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September 6, 2013

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: **Reply Comments of the Minnesota Department of Commerce**
Docket No. U999/R-13-24

Dear Dr. Haar:

Attached are the Reply Comments of the Minnesota Department of Commerce (Department) in the following matter:

Possible Amendment to Rules Governing Utility Proceeding, Practice, and Procedure, Minnesota Rules Chapter 7829, excluding 7829.2550, which is subject to a separate pending rulemaking.

The Department appreciates the opportunity to comment and is available to answer any questions the Commission may have.

Sincerely,

/s/ SUSAN MEDHAUG
Supervisor, Energy Regulation and Planning

/s/ DONNA HEASTON
Public Utilities Rates Analyst

SM/DH/jl
Attachment



BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

**REPLY COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE**

DOCKET No. U999/R-13-24

I. BACKGROUND

On February 15, 2013, the Minnesota Public Utilities Commission (Commission) issued a notice of comment period on amendments to the Rules of Practice and Procedure in Minn. Rules Ch. 7829.

On August 1, 2013, the Commission considered the current docket during its agenda meeting, and based on the discussion at that meeting, issued a second notice of comment period on August 7, 2013. The notice states that parties may comment on any issue arising from the draft of possible amendments with emphasis on the following possible revisions to:

- 1) Part 7829.0250 concerning possible sanctions for violations of the proposed Commission rule governing representations of fact or law to the Commission; and
- 2) Part 7829.2600 concerning the following proposed language: “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.”

II. STATUTORY AUTHORITY

The Commission’s statutory authority to adopt rules is set forth in Minn. Stat. §§ 216A.05 and 216B.08.

The Administrative Procedure Act, Minn. Stat. Ch. 14, requires the Commission to establish the need for the proposed rules by an affirmative presentation of facts. Minn. Stat. §§ 14.14, subd. 2 and 14.23.

III. DEPARTMENT COMMENTS

A. *MINN. RULES PT. 7829.0250 REPRESENTATIONS TO THE COMMISSION*

The Commission seeks comments on an amendment to Minn. Rules pt. 7829.0250 that would include the following language:

Subp. 2. Sanctions. If, after notice and an opportunity for comment and reply, the commission determines that subpart 1 has been violated, the commission may impose a sanction on any party or participant who violated subpart 1 or is responsible for the violation. A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

The Department has no changes to the proposed rule, but wishes to note that the Commission may address inappropriate conduct without a proceeding to impose sanctions. The reputation of parties and their representatives is critical when the Commission is engaged in decision making in matters pertaining to a utility. Therefore, if the Commission has concerns about the veracity or substantiation of statements or legal assertions made in conjunction with a proceeding, it may be effective for the Commission to address those concerns in its decisions and orders, rather than imposing a sanction. Addressing untruthful or unsupported statements or legal assertions in a Commission order would not only confront the issue at hand, but could help to deter future violations. Further, addressing such concerns in an order would be more expeditious than a proceeding to impose sanctions.

B. *MINN. RULES PT. 7829.2600 STAFF COMMENTS*

The Commission seeks comments on an amendment to Minn. Rules pt. 7829.2600 proposed to read as follows:

Written comments on a filing by commission staff must be made available to those persons on the service list at the same time they are provided to the commission. 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 ~~oral~~ an opportunity to comment at the request of any party.

The proposed additional language, "...and to the extent practicable..." would give the Commission discretion to *not* grant the opportunity for comment, if it is deemed impracticable to do so. Providing the opportunity for comment is generally appropriate to ensure parties' due

process rights are not violated, and to create a clear and complete record to support well-reasoned Commission decisions. Therefore, the Department expects that any findings of impracticability should be very infrequent, and parties should rarely be denied an opportunity to comment.

The language also provides for comments to be written or oral, giving the Commission discretion to tailor how best to receive parties' comments in these circumstances. The Department supports both proposed changes to Minn. Rule 7829.2600.

C. ORIGIN AND OPERATION OF THE ELECTRONIC FILING SYSTEM

The Department and the Commission launched the electronic filing (EFileing) system, located at <https://www.edockets.state.mn.us/EFileing/home.jsp> as a shared service by the agencies and the Office of Enterprise Technology. The system allows documents associated with matters under the jurisdiction of the Commission to be filed and retrieved via the Internet, and was made possible by the 2005 Energy Bill (SF 1368) that authorized funding for the establishment of an electronic filing system. The system continues to operate as a shared system, with various functions being performed by each agency.

There is language throughout the proposed rules that refers to EFileing as the "commission's electronic filing system." It would be more accurate to refer to the EFileing system as the "agencies' electronic filing system," or similar language. This change would clarify the additional role of Department staff in the operation of the system, and reinforce the fact that the Commission and Department partner in the administration and operation of the system.

D. MINN. RULES PT. 7829.0400 SERVICE AND FILING REQUIREMENTS, SUBP. 1A (FILING)

Minn. Rules pt. 7829.0400, subp. 1A is proposed to state as follows:

- A. If submitted and accepted into the Commission's electronic filing system, documents are considered filed at the time of electronic submission, regardless of whether the submission occurred during regular business hours.

Under this proposal electronic documents filed before midnight on a given day, and ultimately accepted, would be considered filed on that day.

Current Practice

As the Commission is aware, designated administrative staff at the Department are responsible for the review and acceptance of documents into the electronic filing system. When filings are received electronically, the public version can be accessed by parties on the service list immediately upon submission. Individuals not on the service list, including those that use the

eService subscription process, and assigned Department and Commission staff who receive their filing notification through the internal distribution system, cannot access the public version until the submission is verified and accepted by administrative staff at the Department. Trade secret documents are not available to anyone, including individuals on the service list, until after the submission is verified and accepted. The average verification process generally occurs within two hours of the submission, if submission occurs during normal business hours. If Department administrative staff are made aware of the need to verify and accept documents near the end of the business day so that everyone has access to the filings, all reasonable attempts are made to satisfy the need.

Midnight Deadline Change

If the filing deadline is changed to midnight, public submissions made after normal business hours, up to midnight, will be seen by those on the service list. However, it will be many hours (or even days in the case of a Friday deadline) before assigned agency staff or subscribers can see the submission. It would not be appropriate to put regulatory agencies at such a disadvantage.

The Department believes the objectives of the rule with regard to the timing of submissions should be to:

- 1) minimize the time between when the document is submitted and when it is accessible; and
- 2) enable access to filings by everyone as close to the same time as possible.

These objectives should be applied as uniformly as possible, to public and trade secret documents, and for subscribers as well as service list recipients and regulatory staff. Extending the submission deadline past regular business hours, with filings possible up to midnight, would likely result in greater difficulty in achieving these objectives. To the contrary, an earlier deadline of 3:00 or 3:30 p.m., as opposed to the current 4:30 p.m., would help ensure that filings can be verified and accepted by Department administrative staff before the end of the business day. This approach, which has been used in contested cases, would better achieve the goal of enabling all individuals to have access to filings at the same time (including trade secret documents if parties are authorized to receive them).

A midnight deadline could significantly increase the delay between the filing of documents and the availability of documents to parties, during many proceedings that are already subject to a tight schedule. Therefore, the Department does not support the proposed change.

E. MINN. RULES PT. 7829.0400 SERVICE AND FILING REQUIREMENTS, SUBP. 4 (FORMAT)

Minn. Rules pt. 7829.0400, subpt. 4 states that filings "...shall also include the required data in an industry standard spreadsheet format."

The existing E filing system only accepts data in Microsoft Excel or Adobe Portable Document Format (pdf). Data filed using any other format cannot be accepted by the system without changes to the system design. Therefore, the Department does not support this proposed revision.

F. MINN. RULES PT. 7829.0400 SERVICE AND FILING REQUIREMENTS, SUBP. 5A (SERVICE COMPLETION)

Minn. Rules pt. 7829.0400, subpt. 5A states, "...electronic service is complete upon electronic transmission of the document."

As explained above, documents will not be accessible to all until after the verification and acceptance process occurs at the Department. Verification and acceptance of documents is a critical function that exists to ensure that a valid, viewable document is contained in the submission. While the submitting party may believe that they properly completed their task, if, for example, a submission is rejected because it is not viewable, "service" is not complete. For these reasons, the Department recommends that the rule state that service is complete upon electronic submission of the document **and** subsequent acceptance into the electronic filing system.

G. MINN. RULES PT. 7829.0700 OFFICIAL SERVICE LIST, SUBP. 1 (CONTENT)

Minn. Rules pt. 7829.0700, subp. 1 states, "The official service list shall be limited to one individual per party or participant."

There are numerous individuals registered in the E filing system who may represent multiple parties, such as lawyers and consultants. The service list generated by the E filing application cannot identify which of the various parties these individuals may represent in any particular proceeding. It would not be possible to associate these individuals with the party that they represent on a particular docket without an application design change.

The Department recommends against limiting the official service list to one individual per party or participant. In addition to the practical consideration noted above, that limitation may be problematic when more than one person associated with an organization has substantial responsibility for a case, but only one has ready access to the documents and receives notifications of new submissions. To the extent that additional people receive electronic service, there is essentially no cost to include them on the service list, and it is not clear what issue this proposed limitation would resolve.

H. MINN. RULES PT. 7829.3150 UNTIMELY FILINGS, SUBP. 1B (WHEN FILINGS MAY BE EXCLUDED)

Minn. Rules pt. 7829.3150, subpt. 1B requires that excluded documents "...shall remain in the commission's electronic filing system, but shall be marked as 'excluded from record by commission order.'"

While the Department has no objection to this concept, it is unclear what the Commission intends by the wording "shall be marked as 'excluded from record by commission order'." At present the application has no ability to mark a document. While Commerce staff could add language to the index results to indicate that the document is excluded, in the absence of an application design change, the document itself would not display that it has been excluded from the record.

Overall, the Department notes that, for each of the proposed rules that would require a system design change, it would be beneficial for the Department's EFiled system staff and the Commission to have a more detailed conversation about the system's capabilities and limitations. This approach may help clarify the concerns to be addressed, and should avoid establishing rules that cannot be accommodated by the current system. The Department is available for such a discussion.

/jl

CERTIFICATE OF SERVICE

I, Jan Mottaz, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

Comments of the Minnesota Department of Commerce.

Docket No. U999/R-13-24

Dated this 6th day of September 2013

/s/Jan Mottaz

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