

UTILITY REFORM NOW!

May 6, 2026

REMITTED BY eDOCKETS

Honorable Sasha Bergman
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place E, Suite 350
Saint Paul, MN 55101-2147

IN THE MATTER OF A POSSIBLE
RULEMAKING TO AMEND MINNESOTA
RULES, CHAPTERS 7849 AND 7850,
MPUC Docket No. E-999/R-26-172

Dear Madam Secretary:

Please accept the following rebuttal comments on the Petition of Carol Overland to initiate rulemaking.

In Utility Reform Now's (URN) view, after the Minnesota Legislature's repeal of Minn. R. 7850.4100 (2023) – which occurred in May of 2024, but became effective on July 1 of 2025¹ – Minnesotans would benefit from having a formal and accessible set of administrative rules regarding siting and routing permits.

As detailed below, pretending that the repeal of Minn. R. 7850.4100 never occurred, is neither appropriate nor lawful.

The much better approach, and one that accords with the legislative history, is that the Commission would initiate rulemaking to adopt new rules to supplant the rule that was repealed. The Commission should **GRANT** the Petition for Rulemaking.

Factual Background

More than 18 months after the legislature repealed Minn. R. 7850.4100, and six months after the repeal became effective, the Commission's Energy Infrastructure Permitting staff continued to apply and enforce the rule as though the repeal never occurred. On December 18, 2025, *In the Matter of the Applications of Xcel Energy for a Certificate of Need and Route Permit for the Minnesota Energy Connection Project*, Docket No. TL-22-132, Commission staff submitted their comments on appropriate terms for an amended routing permit relating to the project.² Xcel Energy had earlier requested an amendment to shift a short segment of the approved

¹ See 2004 Minn. Laws ch. 126, art. 7, §§ 15-16; 2024 Journal of the House, at 19820.

² Comments and Recommendations on an Amended Route Permit (eDocket No. [202512-226010-01](#)).

transmission line route in Redwood County.³ Yet, Commission staff faced a quandary. As described in their comments:

The text of Minn. Stat. § 216I.09 does not provide guidance for the Commission as to when a permit amendment should be authorized. The route permit for the Minnesota Energy Connection project (project) includes guidance for changes to the anticipated alignment of the project within the designated route. Section 4 of the permit reads, in part:

Any right-of-way or alignment modifications within the Designated Route shall be located so as to have comparable overall impacts relative to the factors in Minn. R. 7850.4100, as does the right-of-way and alignment identified in this route permit, and shall be specifically identified and documented in and approved as part of the plan and profile submitted pursuant to Section 9.2 of this route permit.⁴

While the factors in Minn. R. 7850.4100 had been stripped from the regulations in 2024, and were due to expire within three weeks of the initial issuance of the route permit, the permitting staff either weren't aware of the repeal, or didn't regard the legislature's action as particularly important. With respect to the November 2025 permit amendment request from Xcel, staff recommended applying the very "dead letters" of Minn. R. 7850.1400 to this, and any future, permit amendments. They wrote:

This guidance – comparable overall impacts relative to the factors in Minn. R. 7850.4100 – is applicable to changes in the anticipated alignment within the designated route. EIP staff believes that it would be appropriate to use this guidance (or something similar) to evaluate entirely new routes and alignments. Accordingly, EIP staff uses this guidance in evaluating Xcel Energy's proposed permit amendment.⁵

As described by their own words, staff applied the factors set forth in the 2023 version of 7850.1400 to assess Xcel's then-pending route amendment and pledged to do so in the future "to evaluate entirely new routes and alignments."⁶

In the parlance of Minnesota's Administrative Procedure Act, staff were taking the repealed factors and applying them as a "statement of general applicability and future effect ... to implement or make specific the law enforced or administered by that agency or to govern its organization or procedure" – they were applying the repealed factors as if they were rules.⁷

³ *Id.* at 1.

⁴ *Id.* at 2 (citing Route Permit, Minnesota Energy Connection Project, pg. 5, Section 4 – Right-Of-Way, June 11, 2025, eDocket No. [20256-219826-01](#)).

⁵ *Id.* at 2-3 (emphasis added).

⁶ *Id.*

⁷ See Minn. Stat. § 14.02, subd. 4 (2024) (definition of a "rule").

Legal Analysis

Following the 2024 repeal of Minn. R. 7850.4100, and the effective date of that repeal a year later, the Commission had three possible options with respect to applying evaluation factors to permit applications. It could:

1. pretend that the repeal did not occur and go on as before May 2024;
2. conclude that the Minnesota Legislature intended to “occupy the field” on siting and routing and that the Commission was barred from adopting new regulations; or,
3. grant the petition and undertake rulemaking.

Of the three possible options, the third – undertaking rulemaking – is the best.

Option 1: Pretend that the Repeal Did Not Occur

Pretending that the repeal did not occur is a bad option. It suggests that the Commission does not recognize the Constitution’s vesting of legislative power in the Minnesota House of Representatives and Senate (and the legislature’s power to repeal administrative rules);⁸ that it may decline to “take care that the laws be faithfully executed;”⁹ and that the pledges made in the Commissioners’ own oaths of office are only aspirational.¹⁰ All of that is bad.

The pretending option is also very high risk. Not only from a perspective of potentially awkward oversight hearings at the Capitol, but also in avoiding litigation costs. Minn. Stat. § 14.381 grants to every person on planet Earth the legal standing to sue the Commission and obtain a court order from an Administrative Law Judge directing the agency to “cease enforcement” of unadopted rules.¹¹ This grant of standing includes every person who lives or works along the permit route ... or is merely concerned about regulatory hygiene. This is a wide and deep class of potential plaintiffs that the Commission, and its budget, should steer clear from.

State agencies who apply informal memoranda as if they were duly adopted rules of procedure are frequently sued. And they often lose.¹² It is very doubtful that the Court of Administrative Hearings would permit a repealed regulation to guide decision-making at the Commission any more than the use of informal memos that the Court has enjoined in the past.

⁸ See Minn. Const. Art. IV, §§ 21-23.

⁹ See Minn. Const. Art. V, § 3.

¹⁰ See generally Minn. Const. Art. V, § 5.

¹¹ See Minn. Stat. § 14.381, subds. 1, 2 (2024).

¹² See e.g., *In the Matter of the Petition of American Crystal Sugar Company*, CAH 8-2200-37302 (the Court barred the MPCA from prohibiting “the use of mixing zones to demonstrate compliance with acute toxic unit standards,” as unauthorized by the legislature and contrary to the agency’s own regulations) (Minn. Ct. Admin. Hrgs 2021) (https://mn.gov/oah/assets/2200-37302-american-crystal-sugar-company-pca-unadopted-rule-order_tcm19-491162.pdf); *In the Matter of the Petition of the Property Casualty Insurers Association of America, Inc.*, CAH 8-1000-33787, (Minn. Ct. Admin. Hrgs 2016) (the Court barred the Commerce Department from requiring Minnesota insurers to respond to the Multistate Insurance Diversity Survey).

It is also a bad look for the agency. If a citizen goes to the Revisor’s website to discover the factors referenced by permitting staff, this is what they will see:

Minnesota Administrative Rules

7850.4100 [Repealed, L 2024 c 126 art 7 s 15; L 2024 c 127 art 43 s 15]

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Option 2: Conclude that the Legislature Intended to “Occupy the Field”

A different inference from the legislature’s repeal of 44 regulations from Part 7850,¹³ is that the legislature withdrew its earlier delegation of rulemaking authority for siting and routing permits, and instead, would “take it from there....” This too is the wrong analysis.

In URN’s view, the legislature did not intend to “occupy the field” and exclude the Commission from developing new siting and routing standards. Two key facts lead to this conclusion: First, the 2024 legislation the legislature did not repeal Minn. R. 7850.4000 (2025) – which provides in part: “No site permit or route permit shall be issued in violation of the site selection standards and criteria established in Minnesota Statutes, sections 216E.03 and 216E.04, and in rules adopted by the commission.”¹⁴ Maintaining untouched a reference to the Commission’s ongoing role in promulgating siting and routing standards is very strong evidence that the legislature did not intend to preempt the MPUC’s policy development efforts.

Second, in Article 9 of the 2024 legislation, the legislature gave two new rulemaking delegations to the Commission – one to amend Part 7850 to “conform with the changes made in this act” and another “to authorize applicants for site and route permits to begin submitting preconstruction compliance filings to commission staff for review immediately following the commission’s vote to grant the applicant a site or route permit”¹⁵ These new directives are inconsistent with a conclusion that the legislature was entirely occupying the “regulatory field.”

Indeed, granting the petition is consistent with the legislature’s direction to the MPUC.

Option 3: Grant the Petition and Undertake Rulemaking

For four reasons, this is the best option. First, rulemaking is an unalloyed good. It contributes to transparency; permits the Commission to access expertise without the attendant costs of hiring consultants; builds relationships of trust with stakeholders and regulated parties; and even, inspires patriotism. Sincere and competent rulemaking is how state agencies confirm that President Lincoln wasn’t a liar, when he assured the nation at Gettysburg that our government was “of the people, by the people, [and] for the people.”¹⁶ For its part, the Commission assures Minnesotans that routing and siting practices are “for the people,” when there are policy development contributions “by the people.” And we do that through rulemaking.

¹³ See 2004 Minn. Laws ch. 126, art. 7, §§ 15-16; 2024 Journal of the House, at 19820.

¹⁴ Minn. R. 7850.4000 (emphasis added).

¹⁵ See 2004 Minn. Laws ch. 126, art. 9, § 19 (a), (c).

¹⁶ Lincoln, A., *Gettysburg Address* (November 19, 1863).

Second, in their own words, the Commission’s staff grumble that the “text of Minn. Stat. § 216I.09 does not provide guidance for the Commission as to when a permit amendment should be authorized.”¹⁷ This is staff telling management that their “radio to command” is broken and does not work. The Commission can fix that. Through rulemaking.

Third, with a staff of 80 Full Time Equivalents,¹⁸ and an \$18 million budget,¹⁹ the Commission has the resources to do the basics of regulatory hygiene. Every agency in state government has the duty to set forth “the nature and requirements of all formal and informal procedures related to the administration of official agency duties to the extent that those procedures directly affect the rights of or procedures available to the public.”²⁰ Siting and routing are pretty important functions of the Commission, and its regulatory signals should be clear.

Lastly, the Commission is blessed beyond most other agencies combined when it comes to in-house rulemaking expertise. Eric B. Witte is among the most well regarded rule-writers in state government and within the Inter-Agency Rules Committee.²¹ It recalls the iconic scene in Cameron Frye’s garage from the movie *Ferris Bueller’s Day Off*. The Commission has on staff the rulemaking equivalent of a 1961 Ferrari 250 GT California Spyder, just sitting in its garage, with only 126 miles on it. It’s time to go for a drive.



For all of these reasons, the Petition should be granted.

Very truly yours,

s/ Eric L. Lipman

Eric L. Lipman
Chief Advocacy Officer

¹⁷ Comments and Recommendations on an Amended Route Permit, *supra* at 2.

¹⁸ Public Utilities Commission - Agency Expenditure Overview, 2026-27 Biennial Budget Pages at 4 (January 2025).

¹⁹ Forecasted Base for Fiscal Year 2026, Revised 2026-27 Biennial Budget Pages (March 2025).

²⁰ Minn. Stat. §§ 14.06(a) (2024).

²¹ See generally Rules Reform Task Force, *Reforming Rulemaking: Building a More Accountable, Open, and Less Burdensome Process*, Executive Summary at 3 (January 15, 2001) (“the Inter-Agency Rules Committee [assists] agencies, boards and commissions with implementing citizen advisory committees, feedback panels, focus groups or other citizen input mechanisms”).