



414 Nicollet Mall
Minneapolis, MN 55401

September 6, 2013

—Via Electronic Filing—

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101

RE: COMMENTS
POSSIBLE AMENDMENTS TO CHAPTER 7829 OF THE COMMISSION'S RULES
DOCKET NO. U999/R-13-24

Dear Dr. Haar:

Northern States Power Company, doing business as Xcel Energy, submits to the Minnesota Public Utilities Commission these Comments in response to the Commission's August 7, 2013 NOTICE OF COMMENT PERIOD in the above-referenced docket.

We have electronically filed this document with the Minnesota Public Utilities Commission, and copies have been served on the parties on the attached service list. Please contact Jody Londo at (612) 330-5601 or jody.l.londo@xcelenergy.com if you have any questions regarding this filing.

Sincerely,

/s/

CHRISTOPHER B. CLARK
REGIONAL VICE PRESIDENT
RATES AND REGULATORY AFFAIRS

Enclosures
c: Service List

STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
David Boyd	Commissioner
Nancy Lange	Commissioner
J. Dennis O'Brien	Commissioner
Betsy Wergin	Commissioner

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

Docket No. U999/R-13-24

COMMENTS

INTRODUCTION

Northern States Power Company, doing business as Xcel Energy, submits to the Minnesota Public Utilities Commission these Comments in response to the Commission's August 7, 2013 NOTICE OF COMMENT PERIOD in the above-referenced docket. The Commission's stated intent in opening this rulemaking docket was to eliminate outdated rule language, address statutory changes, clarify existing Commission procedures, and establish procedural requirements that permit the Commission to more effectively perform its quasi-legislative and quasi-judicial functions.

We comment on the two specific items requested in the NOTICE: (1) the proposed language regarding Sanctions; and (2) considerations we think are important as the Commission considers amending the Rule regarding parties' opportunity to comment when commission staff recommends action not advocated by any party. We also comment on the possible changes to:

- Rejection of filings requiring determination of gross revenue;
- Service and filing requirements; and
- Comment procedure variation.

We appreciate this opportunity to Comment on the proposed changes. In summary, we believe:

- The proposed language for Minn. R. 7829.0250 regarding representations to the Commission provides important clarification of the Commission’s expectations of parties, consistent with the Commission’s objectives for this proceeding. However, the proposed Sanctions language in Subpart 2 may have unintended consequences, and creates ambiguity or may conflict with the Commission’s authority under Minn. Stat. § 216B.57;
- The current 7829.2600 Rule language with regard to parties’ ability to comment on staff recommended action achieves due process, clarifies that the opportunity for comment is oral, and works well; it does not in any way limit a party’s ability to seek opportunity for written comment, nor the Commission’s ability to order additional written comments at its discretion. The proposed changes are unnecessary and create ambiguity rather than clarity;
- The changes proposed to Minn. R. 7829.2400, subp. 5 regarding rejection of rate case filings are substantive and would be a significant change to the Commission’s rate case procedures that would establish an *unclear* procedural requirement that no utility could prospectively meet. The possible changes should be rejected – or in the alternative, subjected to a more rigorous review that would include all filing requirements for rate cases, so that all rate case rules can be reviewed holistically and thoroughly;
- The change to Minn. R. 7829.0400 that would essentially extend the filing deadline to midnight is unnecessary and appears inconsistent with the Commission’s objectives in this docket. The current process works well. Further we note that when the FERC instituted electronic filing as the default requirement, a midnight filing deadline was proposed and rejected;¹
- Limiting official Service to an individual party as is proposed in changes to Minn. R. 7829.0700 would create inefficiencies and impose an unreasonable burden on numerous parties to Commission proceedings. The Commission has existing authority to limit Service. However, if the Commission believes it is essential to explicitly limit service to a certain number of individuals, we believe the limit should be to the number of individuals electing *paper* service; and
- The consolidation of the Commission’s rules with respect to Comments into the new Minn. R. 7829.1250 is helpful and clarifying. However, the new rule does not contain the current subpart that allows the Commission to vary the comment period on its own motion. Expressly retaining this ability by carrying over the repealed subpart would help the Commission better achieve its objective in this docket to permit it to more effectively perform its functions.

¹ *Filing Via the Internet*, Order No. 703, 121 FERC ¶ 61,171 at PP 30-31 (2007).

COMMENTS

A. Possible Sanctions for Violation of Minn. R. 7829.0250

We support the proposed language for Minn. R. 7829.0250, regarding representations to the Commission. We believe it provides important clarification of the Commission's expectations of parties, consistent with the Commission's objectives for this proceeding. However, we believe the Sanctions language proposed as Subpart 2 to this Rule attempts to add the rigor of a purely judicial process to the Commission's blended quasi-legislative and quasi-judicial role, may have unintended consequences, and creates ambiguity or may conflict with the Commission's authority under Minn. Stat. § 216B.57.

In a purely judicial setting, such as a court, the vast majority of practitioners before the court are attorneys, whose discipline is ultimately overseen by the Minnesota Supreme Court – and who are subject to the Minnesota Rules of Professional Conduct. The availability of a sanctions remedy to judges is consistent with the enforcement of attorney conduct by the judicial branch. Conversely, the blended legislative and judicial role of the Commission is much broader than that of a court, and allows for the Commission to gather information and make decisions commensurate with its statutory mandate.

By establishing the standards provided for in Minn. R. 7829.0250, the Commission is clearly stating its expectations with respect to representations to the Commission. Violation of these expectations can and should be treated like any other violation of the Commission's Rules and Orders. Minnesota Statutes Chapter 216B provides authority for the Commission, under legislatively-proscribed procedures, to enforce its Rules and Orders, which would include Minn. R. 7829.0250. Further, attorneys that appear before the Commission are required to meet their ethical obligations, and are subject to attorney discipline for failing to do so.

In light of these remedies available to the Commission, we believe that the proposal to include a subpart for sanctioning authority is unnecessary and would create ambiguity rather than clarity.

B. Considerations Regarding Changes to Minn. R. 7829.2600 (Commission Staff Recommended Action)

The Commission's Notice requests parties to comment on what the Commission should consider when deciding to amend Minn. R. 7829.2600 to specify that "...at

the request of any party, and to the extent practicable, all parties must be granted oral an opportunity to comment at the request of any party.”

We believe the current process works well, is consistent with the concepts of due process, and therefore, no changes to the Rule are necessary. The Commission generally grants parties to proceedings an opportunity to orally comment at its Agenda meetings. In fact, the current rule *requires* that such opportunity be afforded. We believe the proposed change to allow comment only “to the extent practicable” would unreasonably limit parties’ right to due process.

If the Commission’s intent with this possible change is to provide for potential *written* comments regarding Staff recommended action, we believe the proposed new Minn. R. 7829.1250, subp. 2 provides the Commission the discretion to require additional written comments while preserving parties’ rights to address staff recommendations orally under the current rule.

In summary, we believe the current 7829.2600 Rule language and process works well. It achieves due process and clarifies that the opportunity for comment is oral. It does not in any way limit a party’s ability to seek opportunity for written comment, nor the Commission’s ability to order additional written comments or further record development at its discretion.

C. Other Proposed Changes

In this section, we discuss the proposed changes to Rejection of Filings Requiring Determination of Gross Revenue (7829.2400), Filing and Service Requirements (7829.0400 and 7829.0700), and Comment Procedure Variation (7829.1250).

1. Rejection of Filing – Minn. R. 7829.2400

We believe the changes proposed to Subpart 5 of this rule are substantive rather than clarifying. As proposed, the revisions change the meaning and intent of the Rule, introduce ambiguity, which is inconsistent with the Commission’s objectives in this proceeding, and should be rejected or subjected to a more rigorous review than currently contemplated in this proceeding. The proposed language would allow the Commission to reject a rate case filing on the basis of an undefined impairment standard – even if it is fully-compliant with Minnesota Statute and the Commission’s Rules and Orders. The resulting Rule would impose a subjective standard on rate case completeness determination, for which no party could know whether it has

complied. In other words, the proposed rule revision does not provide parties with sufficient notice as to what is required of them to make a complete rate case filing.

We believe the current rule works well. It provides that the Commission can reject a rate case filing if it is not consistent with known filing requirements imposed on parties by Statute, Rule and Orders. Correctly, the current Rule provides that if we fail to meet these compliance obligations, our case may be rejected by the Commission. Further, to the extent that a particular rate case presents new issues for which the parties or the Commission require additional information, the Commission's existing procedures allow for such information to be identified and submitted through a supplemental filing.

The proposed rule revision would impose an unknowable and subjective filing standard, against which, no utility could prospectively measure its actions and filing content to assuredly meet. The myriad of Statutory, Rule, and Order-based filing requirements exists to ensure that rate case filings contain the information that the Commission, through experience, believes is necessary to evaluate the completeness of a filing. If the Commission requires additional information to assess the completeness of a rate case, then utilities must be provided specific guidance as to those additional requirements.

The stated purpose of the proposed Rule revisions is to clarify the Commission's rules of practice and procedure and establish procedural requirements that permit the Commission to more effectively perform its functions. We believe that the proposed revision to Minn. R. 7829.2400 is a substantive and significant change to the Commission's rate case procedures that would create ambiguity, and establish an *unclear* procedural requirement that no utility could prospectively meet. To the extent the Commission wishes to revisit the filing requirements for rate cases, we suggest that it do so in a separate proceeding, so that all rate case rules can be reviewed holistically and thoroughly.

2. *Filing and Service Requirements – Minn. R. 7829.0400 and 7829.0700*

a. Proposed Midnight Filing Deadline

The proposed revision to Minn. R. 7829.0400, subp. 1(A) essentially extends the filing deadline from the end of the Commission's business hours to midnight of the same day. We recognize that the proposed revisions are intended to synchronize the Commission's filing rules with those of courts who also utilize electronic filing by allowing filings to be made at any time during a calendar day. However, we are

concerned that the proposed changes may create unforeseen burdens to parties before the Commission.

Once again, we think the current rule language works well. Utilities and government agencies that are regularly before the Commission have procedures in place to comply with the current filing deadline and requirements. Although parties could continue with their current processes and file earlier in the day, for strategic reasons, many parties may not want to make “early” filings (during business hours) that could, for example, afford other parties in a contested case, time to modify their filings prior to midnight in response. Therefore, establishing a midnight filing deadline would likely require all parties to Commission proceedings to create new internal procedures geared toward midnight filings.

Further, filings made outside of business hours would not be posted to eDockets for many hours – or several days, in the case of a late Friday filing – because personnel required to process the filing would not be in the office. This would mean that official Service List parties that opt for electronic service would receive the filing, but other parties would not have access to the filings until posted to eDockets at a much later point. When combined with the proposed revisions to Minn. R. 7829.0700 that would limit official service to one person per party, valuable time to respond to filings may be lost – for no other reason than the unavailability of information. We believe that this change is unnecessary and that current procedures work well, which appears inconsistent with the Commission’s objectives in this docket.

Lastly, we note that when the FERC instituted electronic filing as the default requirement, a midnight filing deadline was proposed and rejected for many of the same reasons. *Filing Via the Internet*, Order No. 703, 121 FERC ¶ 61,171 at PP 30-31 (2007).

b. Official Service List

The change proposed to Subpart 1 of Minn. R. 7829.0700 that would limit the official service list to one individual per party or participant is overly-restrictive, would create a significant inefficiency at Xcel Energy and perhaps other large utilities and organizations, and is unnecessary. Further, this change combined with Minn. R. 7829.0400, subp. 5a would mean that the Xcel Energy attorney assigned to the docket would be the one individual that would be allowed on the official service list.²

² Minn. R. 7829.0400, subp. 5a states: “When a party or participant is represented by an attorney, service upon the attorney is considered service upon the party or participant.”

We generally have several employees who actively participate in our regulatory proceedings and manage the related records. It is important that these personnel are timely served with filings. The availability of a filing on eDockets through subscription does not diminish this need. For example, filings containing non-public data are only available to those officially served. Further, achieving electronic delivery to a “subscriber” requires the same computer resources as would electronic “service” to an individual. Ensuring that all relevant individuals are appropriately served is critical to ensuring that parties are able to effectively participate before the Commission and manage important information.

We recognize the burden that *paper* service to multiple individuals representing a single party may have on some entities. However, this burden needs to be balanced against the burden that this change would impose on all parties to proceedings. With the ability to electronically serve parties, we believe that the service burden is greatly diminished, and that therefore limiting the number of individuals served at a particular party is unwarranted. Further, the Commission has the ability to limit the service list under Minn. R. 7829.0700, subp. 3, on its own motion or at the request of a party if it finds that requiring service on participants is unduly burdensome.

That said, if the Commission believes it is essential to explicitly limit service to a certain number of individuals in its rules, we believe that the limit should be to the number of individuals receiving *paper* copies per party or participant.

3. *Comment Period Variation – Minn. R. 7829.1250*

We appreciate the consolidation of the Commission’s rules with respect to Comments into the new Minn. R. 7829.1250. We believe that this change provides helpful clarity and avoids the possibility of conflicting rules regarding Comments in the future.

However, we note that the new rule does not contain the language that currently allows the Commission to vary the comment period on its own motion. Specifically, each rule that addressed a Comment Period contained a Subpart that is now proposed to be repealed. These subparts provided:

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.

While the Commission retains this authority even if it is not contained in Minn. R. 7829.1250, we believe that a new Subpart 3 documenting this authority would preserve the Commission's express ability to vary its comment periods without having to meet other criteria in its Rules regarding variances. We also believe this would help the Commission better achieve its objectives in this docket to provide further clarity and permit the Commission to more effectively perform its functions.

CONCLUSION

Xcel Energy appreciates the opportunity to comment on the possible amendments to Minnesota Rules Chapter 7829 governing utility proceeding, practice, and procedure. We look forward to continuing to work with the Commission and stakeholders in this rulemaking process toward the Commission's objectives of increasing clarity and establishing procedural requirements that permit the Commission to more effectively perform its functions.

Dated: September 6, 2013

Northern States Power Company

Respectfully submitted by:

/s/

CHRISTOPHER B. CLARK
REGIONAL VICE PRESIDENT
RATES AND REGULATORY AFFAIRS

CERTIFICATE OF SERVICE

I, SaGonna Thompson, hereby certify that I have this day served copies of the foregoing document on the attached list of persons.

xx by depositing a true and correct copy thereof, properly enveloped with postage paid in the United States mail at Minneapolis, Minnesota

xx electronic filing

DOCKET No. U999/R-13-24

Dated this 6th day of September 2013

/s/

SaGonna Thompson

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