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VIA E-FILING AND U.S. MAIL

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

RE: In the Matter of Possible Amendments to Rules Governing Utility Proceeding, Practices,
and Procedures, Minnesota Rules Chapter 7829
MPUC Docket No. U999/R-13-24

Dear Dr. Haar:

Enclosed please find CenterPoint Energy's Comments in the above-referenced docket. This document has been filed with the E-Docket system and served on the attached service list. Also enclosed is our Affidavit of Service.

Very truly yours,

WINTHROP & WEINSTINE, P.A.

/s/ Eric F. Swanson

Eric F. Swanson

Enclosure

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STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Possible Amendments to Rules
Governing Utility Proceeding, Practices, and
Procedures, Minnesota Rules Chapter 7829

Docket No. U999/R-13-24

**COMMENTS OF
CENTERPOINT ENERGY
MINNESOTA GAS**

On September 13, 2012, the Minnesota Public Utilities Commission (“Commission”) directed its Staff to open a rulemaking to consider amending the Commission’s rules of practice and proceeding. The rulemaking was “intended to eliminate outdated rule language, to address statutory changes, to clarify existing Commission procedures, and to establish procedural requirements that permit the Commission to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.”¹

On February 19, 2013, the Commission published a Request for Comments in the *State Register* and informed the general rulemaking list of its intended rulemaking, requesting comments on the draft rule amendments and for parties’ advice as to potential next steps. Comments were received from various parties.

After Staff’s consideration of comments received, a revised draft was presented to the Commission at its August 1, 2013 meeting and the Commission heard argument from several of the commenting parties.

¹ August 7, 2013 Notice of Comment Period.

Based on discussion at that meeting, on August 7, 2013 the Commission issued its Notice Of Comment Period On Possible Amendments To Rule Chapter 7829, Excluding Part 7829.2550 (“Notice”). That Notice included further revised draft rules and requested additional comments on this latest draft. CenterPoint Energy Minnesota Gas (“CenterPoint Energy” or “Company”) respectfully files these comments pursuant to the Notice.

I. INTRODUCTION

CenterPoint Energy appreciates the Commission’s goals in this docket to: eliminate outdated language, reflect statutory changes in the rules where necessary, clarify existing procedures, and develop procedural requirements to assist in the effective performance of Commission functions. From the Company’s perspective, most of the draft rule changes meet those goals and do not reflect significant changes from existing rules. For those draft amendments, there appears to be little or no controversy and any final proposed rule amendments on these provisions should be able to proceed expeditiously through the rulemaking process.

However, the Company submits these comments to address certain draft rule changes that reflect more substantive changes to current practice and procedure before the Commission and which may create difficulties for the Commission and parties if adopted. Regarding these more controversial draft amendments, the Company respectfully recommends that the Commission not move forward with the draft amendments at this time and either leave the existing rule language in place, modify the current draft amendments or, at minimum, defer these draft proposals so that they may receive more thorough analysis, comment and review before proceeding with formal proposed amendments.

II. RESPONSES TO SELECTED DRAFT RULE CHANGES

A. Proposed New Rule Minn. R. 7829.0250 – Representations To Commission

The current draft amendments include a new rule, Minn. R. 7829.0250, that would require “(a) person who signs a filing or enters an appearance at a commission meeting, by doing so, represents that the person is authorized to do so and has had a good faith belief that statements of fact made are true and correct, and that legal assertions made are warranted by existing law or by a reasonable extension or reversal of existing law.” The Notice sought comment on this draft proposal as well as a possible additional subpart to such a rule that would permit the Commission to impose sanctions on parties found to have violated the rule. The Company respectfully raises concerns with each potential subpart of this draft rule.

First, the Company would note that attorneys appearing before the Commission already are subject to the Rules of Professional Conduct, enforced by the Lawyers Professional Responsibility Board through its Rules on Lawyers Professional Responsibility, and owe a duty of candor to the tribunal with or without the adoption of draft Minn. R. 7829.0250.²

Second, for non-attorneys appearing before the Commission, the Company would respectfully note that past Commission proceedings have demonstrated disputes as to whether issues such as an unintended error or a mistaken understanding in a filing or in testimony amount to the filing of “false” information or something far less nefarious. The fact is inadvertent errors or outright mistakes occasionally happen, on the part of all parties who appear before the Commission. However the Company has not observed problems or issues with parties making representations with no basis or, worse, while knowing the falsity of their representations. Moreover, the Company has observed that the Commission already sends strong messages to

² See, e.g. Minnesota Rules of Professional Conduct, Rules 3.1 and 3.3

parties in the event of errors in the form of its rulings on the merits of any such disputes. In short, this draft amendment appears unnecessary at this time.

Third, adoption of such a draft rule, particularly to the extent that the Commission also seeks to impose undefined “sanctions,” seems destined to only spawn future disputes and consume additional regulatory resources as the Commission investigates whether or not a party had a good faith basis for its inaccurate statement.

Finally, to the extent that the Commission seeks to grant itself undefined sanction authority, the Company respectfully asserts that the draft appears to exceed the current “penalty” authority as set forth in Minn. Stat. §§ 216B.57-61.

For all of these reasons, the Company recommends that the Commission not proceed with a proposed rule based on its current draft.

B. Minn. R. 7829.0400, Subp. 1A – Removing the Current 4:30 P.M. Deadline for Filing.

This proposed amendment, if adopted, would allow electronic filings until midnight of the due date. CenterPoint Energy respectfully suggests that such a change goes beyond the Commission’s stated goals of this rulemaking and would be ill-advised. First, this proposed change does nothing 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.” Second, given that filings now occur through the e-docket system, and that Department of Commerce (“Department”) action is required to post filings to e-dockets, it is unclear exactly how and when a filing made after Department business hours would be docketed and posted. Finally, and more practically, extending the filing time until midnight does nothing but delay receipt into the record of parties’ filings. Under the Commission’s current rules, all parties often

delay filing until shortly before the close of business (4:30 P.M.) deadline to ensure that opposing parties do not gain a tactical advantage by seeing others' filings before completing their own submission. If the Commission now allows electronic filing until midnight, presumably all parties will simply wait until late in the evening before submitting their filings, adding cost and delaying receipt into the record of these filings. As such, Commission adoption of this draft amendment simply would not "permit the Commission to more effectively perform its quasi-legislative and quasi-judicial functions" and this draft amendment should not advance.

C. Minn. R. 7829.0500 – Protected Data.

The current draft amendment to Minn. R. 7829.0500 states, in subpart 1, that "nothing in this chapter requires public disclosure of protected data." The draft rule amendment then proceeds to discuss procedures for excision of "protected data" from any public filings, including a requirement that any such public filing include a banner stating "PUBLIC DOCUMENT – NON-PUBLIC (OR PRIVILEGED) DATA HAS BEEN EXCISED."³ The draft amendment also proceeds to discuss how parties must submit documents containing "protected data," including a requirement of justification for treating the information as "protected," stating that this justification "must include an explanation of how the data is classified under Minnesota Statutes, section 13.37, or is privileged under a rule of privilege recognized by law."⁴

"Protected data," in turn, is defined in proposed new Minn. R. 7829.0100, subp. 19a as follows:

"Protected data" means data filed with the Commission that is either:

- A. nonpublic data or private data on individuals under the Minnesota Government Data Practices Act, Minnesota Statutes, section 13.37; or
- B. data that is protected from disclosure pursuant to the rules of privilege recognized by law.

³ Proposed Minn. R. 7829.0500, subp. 2 (emphasis added).

⁴ Proposed Minn. R. 7829.0500, subp. 5 (emphasis added).

Otter Tail has raised a concern that, read together, these draft amendments could be interpreted to compel the production of “privileged” communications, albeit subject to “trade secret” protections, if applicable.⁵ The Company respectfully notes that, while Otter Tail raises an important issue which merits modification of the draft rules, its concerns requiring the Commission potentially compelling production of privileged materials are not well founded. As Otter Tail itself recognized in prior comments, the Commission cannot compel any party to waive the attorney-client privilege or other legally recognized privileges, when applicable, regardless of any new Commission rule. As such, and for the purpose of clarity, CenterPoint Energy recommends that references in the draft amendments to “privileged” information be removed.

D. Minn. R. 7829.0700, Subp. 1 - Official Service List.

The current draft amendments contain a requirement to limit official service lists to “one individual per party or participant.” Given the administrative ease of the e-dockets system, there is no need to limit participation on official service lists in this manner, especially for utilities where electronic service is required. CenterPoint Energy, like other large companies often has more than one person involved in specific dockets. Limiting official notification to one person in an organization (including outside counsel and internal employees) could result in miscommunication and confusion.

The Company does understand and appreciate the burden that service of paper copies of filings may put on certain parties. Therefore, in order to reduce potential administrative efforts

⁵ Of course, it is unclear how a “privileged” document could meet the definition of a “trade secret.” Complicating matters further, the disclosure of a “privileged” document to the Commission, even under the procedures set forth in the draft rule, may destroy the disclosing party’s ability to maintain the claim of privilege against any other party seeking disclosure.

and the associated costs of such filings, CenterPoint Energy suggests that *paper service* could be limited to one person per party or participant.

E. Minn. R. 7829.1400 - Commission Action on Miscellaneous Filing; Comments.

The current draft amendments appear to consolidate and clarify the current rules that set out filing deadlines for various filings, but also appear to remove the Commission's ability to vary time periods (without requesting a formal rule variance) for parties other than the Department of Commerce. Specifically, the current draft proposes repealing Minn. R 7829.1400, subp. 7 which states: "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." The Company believes that the current rule appropriately gives the Commission the ability to efficiently vary time periods for all parties without a formal rule variance (which, in fact, is impractical given the time periods involved) and should be continued.

F. Minn. R. 7829.2400, Subp. 5 - Rejection Filing.

The current draft amendment would require rejection of a general rate case by the Commission as "substantially out of compliance" with applicable requirements if it "finds the filing will impair the commission's ability to evaluate the need for a change in gross revenue of a utility." This draft appears to be a significant change from the current rules which allow the Commission substantial discretion to review completeness, and fashion an appropriate remedy, on a case-by-case basis. The Company is not aware of significant issues or concerns with the current rule and suggests that such a significant revision which includes a new and vague "impairment" criterion opens the door to further controversy, may actually impair the Commission's ability to appropriately fashion remedies, and goes beyond the scope of the stated

goals of this docket. For those reasons, the Company respectfully suggests that the Commission not proceed with this draft amendment.

G. Minn. R. 7829.2600 - Staff Comments.

The Notice includes a draft amendment to Minn. R. 7829.2600. Currently, the rule reads that: “If commission staff recommend action not advocated by any party, all parties **must** be granted oral comment at the request of any party.” Of course, the Commission also has the discretion to allow further written comment in appropriate circumstances.

In contrast, the draft amendment would change the rule to state: “If commission staff recommend action not advocated by any party, at the request of any party **and to the extent practicable**, all parties must be granted an opportunity to comment.” As such, the draft amendment would allow for a Commission decision prohibiting a party from responding to Staff, raising serious due process concerns. CenterPoint Energy would respectfully observe that the current rule does not appear to have created problems or concerns. Therefore, the Company recommends that no change is needed.

III. CONCLUSION

CenterPoint Energy agrees with the Commission's goals in this proceeding of eliminating outdated language, reflecting statutory changes where necessary, clarifying existing procedures, and developing procedural requirements to assist in the effective performance of Commission functions. The Company further appreciates the efforts of Staff and other parties to craft amendments meeting these goals. Indeed, many of the current draft rule amendments will meet those goals and those draft amendments can and should move forward expeditiously. However, for those draft amendments discussed above, the Company recommends either no change from the current rules, modification of the current draft amendments or, at minimum, further review.

Respectfully Submitted,

September 6, 2013

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