitutes receipt by parties, participants, and commissioners for purposes of Minn. Stat. § 216A.03, subd. 8(b).

The MCCA stated that it is concerned about the possibility for an order to be filed and not served, and that this change would eliminate the possibility that the distinction could adversely affect parties.

Staff agrees that making the rule hinge on *service* is consistent with the Commission's intent for the rule part, is needed and reasonable, and would not result in a substantially different rule. Accordingly, it has been incorporated into the amended proposed rule draft for Commission adoption as follows:

Service of an order reflecting disposition by the subcommittee constitutes receipt by parties, participants, and commissioners for purposes of Minn. Stat. § 216A.03, subd. 8(b).

C. The Minnesota Department of Natural Resources (DNR)

The DNR commented on Rule part 7829.0800, the part concerning petitions for intervention, and stated that neither commenter nor party status is "well-suited for agencies like the DNR to convey technical information and agency perspectives to the PUC." It recommended that the Commission consider a rule change to "create a specific status for state agencies other than the Department of Commerce" in order to better facilitate interagency coordination on permitting and other key considerations. The DNR indicated it would work with the Commission to identify a way to formalize interagency coordination in Commission proceedings.⁴

Staff has not changed the draft in response to the DNR comments. The DNR's recommendation would appear to require the input and coordination of multiple state agencies and other stakeholders and is not developed as rule language for deliberation. It would therefore likely substantially delay the adoption of the pending rule amendments that have already been subject to prolonged deliberation. It is also not clear to what extent Memoranda of Understanding with the relevant agencies are an appropriate method of addressing the recommendation rather than rulemaking.

At this point in the rulemaking process, modifying the proposed rule to create a new filing status could require the adoption of a "substantially different" rule. Adoption of a substantially different rule would require the Commission to undertake additional steps to ensure adequate

⁴ In comments filed after the close of the comment period, Legalectric, Inc., supported the DNR's recommendation.

public notice and opportunity to comment (essentially repeating several steps in the rulemaking).⁵

To a large degree this issue is also already the subject of closer consideration in another rulemaking proceeding.⁶ That rulemaking directly involves the kinds of cases that the DNR and other agencies typically offer their perspectives and technical advice. The DNR, the Minnesota Department of Transportation, the U.S. Fish and Wildlife Service, and the U.S. Army Corps of Engineers appear to be participating in or monitoring that rulemaking proceeding. Accordingly, that rulemaking would appear to be a better vehicle for addressing this issue.

D. Summary of Modifications From Proposed Rule

The following rule parts have been amended from the proposed rule:

Rule Part	Brief Description of Change
.0100	Subp. 11a: Replaced “ongoing proceeding” with “existing commission docket” to be more precise.
.0400	Subps. 1, 5, and 5a: Additional changes for consistency with electronic filing and to accommodate the concern raised by the Department.
.0410	Reorganized sentences for clarity.
.0430	This part now expressly establishes 10-day deadline to object to withdrawal of a filing, consistent with the Commission’s current practice.
.1050	Subp. 2: Modified as discussed above to address the concern raised by MCCA, and revised to say “may delegate <u>other</u> functions” for additional clarity.
	Subp. 3: Reorganized sentence for clarity and precision.
.1300	Replaced “[filing] utility” with “filing party” for consistency with changes elsewhere in this rule part.
.1400	Added “unless otherwise directed by the commission” for consistency with the Commission’s authority to establish deadlines.
.2700	Reorganized sentence for clarity.

⁵ Minn. Stat. § 14.05, subd. 2, § 14.15, subd. 3, and Minn. R. 1400.2110.

⁶ *In the Matter of Possible Amendments to Rules Governing Certificates of Need and Site and Route Permits for Large Electric Power Plants and High-Voltage Transmission Lines; and to Rules Governing Notice Plan Requirements for High-Voltage Transmission Lines*, Docket. No. E,ET,IP-999/R-12-1246.

V. Commission Options

- A. Approve the attached rule draft and authorize staff to take the necessary steps to continue the rulemaking process and finalize adoption of the rule. Delegate to Commissioner Lipschultz authority to make necessary, non-substantive edits to the rule that may be required after OAH's review pursuant to Minn. R. 1400.2310.
- B. Take other action as the Commission deems appropriate.

Staff recommends Option A.