

Staff Briefing Papers

Meeting Date	February 19, 2026	Agenda Item 4**	
Company	Utility Reform Now		
Docket No.	E,G-999/R-26-81		
	In the Matter of Possible Rulemaking to Amend Minnesota Rules, Chapter 7825		
Issues	Should the Commission undertake Rulemaking to Amend Minnesota Rules Chapter 7825?		
Staff	Ashley Marcus	ashley.marcus@state.mn.us	651-201-2192
	Jason Bonnett	Jason.bonnett@state.mn.us	651-201-2235

✓ Relevant Documents	Date
Utility Reform Now – Initial Filing	January 8, 2026
Minnesota Public Utilities Commission - Notice	January 9, 2026
Legalelectric, Inc. – Initial Comments	January 20, 2026
Utility Reform Now – Initial Comments	January 20, 2026
Joint Utilities – Initial Comments ¹	January 21, 2026
Office of the Attorney General – Residential Utility Division – Initial Comments	January 21, 2026
LiUNA – Reply Comments	January 28, 2026
Utility Reform Now – Reply Comments	January 28, 2026

¹ The Joint Utilities consist of CenterPoint Energy, Dakota Electric Association, Minnesota Energy Resources Corporation, Minnesota Power, Otter Tail Power Company, and Xcel Energy.

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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.



I. BACKGROUND

On January 8, 2026, the organization Utility Reform Now! (URN) submitted a Petition for Rulemaking (Petition) to the Minnesota Public Utilities Commission (Commission) pursuant to Minn. Stat. § 14.09 and Minn. Rule (R) 1400.2500.

On January 9, 2026, a Notice of Comment Period was issued by the Commission establishing a comment and reply period for consideration of the Petition by interested parties.

Comments were received from the following:

- URN,
- Carol Overland and Legalectric,
- CenterPoint Energy, Dakota Electric Association, Minnesota Energy Resources Corporation, Minnesota Power, Otter Tail Power Company, and Xcel Energy (collectively, the Joint Utilities), and
- the Office of the Attorney General—Residential Utilities Division (OAG).

Reply comments were received from LIUNA Minnesota and North Dakota (LIUNA) and URN.

II. MINNESOTA STATUTES AND RULES

Rulemaking in Minnesota follows procedures outlined in the Minnesota Administrative Procedure Act (APA), Minnesota Statutes, chapter 14. Additionally, Minnesota Rules Chapter 1400 contains the Court of Administrative Hearing's rules to implement administrative rulemaking.

Minnesota (Minn.) Statute (Stat.) Section (§) 14.09 states that any person is entitled to petition a state agency to adopt or amend a rule. The Commission is required to provide a written response within 60 days.

Minnesota Rules chapter 7825 contains the Commission's formally adopted procedures governing utility financial filings, depreciation studies, capital structure approvals, and other regulatory requirements.

III. DISCUSSION

A. Utility Reform Now! - Petition

In its Petition, URN requested amendments to Minnesota Rules Part 7825 to include the Statements of Policy issued by the Commission on April 14, 1982 and June 14, 1982 (1982 Statements). URN stated that the Commission has been utilizing the 1982 Statements from 1982 as de facto rules without properly adopting them through a rulemaking proceeding. URN argued that rate-regulated utilities in Minnesota operate as if the 1982 Statements set forth minimum requirements that are needed for compliance. URN provided the following table of



recent rate case filings of Otter Tail Power and Xcel Energy:

Table 1 - Application of Policy Statements²

Dockets	eDocket Number
Notice and Petition for Interim Rates, GR-25-359 at 1	202512-225487-01
Notice and Petition for Interim Rates, GR-25-356 at 1	202510-224501-01
Notice and Petition for Interim Rates, GR-24-320 at 1	202411-211511-01
Direct Testimony of Olsen, GR-25-359, at Schedule 2, Page 4 of 6	202510-224484-07

In addition, URN cited to Minn. Stat. § 14.02, subd. 4 which defines a rule as follows:

"Rule" means every agency statement of general applicability and future effect, including amendments, suspensions, and repeals of rules, adopted to implement or make specific the law enforced or administered by that agency or to govern its organization or procedure.

URN argued that as an example, the Statement of Policy on Interim Rates satisfies all the characteristics listed in the definition of a rule. Specifically,

- (a) The Commission is a state "agency;"
- (b) It characterized the document as its "Statement" on Interim Rates;
- (c) The later filings cited above show that the Commission's stakeholders believe that the requirements of the Statement apply generally to all rate regulated utilities in Minnesota, across time, and into the future; and
- (d) It was adopted by the Commission "to implement or make specific the law ... administered by that agency" - well, at least if one believes then Commission Chair Lillian Warren-Lazenberry.

URN argued that the same analysis could be applied to all the 1982 Statements.

URN argued that Initiating rulemaking to promulgate some or all the 1982 Statements is also the right thing to do, for three reasons. Specifically, URN stated:³

First, the Commission promised to do so. [The Chair at the time] stated forthrightly that as soon as the Commission had some experience applying features of the 1982 Statements, it would set out to revise them. The 40-year wait makes those revisions long overdue.

Second, the Policy Statements are completely hidden from ordinary view. This is directly contrary to the purposes of the Administrative Procedure Act. In

² URN Petition at 3.

³ URN Petition at 5 – 6.



fact, the Legislature made unpromulgated rules illegal because they conflict with the Legislature's goals; which are to:

- (1) provide oversight of powers and duties delegated to agencies;
- (2) increase public accountability of administrative agencies;
- (3) ensure a uniform minimum procedure;
- (4) increase public access to governmental information; [and]
- (5) increase public participation in the formulation of administrative rules

The public cannot aid oversight, ensure uniform standards or participate in the development of rules if agency standards are distilled in secret and shared only with other elites.

Third, there is real doubt that the rag-tag collection of blurry images that comprise what is left of the 1982 Statements, meets the "Success Criteria" of the State of Minnesota's Digital Accessibility Standard. The state's Web Content Accessibility Guidelines require "levels A and AA," whereas "[l]evel AAA compliance is encouraged." These accessibility and readability standards apply to "[a]ll state information systems, tools and information content" - terms that encompass the Commission's website and eDocket system.

Finally, URN argued that the exemption found in Minn. Stat. § 14.06(b) exempting the Commission from the requirement to conduct rulemaking to adopt rules superseding policies relied upon as precedents in future cases, does not apply in this case. Specifically, Minn. Stat. § 14.06(b) states:

(b) Upon the request of any person, and as soon as feasible and to the extent practicable, each agency shall adopt rules to supersede those principles of law or policy lawfully declared by the agency as the basis for its decisions in particular cases it intends to rely on as precedents in future cases. This paragraph does not apply to the Public Utilities Commission.

URN asserts that the 1982 Statements are not pursuant to a request from an outside party but rather created by the Commission and therefore the limitation described above in 14.06(b), is not applicable. Specifically, URN stated:⁴

It is absolutely true that URN could not petition the Commission to - for example – fashion uniform filing practices from different interim rate decisions that have occurred in the past...

⁴ URN Petition at 5.



But that is not what is happening here, with this Petition for Rulemaking. URN didn't prompt then-Commission Chair Lillian Warren-Lazenberry and the 1982 Commission to circulate a series of "eight policy statements covering recurring rate case issues ... providing advance guidance on the likely treatment of these issues." That was entirely their idea.

And with limited exceptions, that are not applicable here, an agency's interpretative rules are only valid if they are promulgated in accordance with the Administrative Procedure Act.

Further, after the effective date of the 2001 amendments to the Act, regulatory practices of state agencies can't be guided by a stack of mimeographed sheets. Real regulators issue Notices of Intent to Adopt.

B. Legalectric, Inc. – Comments

Legalectric argued in support of URN's proposed rulemaking noting that the current procedure for rulemaking is outdated. Legalectric noted that the policies which are the subject of the instant proceeding are over 40 years old and are currently inaccessible to the general public.

C. Utility Reform Now! – Comments

URN continued to urge the Commission to open a rulemaking to amend chapter 7825. URN argued that rulemaking is necessary because the Commission cannot apply the unpromulgated 1982 Policy Statements in ratemaking dockets without violating Minn. Stat. § 14.381, which prohibits enforcing a policy or standard "as though it were a duly adopted rule." Additionally, URN stated that the Commission relies too heavily on contested-case litigation to resolve policy matter to achieve just and reasonable rates. That approach, URN argued, is expensive for ratepayers, slow, burdensome for staff and stakeholders, corrosive to collaboration, and inconsistent with Minn. Stat. § 14.002 which emphasizes "superior achievement in meeting the agency's regulatory objectives [with] maximum flexibility for the regulated party."⁵

URN emphasized that the Commission has quasi-legislative powers and should use them "early and often" to reduce regulatory costs and improve policymaking. Minnesota has many tools for gathering information and solving problems that are far cheaper and more transparent than litigation. After forty years without public discussion of the 1982 Statements and given that the Commission is exempt from the statute that normally allows citizens to compel agencies to convert case-by-case decisions into rules, URN contended the Commission should be especially attentive to public signals and accountability. For all these reasons, URN concluded that the Commission should grant the petition and initiate rulemaking.

⁵ URN Comments at 1.



D. Office of the Attorney General – Comments

The OAG provided comments opposing the Petition. The OAG argued that the 1982 Statements are not, as URN argued unadopted rules that the Commission is enforcing or attempting to enforce. As such, the OAG argued, the Commission should not feel compelled to adopt them.

The OAG noted that URN has chosen to request the Commission adopt the Policy Statements as rules rather than following the process available in law to challenge unadopted rules under Minn. Stat. § 14.381. The OAG asserted that the reason was because a petition under that section would be unsuccessful because the Commission has not enforced or attempted to enforce any of the Policy Statements as if it were “a duly adopted rule.”

The OAG argued that the Commission has neither enforced nor attempted to enforce the Policy Statements. Indeed, the Policy Statements themselves show that even the 1982 Commission had no intention of treating them as duly adopted rules. The statements uniformly include the following language:

The Commission recognizes that a policy statement does not have the force and effect of law. Instead, it is an expression of the Commission’s general intention which will be followed unless circumstances demonstrate the policy to be inappropriate. In each particular, case, the policy statement can be expected to form the starting point of the Commission’s decision, but the final decision will depend upon the facts of the case.

The OAG argued that while the language may show an intention by the 1982 Commission to process the information regarding the statements in a particular manner, the Commission has not gone that far. The OAG noted that instead of citing any Commission order relying on the Policy Statements, URN focused on citations to statements from utilities. The OAG asserted that parties treat the policy statements as they would any previous Commission order in a proceeding—as persuasive authority. As with all Commission orders, the Commission is able and willing to revisit its previous positions, practices, or treatment in future orders and the 1982 Statements provide a clear intention that the Commission do just that. However, the Commission does not and cannot dictate what persuasive material utilities or other parties may cite to. And citations or discussion from utilities or other parties certainly do not equate to the Commission “enforcing or attempting to enforce” the 1982 Statements as though they were a duly adopted rule, pursuant to Minn. Stat. § 14.381.

Alternatively, even if the Commission were enforcing the statements, the OAG argued that rulemaking still would not be required because the Commission’s exemption from certain rulemaking requirements, enacted in 1995 amendments to the Minnesota Administrative Procedure Act (MAPA), would apply. Minn. Stat. § 14.06(b) states:



14.06 REQUIRED RULES.

(b) Upon the request of any person, and as soon as feasible and to the extent practicable, each agency shall adopt rules to supersede those principles of law or policy lawfully declared by the agency as the basis for its decisions in particular cases it intends to rely on as precedents in future cases. *This paragraph does not apply to the Public Utilities Commission.*⁶

In conclusion, the OAG argued that the Commission can and should exercise its discretion in determining whether rulemaking would be a desirable outcome. The Commission should not, however, feel compelled to adopt the Policy Statements for fear of being “sued” for enforcing or attempting to enforce an unadopted rule. The Commission has not enforced or attempted to enforce the Policy Statements as rules. Further, the OAG argued that the Policy Statements would be exempt from the rulemaking requirement under section 14.06(b).

However, if the Commission decides to initiate a rulemaking on the issues addressed in the 1982 Statements, the OAG argued that URN should provide more clear statements of its stated desire to include the 1982 Statements as rules rather than simply urging their adoption “word for word.” The OAG noted that the Commission’s reply comment period is a useful opportunity for URN to provide this information. Alternatively, the Commission could dismiss the current petition for rulemaking and URN may bring another more specific petition for rulemaking on topics included in the 1982 Statements that URN’s membership desires to become duly adopted rules.

E. Joint Utilities – Comments

In its comments, the Joint Utilities recommend the Commission not undertake a rulemaking proceeding to address the 1982 policy statements or to otherwise address natural gas or electric utility rate case filings at this time. The Joint Utilities noted that rulemaking proceedings consume significant resources, adding to the regulatory burden of both the Commission and other stakeholders, including the Joint Utilities. In addition, given the volume and importance of the many regulatory matters currently before the Commission, the Joint Utilities are concerned that pursuing such a rulemaking would divert scarce resources from these existing matters. As the Joint Utilities are not aware of any current controversy regarding the substance of the 1982 policy statements, they argued they do not see benefits to the regulatory process of rulemaking that would justify this use of resources.

F. Utility Reform Now – Reply Comments

URN continued to urge the Commission to grant its Petition for Rulemaking, arguing that both the OAG and the Joint Utilities inadvertently demonstrate why modern, transparent rules are needed.

⁶ Minn. Stat. § 14.06 (emphasis added).



URN contended that the OAG misreads the narrow statutory exemption from rulemaking for “bases for decisions” and ignores that many directives in the Commission’s 1982 Policy Statements function as binding rules without having gone through lawful rulemaking. The OAG’s reliance on a decades-old disclaimer, URN argued, cannot cure the defects of unadopted rules, especially after the 2001 amendments that prohibit such practices. URN further criticized the OAG’s preference for litigation over rulemaking, asserting that lawsuits are costly, inefficient, and contrary to the Administrative Procedure Act’s goals of transparency and public participation.

URN argued that the Joint Utilities’ claim that rulemaking would divert scarce Commission resources amounts to an admission that the agency cannot meet its statutory obligations. URN framed this as evidence of a regulatory culture overly dependent on litigation, burdensome to ratepayers, and misaligned with the “Golden Rule” of regulation.

URN concluded that rulemaking is not a burden but an opportunity that would modernize outdated policy statements, reduce unnecessary litigation, and strengthen the Commission’s ability to regulate effectively and fairly.

G. LIUNA – Reply Comments

LIUNA filed reply comments in opposition to the Petition. In its reply comments, LIUNA noted agreement with the arguments put forth by the OAG and Joint Utilities noting that “rulemaking is neither required by law nor prudent.” LIUNA argued that the Policy Statements which are the subject of URN’s request have not been applied as a rule, and to the degree URN believes that specific decisions are in error, they are welcome to make those arguments in the relevant proceedings.

LIUNA concluded its comments by stating “the proposed rulemaking would amount to a tremendous waste of time, at a moment when the Commission has no time to waste.”

H. Staff Comments

URN’s petition does not identify any legal deficiency in the Commission’s current practices. As the OAG noted, URN did not identify any Commission orders citing the 1982 Statements as requirements or rejecting a filing or request based on inconsistency with the 1982 Statements. There is no evidence in the record that the Commission is enforcing or attempting to enforce the statements.

Initiating a broad rulemaking would also divert limited staff resources from other statutory obligations. Ratemaking is inherently fact-specific and appropriately resolved through contested case procedures, which ensure due process and allow the Commission to address the unique circumstances of each utility. The existing Minnesota Statutes, Rules and the contested case process already provide transparency and public participation. The petition fails to

demonstrate a need for new rules.

IV. DECISION OPTIONS

1. Initiate a rulemaking process under Minnesota Statutes chapter 14 to consider possible amendments to Minnesota Rules chapter 7825.

OR

2. Deny the Petition to initiate rulemaking.