

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
Nancy Lange
Dan Lipschultz
John A. Tuma
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Amendments to Rules
Governing Proceeding, Practice, and
Procedure (Chapter 7829, excluding
7829.2550 which is subject to a separate
pending rulemaking)

ISSUE DATE: December 31, 2015

DOCKET NO. U-999/R-13-24

ORDER ADOPTING RULES

PROCEDURAL HISTORY

In 2013 the Commission opened this proceeding to consider modifying its rules of practice and procedure to eliminate outdated rule language, to address statutory changes, to clarify existing Commission procedures, and to establish procedural requirements that permit the Commission to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.

On July 10, 2014, at a duly noticed meeting, with a quorum present, the Commission authorized the proposal of rule amendments in Chapter 7829, excluding 7829.2550 which is subject to a separate pending rulemaking.¹ The proposed rules, along with a Notice of Intent to Adopt, were published in the June 15, 2015, *State Register*.

The Minnesota Department of Commerce (the Department), the Minnesota Department of Natural Resources, the Minnesota Cable Communications Association (the MCCA), and Legalectric, Inc., filed comments recommending modifications to the proposed rules.

The Commission did not receive any hearing requests, and therefore cancelled the hearing originally scheduled for August 31, 2015.

The Commission received no requests for notice of the rules' submission to the Office of Administrative Hearings.

The Commission met on November 19, 2015, at a duly noticed meeting, with a quorum of its members present, to adopt the proposed rule amendments.

¹ *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.

The agency has complied with all notice and procedural requirements in Minnesota Statutes, Chapter 14; Minnesota Rules, Chapter 1400; and other applicable law. At its November 19 meeting, the Commission adopted the rules, with modifications to the proposed rules as set forth below, and authorized the Executive Secretary to sign this Order.

FINDINGS AND CONCLUSIONS

I. Introduction

Having considered the entire record, the Commission finds that the proposed rules are needed and reasonable for the reasons set forth in the Statement of Need and Reasonableness. The Commission further finds that the modifications to the proposed rules described below are needed, reasonable, and do not result in substantially different rules.

II. Authority to Modify Proposed Rule

The Commission may adopt a modified proposed rule provided that the modifications do not render the rule substantially different from the rule proposed in the notice of intent to adopt rules.² The modifications described below are intended to be consistent with the requirements of Minn. Stat. § 14.05, subd. 2(b), which provides that

[a] modification does not make a proposed rule substantially different if:

- (1) the differences are within the scope of the matter announced in the notice of intent to adopt or notice of hearing and are in character with the issues raised in that notice;
- (2) the differences are a logical outgrowth of the contents of the notice of intent to adopt or notice of hearing and the comments submitted in response to the notice; and
- (3) the notice of intent to adopt or notice of hearing provided fair warning that the outcome of that rulemaking proceeding could be the rule in question.

The scope announced in the notice of intent to adopt includes amendments to the Commission's procedural rules to "eliminate outdated rule language, address statutory changes, articulate and clarify existing Commission procedures, and establish procedural requirements that permit the Commission to more effectively perform its quasi-legislative and quasi-judicial functions."³

The changes described below are within that scope, and are a logical and fair result of the notice and the subsequent public comments. The changes are chiefly non-substantive editorial changes, clarifications, and modifications made in response to comments. The Commission will therefore adopt the proposed rule as modified, consistent with its authority under Minn. Stat. § 14.05, subd. 2(b).

² Minn. Stat. § 14.05, subd. 2.

³ Dual Notice, 39 *Minn. State Register* 1706 (June 15, 2015).

III. Modifications to Proposed Rules

The Commission will make the following modifications to the proposed rule, for the following reasons:

A. Part 7829.0100

The Commission will replace “ongoing proceeding” with “existing commission docket” in subpart 11a to be more precise and eliminate a possible unintended ambiguity that could arise in inactive docketed proceedings.

B. Part 7829.0400

The Commission will modify subparts 5, and 5a to further refine those subparts to be consistent with electronic filing practice. Specifically, the Commission will eliminate service by facsimile because electronic filing, personal delivery, or first class mail are sufficient methods of service. Under the initially proposed rule, a facsimile alone could never accomplish service—facsimile service could only be accomplished in conjunction with first class mail—so removing references to service by facsimile does not substantially change the methods of service available.

The Commission will remove the reference in subpart 1 to Minnesota Statutes, section 216.17, subdivision 3, because it is superfluous. The statute applies to certain electronic filings with the Commission, but express reference to the statute is not necessary in this rule provision. The Commission will also remove the word “agencies” in subpart 4 because it is superfluous, and strike “in the commission offices” from subpart 5a, because the phrase is not consistent with electronic service. These changes are clarifying in nature and no change in substantive effect is intended.

The Commission will modify subpart 5a to accommodate the concern raised by the Department, in a way that is consistent with current electronic filing practices. The change is necessary to avoid an ambiguity about the timing of effective service that could arise. The subpart will now clarify that when the electronic filing system administrator requires a submission to be resubmitted, service is not retroactively effective.

C. Part 7829.0410

The Commission will modify this rule part to simplify and clarify the language, as follows:

Subpart 1. Form and content.

A party to a proceeding making a motion filing shall make it in writing, state the grounds for the motion, and set forth the requested commission action. A party shall file and serve a motion filing on the persons listed on the official service list ~~and file it consistent with the electronic filing requirements of Minnesota Statutes, section 216.17, subdivision 3.~~ A party shall, As a part of a motion filing, a party shall advise other parties that ~~if they wish~~ any opposition to oppose the motion ~~they must file~~ be filed and serve served on the same list of persons ~~a written response~~ within 14 days of service of the motion filing. The commission will consider only

motion filings signed by a party or the party's attorney or authorized representative.

Subp. 2. Responses.

A party responding to a motion filing shall file and serve a response on the persons listed on the official service list ~~and file it consistent with the electronic filing requirements of Minnesota Statutes, section 216.17, subdivision 3,~~ within 14 days of service of the motion filing.

The Commission will remove the references to Minnesota Statutes, section 216.17, subdivision 3, because they are superfluous. The statute applies to certain electronic filings with the Commission, but express reference to the statute was not necessary in these rule provisions. The remaining changes are grammatical and clarifying in nature. No change in substantive effect is intended.

D. Part 7829.0430

The Commission will modify this part to expressly establish a 10-day deadline to object to withdrawal of a filing. This change is necessary to establish a reasonable time in which to make an objection, and is reasonable because ten days is adequate time to raise an objection and is consistent with the Commission's established practice. This change is a logical outgrowth of the proposed rule, which implied a deadline without expressly stating what the deadline is or would be.

The Commission will also clarify that parties seeking to withdraw their filing must serve notice of their request on interested parties. This clarification is needed and reasonable to ensure that parties that may have an interest in objecting to the withdrawal are notified of the request to withdraw in time to object. This change is a logical outgrowth of the proposed rule, which provided an opportunity to object, but did not unambiguously require notice of that opportunity.

E. Part 7829.0700

The Commission will further modify subpart 2 to reflect necessary and reasonable changes consistent with electronic filing practice. Specifically, the rule will be changed to reflect that the official service list will be maintained and available electronically.

F. Part 7829.1050

The Commission will modify this part to address the concern raised by the Minnesota Cable Communications Association. The MCCA expressed concern that the rule as proposed did not properly address the possibility that an order might be filed and not served. The Commission will change the rule part to address service rather than filing.

The Commission will also revise subpart 2 to say "may delegate other functions" for additional clarity. No change in substantive effect is intended.

G. Part 7829.1300

The Commission will replace “[filing] utility” with “filing party” for consistency with changes elsewhere in this rule part. Because miscellaneous filings may be filed by parties other than utilities, it is reasonable and necessary to clarify that this rule part applies to parties and not just utilities. This change is a logical outgrowth of the proposed rule, which replaced “utility” with “party” in some, but not all, instances in this rule part.

The Commission will also relocate the proposed new subpart (subpart 6) to 7829.2900. This subpart pertains to compliance filings, and it is reasonable and necessary that it be located in a more generally applicable rule provision to avoid the implication that compliance filings are a subset of, or only arise out of, miscellaneous filings. The relocated subpart will now appear with the rule part discussing Commission decisions and orders.

H. Part 7829.1400

The Commission will add “unless otherwise directed by the commission” in subpart 9 for consistency with the Commission’s authority to establish deadlines. This is reasonable and necessary to ensure the Commission has flexibility to modify deadlines on a case by case basis as circumstances such as the complexity or urgency of the issues warrant. This change is a logical outgrowth of the proposed rule, which retained similar flexibility in similar circumstances, such as comment periods in part 7829.1250.

I. Part 7829.2700

The Commission will reorganize a sentence in subpart 1 for clarity. The subpart will be changed to read:

Subpart 1. Exceptions to administrative law judge's report.

Except in cases subject to statutory deadlines or as otherwise specified by the commission, parties shall file and serve on the other parties any exceptions to an administrative law judge's report within 20 days of its filing ~~unless otherwise specified by the commission~~.

In cases subject to statutory deadlines, exceptions must be filed and served within 15 days of the filing of the report.

No change in substantive effect is intended.

IV. Conclusion

The Commission adopts and incorporates the Statement of Need and Reasonableness as the factual basis for the proposed rules, as modified above. The Commission finds that the proposed rules, as modified above, are needed and reasonable. The Commission adopts the proposed rules, as modified above.

ORDER

1. The Commission adopts the above-captioned rules, in the form set out in the *State Register* on June 15, 2015, with the modifications set forth above and indicated in the Revisor's draft, file number AR-4159, dated December 3, 2015.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



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