

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: February 19, 2015 *Agenda Item #1

Company: **All Utilities**

Docket No. **U-999/R-13-24**

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

Issue(s): Should the Commission Adopt Rule Revisions Recommended by the ALJ?

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I. Relevant Documents

Order Adopting Rules December 31, 2015
ALJ's Order on Review of Rules Under Minn. Stat. § 14.26 January 27, 2015
Adopted Rules as Approved by the Revisor (Dated 12/3/2015) February 3, 2016

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.

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II. Statement of the Issues

Should the Commission Adopt Rule Revisions Recommended by the ALJ?

III. Background

On December 31, 2015, the Commission adopted amended rules of practice and procedure. Under Minn. Stat. § 14.26, before the rules can take effect, they must be reviewed and approved by the Office of Administrative Hearings.

On January 27, 2016, the ALJ assigned to review the adopted rules approved them. Additionally, the ALJ recommended two “technical corrections” that he determined would also be approved if adopted by the Commission.

Whether the Commission decides to adopt or decline the ALJ’s recommendations, the rule will become effective upon filing it with the Secretary of State and five business days after the adopted rule is published in the *State Register*.

IV. The ALJ’s Recommended Changes

The ALJ made two recommendations that the Commission may either adopt or decline to adopt.

A. Clarify Further The Definition of Miscellaneous Filing

The ALJ recommended the following:

The Commission proposes to modify the term “miscellaneous tariff filing” by deleting the word “tariff,” so that the revised rule would encompass a broader range of less common filings. The proposed rule also defines a “miscellaneous filing” as “a request or notice that does not require determination of a utility’s revenue requirement.”

The Commission should consider whether the rule, as modified, includes a request for a site permit for a large electric power generating plant or a route permit for a high-voltage transmission line. Minn. Stat. §§ 216E.03, subd. 9, and 216E.04, subd. 7, (2014) each label these applications as “requests.” These “requests” are likewise submitted to the Commission and, presumably, do not require a determination of a utility’s revenue requirement. See Proposed Rule Minn. R. 7829.0100, subp. 11.

A revision that clarified whether a request for a site permit for a large electric power generating plant or a route permit for a high-voltage transmission line is a “miscellaneous filing,” is needed and

reasonable and would not be a substantial change from the rules as proposed.

Commission rules outside of Chapter 7829 specifically address practices and procedures for many different types of filings, including site and route permits.¹ Adopting the ALJ's recommendation would likely introduce rather than alleviate confusion, because the revised definition would address site and route permits but not address a multitude of other filings that are also procedurally governed by other specific rule provisions.

Minn. R. 7829.0200 ("Conflicting statutes and substantive rules to control") prevents the ambiguity that this suggested clarification is intended to alleviate. Part 7829.0200 makes clear that Chapter 7829 contains generally applicable rules, which are superseded by more specific procedural rules. Revising the definition of Miscellaneous Filing to insert a reference to one type of filing but omit others that are similarly situated could cause confusion rather than avoid it.

Staff therefore recommends not adopting this recommendation.

B. Uniform Motion Response Deadlines

The ALJ Recommended the following:

The Commission proposes to require a pleading that opposes the withdrawal of an application to be filed "within ten days of service of the notice" of withdrawal. In a different rule, Minn. R. 7829.0410, the time period for opposing other requests for relief is 14 days.

The Commission should consider whether setting the response period for contested withdrawals at a different, and shorter interval than routine opposition filings, would be a trap for the unwary and result in a higher number of untimely filings.

A revision that set the same response period for both sets of filings is needed and reasonable, and would not be a substantial change from the rules as proposed.

Both rule parts at issue in this suggestion are new. Part 7829.0410 provides 14 days to object to a motion; Part 7829.0430 provides 10 days to object to withdrawal of a filing. The Commission expressly approved a 10-day deadline in Part 7829.0430 primarily because it is consistent with

¹ See, e.g., Minn R. Chs. 7843 (Utility Resource Planning), 7849 (Power Plant or Line Certificates of Need), 7848 (Biennial Transmission Projects Reports), 7852 (Pipeline Route Permits), 7854 (Large Wind Energy System Site Permits).

existing commission practice.² The 14-day deadline for responses to all other motions was derived from an analogous Minnesota Rule of General Practice.³

The ALJ did not require that the Commission modify the rule. And, if the Commission chooses to make the deadlines uniform, the ALJ did not require any specific deadline.

The suggestion to impose a consistent response deadline has merit. Making the deadlines uniform would eliminate a possible ambiguity and avoid unnecessary confusion, without significantly delaying Commission action.

Because ALJ Lipman concluded that changing 7829.0430 to a 14-day deadline would be needed, reasonable, and not substantially different, staff recommends that the Commission adopt the recommended change and set a uniform 14-day deadline unless the Commission concludes that another uniform deadline is appropriate, or that having distinct response deadlines is its preference.

V. Commission Options

A. Clarify Further The Definition of Miscellaneous Filing

1. Decline to adopt the ALJ's recommendation.
2. Adopt the ALJ's recommendation and direct staff to modify the definition of Miscellaneous Filing to clarify whether a request for a site permit for a large electric power generating plant or a route permit for a high-voltage transmission line is a miscellaneous filing.

B. Uniform Motion Response Deadlines

1. Adopt the ALJ's recommendation and establish a 14-day response deadline in part 7829.0430.
2. Adopt the ALJ's recommendation and establish a different uniform response deadline in parts 7829.0410 and 7829.0430.
3. Decline to adopt the ALJ's recommendation.

C. Direct staff to publish the adopted rule in the State Register—with changes, if any are adopted by the Commission.

VI. Staff Recommendation

Staff recommends Options A1, B1, and C.

² Order Adopting Rules, December 31, 2015.

³ Minn. R. Gen. Pract. 115.04.