

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: July 10, 2014*Agenda Item #2

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): Whether to publish a Notice of Intent to Adopt Rules

Staff: Christopher Moseng651-201-2223

Relevant Documents

- Comments in Docket No. E,ET,IP-999/R-12-1246, Legalectric, Inc. January 23, 2013
- Request for Comments, published in the *State Register* February 19, 2013**
- Comments, Charter Fiberlink COO, LLC and Charter Fiberlink CC VIII, LLC April 8, 2013
- Comments, Minnesota Department of Commerce..... April 8, 2013
- Comments, Office of the Attorney General – Antitrust and Utilities Division April 8, 2013
- Comments, Xcel Energy April 8, 2013
- Comments, CenturyLink..... April 8, 2013
- Comments, Otter Tail Power Company April 8, 2013
- Comments, Legalectric, Inc. June 10, 2013
- Notice of Comment Period August 7, 2013**
- Comments, Dakota Electric Association September 4, 2013
- Comments, Minnesota Power September 6, 2013
- Comments, Otter Tail Power Company September 6, 2013
- Comments, CenturyLink..... September 6, 2013
- Comments, Minnesota Energy Resources Corporation September 6, 2013
- Comments, Minnesota Cable Communications Association..... September 6, 2013
- Comments, Minnesota Department of Commerce..... September 6, 2013

Comments, CenterPoint Energy.....	September 6, 2013
Comments, NoCapX 2020 and United Citizens Action Network	September 6, 2013
Comments, Kristen Eide-Tollefson Cure.....	September 6, 2013
Comments, Xcel Energy	September 6, 2013

I. Background

The Commission's current rules of Practice, Proceeding, and Procedure, Minn. R. ch. 7829, were adopted in 1994, with few modifications since.¹

The Commission directed staff to open a rulemaking to consider amending the Commission's rules of practice and proceeding. The rulemaking is intended to eliminate outdated rule language, to address statutory changes, to clarify existing Commission procedures, and to establish procedural requirements that permit the Commission to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. The Revisor has assigned this Rulemaking project tracking number R-04159.

The attached rules draft reflects proposed rule amendments developed with the input of Commission staff, and revised in light of the comments discussed in section III below. At this stage in the rulemaking process, the Commission can decide to publish a Notice of Intent to Adopt Rules or solicit additional public input on the possible amendments through additional comments or an advisory committee.

These briefing papers incorporate the comments and discussion contained in the briefing papers used at the August 1 meeting, with the new material added at the end. Comments made in response to the February 19 Request for Comments are summarized in section III and **comments following the August 7 Notice of Comment Period are summarized in section V**. For purposes of clarity, the rule draft filed in the docket on July 25, 2013 remains the operative version of the draft for purposes of comparison. That draft was refiled in conjunction with these briefing papers.

II. Comment Periods

a. Request for Comments Published in the *State Register*

On February 19, 2013, the Commission published a Request for Comments in the *State Register* and did a mass mailing to the general rulemaking list, requesting comments on amending the rules and on whether the Commission should appoint an advisory committee. The Commission received a range of comments on the rulemaking.

¹ Rule parts concerning notice plans for transmission lines and pipelines were later added. One of those rule parts, Minn. R. 7829.2550, is currently the subject of another pending rulemaking and will likely be relocated.

Additionally, On January 23, 2013, in Docket No. E,ET,IP-999/R-12-1246, Legalectric, Inc. filed comments in response to a request for comments in another pending Commission rulemaking. Some of the comments pertained to the rule parts under consideration in this proceeding. Specifically, the comments addressed Rules 7829.0700, .0800, .1000, .1100, .2600, and .2700.

On June 10, 2013, Legalectric, Inc. filed comments in this docket, stating that it had not received notice of the request for comments. The comments from Legalectric, Inc. filed on January 23 and June 10 are addressed in section III, below.

On some occasions, conflicting recommendations on the same rule part could not simultaneously be incorporated into the attached draft. In those instances, the draft contains the language that Staff believes most closely adheres to the scope and goals of the rulemaking without exceeding the Commission’s authority.

b. August 7, 2013, Notice of Comment Period

At its August 1, 2013, meeting, the Commission directed staff to begin a 30-day comment period to take additional comments on the rule draft. The Notice solicited comments on the entire July 25, 2013 draft, and specifically on possible revisions to the draft discussed at the Commission’s August 1, 2013 meeting. Eleven entities and individuals filed comments during this comment period.

III. Comments: February 19 Request for Comments

In response to its initial Request for Comments, the Commission received comments on the following rule parts:

7829.0100 DEFINITIONS

Subp. 18: Legalectric, CenturyLink, and Charter Fiberlink COO, LLC and Charter Fiberlink CC VIII, LLC (the Charter Entities) commented on the definition of “protected data.” See the comments on Rule Part 7829.0500 and the Staff Discussion in Section IV, below, for a full discussion of the subject of protected data. Legalectric and the Charter Entities made the following specific recommendations:

Request for Comments (RFC) Draft Language	a. <u>properly identified as nonpublic data under the Minnesota Government Data Practices Act, Minnesota Statutes 13.37, or</u>
Recommended Language Legalectric, Inc.	a. <u>properly identified and justified as nonpublic data under the Minnesota</u>

	<u>Government Data Practices Act, Minnesota Statutes 13.37, or</u>
Recommended Language The Charter Entities	a. <u>nonpublic data or private data on individuals under the Minnesota Government Data Practices Act, Minnesota Statutes 13.37, or</u>

The Charter Entities’ recommended language is incorporated in the attached draft.

Subp. 21: The Charter Entities and the Minnesota Department of Commerce (the Department) recommend the following revisions:

RFC Draft Language	"Utility" means a gas, electric, or <u>telecommunications service provider</u> telephone company subject to the jurisdiction of the commission.
Recommended Language The Charter Entities	"Utility" means a gas, electric, or telephone company, <u>or telecommunications carrier,</u> subject to the jurisdiction of the commission.
Recommended Language The Department	"Utility" means a gas, <u>or electric service provider,</u> or telephone <u>utility,</u> company subject to the jurisdiction of the commission.

The Department’s recommendation is reflected in the attached draft. In Section VI, below, staff recommends an additional slight modification to this language.

Legalelectric, Inc. recommends that the Commission define “exigent circumstances,” which appears in Rule 7829.2800. This recommendation is not reflected in the draft because it is appropriate and within the Commission’s authority to find exigent circumstances on a case-by-case basis.

Legalelectric, Inc. also recommends that the Commission define “qualified complainant,” which appears in 7829.1600. This recommendation has been incorporated in the attached draft. The added definition, “a person authorized by statute to make a formal complaint to the commission,” is not intended to substantively change the application of rule 7829.1600, but to capture the operational definition that has applied to the phrase. Such authorizations appear variously throughout Minnesota Statutes (e.g., § 216B.17, subd. 1, and § 237.081, subd. 2.). Rather than attempt to include and maintain an exhaustive list of such authorizations, the definition as drafted captures all of them, wherever they may appear.

7829.0400 SERVICE AND FILING REQUIREMENTS

The Office of the Attorney General – Antitrust and Utilities Division (the OAG) recommends that the rule provision concerning service and filing requirements be revised to allow filing through midnight, and to add electronic filing requirements for spreadsheets. These recommendations are reflected in the attached draft.

7829.0411 REPRESENTATIONS TO THE COMMISSION

In the attached draft this part has been renumbered 7829.0250. The Charter Entities recommend revising this rule part, which is new language modeled on Rule 11 of the Federal Rules of Civil Procedure, the Minnesota Rules of Civil Procedure, the California Public Utilities Commission Rule 1.1,² and on language previously used by the Commission for a similar purpose.³

The Charter Entities contend that the draft language of 7829.0411 should more closely conform to the analogous Minnesota Rule of Civil Procedure, and as drafted may tend to stifle legitimate debate. Specifically, the Charter Entities highlight that Minn. R. of Civ. P. application is limited to pleadings, motions, and similar filings. They recommend the following revisions:

RFC Draft Language	Recommended Language
<p><u>Any person who signs a filing or enters an appearance at a commission meeting, by doing so, represents that he or she is authorized to do so and has 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.</u></p>	<p><u>Any person who signs a pleading, motion or similar filing or enters an appearance at a commission meeting, by doing so, represents that he or she is authorized to do so and has a good faith belief that statements of fact made therein are true and correct, and that legal assertions made by him or her therein are warranted by existing law or by a reasonable nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.</u></p>

Legalelectric, Inc. agrees with the Charter Entities comments, and recommends that the Commission include a statement referring to “Rule 11 or other applicable professional code of conduct,” to apply to both attorneys and non-attorneys.

² Cal. Code Regs. Tit. 20, § 1.1.

³ Notice Seeking Comments (March 11, 2011), Docket No. E-017/M-10-1082.

The recommendations are not included in the attached draft. Differences between the draft rule and the Minnesota Rules of Civil Procedure serve two important Commission objectives. First, the Commission is not a court. The Commission does not have the authority to modify or establish common law in the sense that a judicial entity may. Accordingly, rule language implying the Commission has such authority may be inappropriate.

Additionally, the draft language intentionally departs from the rule of civil procedure by governing oral representations to the Commission. The California Commission rules contain similar language. Requiring good faith efforts in oral presentations as well as written filings advances the Commission’s interest in a record that provides a sound basis for Commission decision making. The draft language applies equally to attorneys and to non-attorneys with business before the Commission.

7829.0420 MOTION FILINGS

Xcel recommends that the rule allow 14 days to respond to a motion rather than 10. This recommendation is reflected in the attached draft.

7829.0500 PROTECTED DATA

The Department asserts that in the past the Commission has adapted its procedures when dealing with voluminous or highly sensitive data. The Department recommends that the proposed rule not limit the Commission’s flexibility in this regard, though states that the draft rule does not appear to do so.

The Charter Entities recommend clarifying language for the rule part concerning protected data.

RFC Draft Language	Recommended Language
Nothing in this chapter requires the public disclosure of privileged proprietary information, trade secrets, or other privileged information.	Nothing in this chapter requires the public disclosure of privileged proprietary information, trade secrets, or other privileged information <u>protected data</u> .

The recommended language is incorporated in the attached draft.

Otter Tail Power Company recommends reorganizing and slightly rewording and reorganizing subpart 2.

RFC Draft Language	Recommended Language
Persons filing documents containing proprietary information, trade-protected data or other privileged information shall <u>file one copy of the document</u>	Persons filing documents containing proprietary information, trade secrets, <u>protected data</u> or other privileged information shall <u>file one copy of the</u>

<p><u>with the information redacted, and one copy without redactions, designated as required in subpart 4 and identified as a nonpublic document during the electronic submission process. excise this information in all copies but the original and six copies. The first page or cover page of a document from which protected information has been excised must be clearly captioned in bold print “PUBLIC DOCUMENT—NONPUBLIC (or PRIVILEGED) DATA HAS BEEN EXCISED. The beginning and end of the excised protected data must be identified.</u></p>	<p><u>document with the information redacted. excise this information in all copies but the original and six copies. The first page or cover page of a document from which protected information has been excised must be clearly captioned in bold print “PUBLIC DOCUMENT—NONPUBLIC (or PRIVILEGED) DATA HAS BEEN EXCISED. The beginning and end of the excised protected data must be identified. One copy of the document without redactions shall be filed, designated as required in subpart 4, and identified as a nonpublic document during the electronic submission process.</u></p>
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The reorganization suggestion is incorporated in the attached draft.

Otter Tail Power Company also recommends either clarifying or eliminating the use of the word “privilege” in the rule part. It contends that the terms “protected” and “nonpublic” are sufficient for purposes of the rule, and use of the word privilege creates potential for confusion. It suggests, alternatively, that “an explanation should be added in the Rule to clarify that references to ‘privileged’ data and information are not intended to imply a compulsion to disclose communications covered by legal privilege (even in non-public filings).”

Rule 7829.0500, subp. 1, seems to address Otter Tail Power’s suggestion. It reads: “Nothing in this chapter requires the public disclosure of privileged proprietary information, trade secrets, or other privileged information.”

CenturyLink expresses concern about the effort needed to comply with the draft rules concerning protected data. This concern is addressed in greater detail in section IV, below.

7829.0600 GENERAL SERVICE LIST

Xcel recommends that the rule encourage or require parties desiring to be on a general service list to provide an email address. This recommendation is reflected in the attached draft.

Legalelectric, Inc. asserts that the utilities have an unacceptable measure of discretion in administration of general service lists and recommends that the Commission maintain the lists. This recommendation is not incorporated in the draft, as it constitutes a substantial change from the status quo and it is not apparent what benefits it would provide. The draft, consistent with the

scope of the rulemaking described in the request for comments, simply updates the existing language to accommodate electronic service.

7829.0700 OFFICIAL SERVICE LIST

Otter Tail Power Company recommends that the Commission add the following language:

RFC Draft Language	Recommended Language
<p>A party or participant who wishes to change the name or address of a person receiving service on behalf of the party or participant shall provide written notice of the change to the executive secretary and to persons on the official service list.</p>	<p>A party or participant who wishes to change the name or address of a person receiving service on behalf of the party or participant shall provide written notice of the change to the executive secretary and to persons on the official service list. <u>Persons are responsible for maintaining current paper and electronic service address information. When a person is served and the mail is returned as undeliverable two times to a serving party, the Commission may remove the person from the applicable service list. A person may be added to the applicable service list at a later time by filing a request with the Commission.</u></p>

Legaletric, Inc. made the following recommendations:

7829.0700, subp. 1

RFC Draft Language	Recommended Language
<p>The official service list for each proceeding consists of the names of the parties and the names of participants who have filed a written request for inclusion on the service list with the executive secretary.</p>	<p>ADD: <u>The official service list shall be limited to one individual per party. Those on service lists must identify party represented. Access to officially filed documents shall be available through subscription to eDockets or viewing the website for a particular docket.</u></p>

7829.0700, subp. 3

RFC Draft Language	Recommended Language
On its own motion or at the request of a party, the commission shall limit the service list to parties to the proceeding if it finds that requiring service on participants is unduly burdensome.	ADD: <u>The official service list shall be limited to one individual per party. Access to officially filed documents shall be available through subscription to eDockets or viewing the website for a particular docket.</u>

7829.0700, subp. 5

RFC Draft Language	Recommended Language
In proceedings before an administrative law judge in which the judge establishes a service list, the names on that service list must remain on the official service list for the remainder of the proceeding.	ADD: <u>The official service list in a contested case hearing shall be limited to one individual per party.</u>

The recommendations of both Otter Tail Power Company and Legalectric, Inc. are reflected with slight modification in the attached draft.

7829.0800 PETITION TO INTERVENE

Legalectric, Inc. made the following recommendations:

7829.0800, subp. 1

RFC Draft Language	Recommended Language
A person who desires to become a party to a proceeding shall file a petition to intervene within the time set in this chapter. The petition must be served on known parties and those persons on the utility's general service list for the matter, if applicable.	ADD: <u>If during the contested case the scope of impacts is broadened, the intervention deadline shall be extended to allow intervention by newly affected parties. The administrative law judge, with the consent of all parties, may waive the requirement that the petition be in writing.</u>

7829.0800, subp. 2

RFC Draft Language	Recommended Language
The petition must allege the grounds for intervention and [. . .] or the person's interests are not adequately represented by one or more other parties participating in the case.	ADD: <u>Parties wishing to intervene jointly, and counsel representing more than one party, must specify distinct interests and demonstrate that distinct interests are not in conflict or</u>

	<u>duplicative. Where interests overlap or are duplicative, such petitioners shall petition to intervene as one party.</u>
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7829.0800, subp. 5

RFC Draft Language	Recommended Language
If there is no objection to intervention and a petition to intervene is not denied or suspended within 15 days of filing, the petition to intervene must be considered granted, unless the matter is referred to the Office of Administrative Hearings for contested case proceedings before the expiration of the 15-day period.	ADD: <u>Once granted party status, party intervenors are not required to submit testimony or maintain any level of participation to retain party status.</u>

These recommendations are not incorporated in the attached draft. The draft language maintains the Commission flexibility to address petitions for intervention on a case-by-case basis. Additionally, to the extent that recommendations pertain to proceedings conducted by the Office of Administrative Hearings, they are outside the scope of the Commission’s authority and are not incorporated for that reason.

7829.1100 PUBLIC HEARING

Legalelectric, Inc. made the following recommendation:

RFC Draft Language	Recommended Language
When a public hearing is held in connection with a contested case proceeding, the commission shall, whenever possible, schedule the public hearing to be held before the evidentiary hearings.	When a public hearing is held in connection with a contested case proceeding, the commission shall, whenever possible, schedule the public hearing to be held before the evidentiary hearings <u>in the area where the infrastructure in question would be located.</u>

This recommendation is not incorporated in the attached draft. The suggested requirement is a statutory requirement for large electric power facility hearings under Minn. Stat. § 216E.03, subd. 6, which need not be repeated in the Commission’s rules. Additionally, to the extent the recommendation pertains to procedural authority statutorily granted to the chief administrative law judge (e.g., under Minn. Stat. § 216E.16), it is outside the scope of the Commission’s authority and is not incorporated for that reason.

7829.1250 UNCONTESTED PROCEEDING SUBCOMMITTEE

In the attached draft this part has been renumbered 7829.1050 to be adjacent to 7829.1000, another rule describing referral of Commission matters. This part pertains to what is sometimes informally referred to as the “consent calendar,” for uncontroversial items that have unanimous consent to be delegated for expedited disposition.

The Charter Entities recommend clarifying this part to repeat language from Minn. Stat. § 216A.03, subd. 8(b) and (c), or expressly reference those paragraphs. Legalectric recommends this rule part be on an opt-in basis, and should provide for objection by a “person” and not a party.

To the extent they are not already addressed by the existing draft language, these recommendations are not reflected in the attached draft. The draft expressly cites Minn. Stat. § 216A.03. Repetition of statutory language in rules is neither necessary nor good practice.

The draft, consistent with the scope of the rulemaking described in the request for comments, reflects existing Commission practice and is consistent with Commission statutory authority concerning subcommittee delegations. Changing the rule to be opt-in rather than opt-out would represent a departure from Commission practice that would substantially diminish the Commission’s capacity to effectively perform its functions.

However, the rule could provide more clarity to practitioners without impairing the Commission’s implementation. In Section VI, below, more detailed language for this rule is recommended.

7829.1300 MISCELLANEOUS FILINGS

The Charter Entities requested clarification of miscellaneous filings requirements. In particular, the Entities request that the rules clarify the circumstances for applying either subpart 3 or subpart 4. They also recommended a 20-day time period for compliance filings following Commission orders.

The first recommendation is addressed in the attached draft by consolidating subparts 3 and 4 and clarifying when additional description is required. The compliance filing deadline recommendation is not incorporated in the attached draft, as the 10 day period in the draft serves the Commission’s purpose to effectively perform its regulatory functions.

The Department recommends language clarifying that application of procedures to miscellaneous filings apply only to the extent procedures are not otherwise prescribed by statute or rule. To that end, the Department recommends adding a sentence to the definition of Miscellaneous Filing in 7829.0100, subp. 9:

RFC Draft Language	Recommended Language
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<p>The inclusion of a particular type of filing in this list does not require a filing that would not otherwise be required or confer jurisdiction that would not otherwise be present.</p>	<p>The inclusion of a particular type of filing in this list does not require a filing that would not otherwise be required or confer jurisdiction that would not otherwise be present. <u>Procedures established in this Rule apply only to the extent that procedures relating to certain listed filings have not otherwise been prescribed by statute or rule.</u></p>
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Rule 7820.0200, subp. 2 addresses the Department’s concern. That subpart reads: “This chapter governs practice and procedure in matters before the commission except when a statute or a rule on a specific topic contains procedural requirements in direct conflict with this chapter. Then, the statute or rule on a specific topic controls insofar as it is in direct conflict with this chapter.”

Xcel recommends that the rule limit service of information requests for miscellaneous filings when the requests are made prior to the filing of comments. Xcel recommends that information requests made prior to filing of comments be served only on the entity and upon those electing to be notified of those information requests. Xcel states that it is “common practice” to serve data requests on the General Service List. However, there does not appear to be anything in the rule that requires this practice, and it is not evident that a clarification is needed.

7829.1700 FORMAL COMPLAINT

The Department recommends revising the language of this part to reflect electronic filing requirements.

RFC Draft Language	Recommended Language
<p>Subp. 2. Mailing and filing. A formal complaint must be mailed to the respondent, the department, and the Residential Utilities Division of the Office of the Attorney General, as well as filed with the commission.</p>	<p>Subp. 2. Mailing and filing. A formal complaint must be mailed to the respondent, the department, and the Residential Utilities Division of the Office of the Attorney General, as well as filed with the commission. <u>Formal complaints may also be filed in a manner consistent with the electronic filing requirements of Minn. Stat. § 216.17, subd. 3. If filed electronically in this manner, a formal complaint does not need to be mailed to the state agencies.</u></p>

This recommendation is reflected in the attached draft.

7829.2400 FILING REQUIRING DETERMINATION OF GROSS REVENUE

The OAG recommends that the Commission revise subpart 5 as follows:

RFC Draft Language	Recommended Language
The commission shall reject a filing under this part that is found to be substantially out of compliance with Minnesota Statutes, section 216B.16 or 237.075, or other requirement imposed by rule, statute, or previous commission order.	The commission <u>may accept</u> a filing under this part that is found to be substantially out of compliance with Minnesota Statutes, section 216B.16 or 237.075, or other requirement imposed by rule, statute, or previous commission order <u>if it finds that the filing does not impair the parties' ability to evaluate the need for a change in gross revenue of a utility.</u>

Because the OAG’s recommended language may appear to imply the Commission has authority to accept filings that it determines do not comply with statutory requirements, the attached draft has been revised using different language, but in a manner consistent with the OAG’s suggestion.

7829.2560 NOTICE PLANS WHEN SEEKING CERTIFICATION OF PIPELINES

Legalelectric, Inc. recommends moving this part to a rule part pertaining to pipelines, similar to the relocation of 7829.2550 being done in the concurrent rulemaking in Docket 12-1246. This recommendation is not reflected in the draft because the suggestion was left for a time when the Commission is focused on rules pertaining to that subject area, at which time it is anticipated that the rule may be relocated. Because this rule pertains to proceedings under multiple rule chapters, simply moving the rule at this time may introduce more confusion than clarity to Commission process.

7829.2560 STAFF COMMENTS

Legalelectric, Inc. made the following recommendation:

RFC Draft Language	Recommended Language
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	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

<p>not advocated by any party, all parties must be granted oral comment at the request of any party.</p>	<p>party, all <u>interested and formal parties</u> must be <u>provided opportunity for written comment, and written commentors be granted oral comment at the request of any interested or formal party.</u></p>
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This part has been revised in the attached draft to provide all parties an opportunity to comment at the request of any party, without specifying the form the comments must take. The draft language appropriately allows the Commission to receive comments in whatever format they feel will best inform its decisionmaking, and with procedures appropriate to the circumstance. Additionally, the recommendation to add the word “formal” is not incorporated as it is surplusage that could cause unnecessary confusion. The word “party” is already defined in Rule 7829.0100.

7829.2700 PROCEDURE AFTER ADMINISTRATIVE LAW JUDGE REPORT

Legalelectric, Inc. made the following recommendation:

<p>RFC Draft Language</p>	<p>Recommended Language</p>
<p>Subpart 1. Exceptions to administrative law judge's report. Except in cases subject to statutory deadlines, parties shall file and serve on the other parties any exceptions to an administrative law judge's report within 20 days of its filing. In cases subject to statutory deadlines, exceptions must be filed and served within 15 days of the filing of the report.</p> <p>Subp. 2. Replies to exceptions. Except in cases subject to statutory deadlines, a party shall file and serve on all other parties any replies to exceptions within ten days of the due date for exceptions. In cases subject to statutory deadlines, replies are not permitted.</p> <p>Subp. 3. Oral argument. Parties must be granted an opportunity for oral argument before the commission as required under Minnesota Statutes, section 14.61.</p>	<p>Subpart 1. Exceptions to administrative law judge's report. Except in cases subject to statutory deadlines <u>not waived by applicant</u>, parties shall file and serve on the other parties any exceptions to an administrative law judge's report within 20 days of its filing. In cases subject to statutory deadlines, exceptions must be filed and served within 15 days of the filing of the report.</p> <p>Subp. 2. Replies to exceptions. Except in cases subject to statutory deadlines <u>not waived by applicant</u>, a party shall file and serve on all other parties any replies to exceptions within ten days of the due date for exceptions. In cases subject to statutory deadlines <u>not waived by applicant</u>, replies are not permitted.</p> <p>Subp. 3. Oral argument. Parties must be granted an opportunity for oral argument before the commission, <u>when requested</u>, as</p>

	required under Minnesota Statutes, section 14.61.
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These recommendations are not incorporated in the attached draft. Even in cases where a party has waived a statutory right to enforce a deadline, it is still in the public’s interest that Commission proceedings be conducted with diligence. Accordingly, it is proper for the Commission to maintain these reasonable time frames for filings after an administrative law judge report.

The recommendation to include “when requested,” in subpart 3 appears to heighten the threshold for presentation of argument in a manner that exceeds the Commission’s authority. The requirement that parties be provided an opportunity to present argument, whether or not requested, is statutory.⁴

7829.2900 DECISION AND ORDER

Legalelectric, Inc. made the following recommendation:

RFC Draft Language	Recommended Language
The executive secretary shall serve a decision and order of the commission on all parties and participants in the proceeding <u>on the official service list.</u>	The executive secretary shall serve a decision and order of the commission on all parties and participants in the proceeding, <u>including those on the official service list.</u>

This recommendation is not incorporated in the attached draft. The proposed language does not impose any additional meaningful or enforceable requirement, and may be deemed defective by the Office of Administrative Hearings. And, because parties and participants can use the electronic filing system to subscribe and receive electronic notice of all filings in Commission dockets, it is unclear that requiring service on persons besides those on the official service list would serve a purpose.

7829.3000 PETITION AFTER COMMISSION DECISION

CenturyLink contends that the timing of a petition for reconsideration can serve as a trap for the unwary as it relates to the statutory deadlines concerning certiorari review of Commission decisions to the Minnesota Court of Appeals. CenturyLink recommends the following clarifying language be added to the rule:

RFC Draft Language	Recommended Language
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⁴ Minn. Stat. § 14.61, subd. 1.

<p>A party or a person aggrieved and directly affected by a commission decision or order may file a petition for rehearing, amendment, vacation, reconsideration, or reargument within 20 days of the date the decision or order is served by the executive secretary.</p>	<p>A party or a person aggrieved and directly affected by a commission decision or order may file a petition for rehearing, amendment, vacation, reconsideration, or reargument within 20 days of the date the decision or order is served by the executive secretary. <u>In order to stay the deadline for appeal provided in Minn. Stat. § 14.63, a motion for reconsideration of an order pursuant to Minn. Stat. Ch. 237 should be filed within 10 days.</u></p>
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The language CenturyLink recommends exceeds the Commission’s authority concerning the referenced statutory deadlines. In lieu of CenturyLink’s recommended language, the following is added to subpart 1 of the attached draft: “This subpart does not affect any statutory limit on the time allowed for a petition for judicial review that may run concurrently.”

7829.3150 UNTIMELY FILINGS

Xcel recommended a slight modification (with which Legalectric, Inc. agreed):

RFC Draft Language	Recommended Language
<p><u>On its own motion or at the request of any party or participant, the commission may exclude from the record a document not filed within a time period established by rule or commission order if the commission determines that the value of the document to the commission’s deliberative process is outweighed by prejudice to a party, participant, or the public interest.</u></p>	<p><u>On its own motion or at the request of any party or participant, the commission may exclude from the record a document not filed within a time period established by rule, notice, or commission order if the commission determines that the value of the document to the commission’s deliberative process is outweighed by prejudice to a party, participant, or the public interest.</u></p>

This recommendation is reflected in the attached draft.

The Department recommends clarifying language (with which Legalectric, Inc. agreed):

RFC Draft Language	Recommended Language
<p><u>Subp. 2. Required statement.</u> <u>A person filing a document not within a time period established by rule, notice, order, or statute shall include a statement explaining why the filing was untimely and why it should be considered by the commission.</u></p>	<p><u>Subp. 2. Required statement.</u> <u>A person filing a document not within a time period established by rule, notice, order, or statute shall include a statement explaining why the filing was untimely and why it should not be excluded by the commission.</u></p>

This recommendation is reflected in the attached draft.

Legaletric, Inc. also recommends providing for opposition to motions. The draft language provides for such opposition in Rule 7829.0420, subp. 2.

IV. Staff Discussion

This discussion section will address the comments pertaining to protected data. The rule parts pertaining to protected data drew the most comments. Because several of the comments addressed the rule parts concerned with protected data, it was not feasible to incorporate every recommendation.

Otter Tail Power, CenturyLink, the Charter Entities, and the Minnesota Department of Commerce provided suggestions on rule 7829.0500 and the definition of “protected data” in Rule 7829.0100. CenturyLink suggested reviewing the rules concerning protected data in other jurisdictions.

A. Background of This Commission’s Rules Concerning Protected Data

This Commission’s treatment of nonpublic data is subject to the Minnesota Government Data Practices Act.⁵ The Data Practices Act has undergone substantial changes since the Act’s enactment, and the currently adopted Rule 7829.0500 predates many of the revisions. Additionally, in September 1999 pursuant to a provision of the Data Practices Act, the Commission adopted and published procedures for the handling of trade secret and privileged data.⁶ Most recently, the Data Practices Act was amended in 2013.⁷

B. Protected Data Rules in Other Jurisdictions

⁵ Minn. Stat. §§ 13.01 – .99.

⁶ Revised Procedures for Handling Trade Secret and Privileged Data, September 1, 1999, <http://www.puc.state.mn.us/PUC/consumers/data-practices/ssLINK/000671> (from the Commission home page, click on “Data Practices” and then click on “Trade Secret and other Privileged Data.”).

⁷ 2013Minn. Laws Ch. 82 § 1.

Staff reviewed the administrative rules of utilities commissions in seven states: California, Colorado, Illinois, Iowa, North Dakota, South Dakota, and Wisconsin. Staff selected these states because they have detailed rules of practice, or because they are states that also regulate utilities regulated by this Commission.

Administrative rules concerning protected data vary in three significant ways: (1) the application of different terms required by different state laws; (2) the procedural and substantive requirements to seek and obtain protected treatment for filed information; and (3) the nature of notice required on redacted and unredacted documents. Below, relevant rules in the states examined are briefly summarized.

i. California

California statutes concerning commission records are substantially different from the Minnesota Data Practices Act. No California Commission rules specifically pertain to nonpublic data. However, the Commission describes certain filing requirements and guidance on the Commission's web site.

Parties must make a motion to file documents under seal. Documents subject to a request for filing under seal cannot be e-filed, but must instead be filed in hard copy in an envelope with the title page taped to the outside.

A redacted copy of the documents should be e-filed labeled with the words "PUBLIC VERSION" on the title page. There are three approved methods for redactions: complete removal of the confidential portions, placeholder characters between text indicating "Confidential Begins" and "Confidential Ends," and black out.

ii. Colorado

Colorado commission rules concerning confidential information are extensive and highly detailed. Rules 1100 and 1101⁸ pertain to "confidential information." The rules require a good faith effort to identify confidential data, and authorize sanctions including attorney fees for improperly identified information. The rule has in-depth procedural requirements for disputes about confidential information designations. Documents filed under the rule are presumed protected unless and until a challenge is brought and a contrary determination is made.

The rule requires the following notice on public versions of confidential documents: "NOTICE OF CONFIDENTIALITY: A PORTION OF THIS DOCUMENT HAS BEEN FILED UNDER SEAL." The cover page of each copy of the document filed in the public record shall list each document filed under seal, shall list each page number of each document on which confidential material is found, and shall indicate the nature of the documents which are filed under seal. All

⁸ 4 CCR 723-1 (2013).

pages and copies of the information claimed to be confidential shall be clearly marked as "confidential" and shall be filed on microfilmable paper.

iii. Illinois

Ill. Admin. Code tit. 83 § 200.430 requires a protective order be entered. Documents submitted and marked as proprietary will be treated as such pending submission and ruling on a motion for a protective order. A public redacted version of each document must also be submitted with the proprietary version. Protective orders are subject to a time limit of no more than five years from the date of submission, unless good cause is shown.

iv. Iowa

Iowa Admin. Code §§ 199—14.12 and 1.9(6) govern confidential documents filed with the Iowa Utilities Board. They require that confidential information be identified, and the party requesting confidential treatment submit a request supported by affidavit for confidential treatment.

The rule further requires labeling of the public and nonpublic versions of the document in a manner similar to the existing Minnesota Rule 7829.0500.

The two versions of the document shall be named according to the following convention: "Document Title – Public" and "Document Title – Confidential." It is the responsibility of the person submitting a public version of the electronic document to take appropriate measures to ensure that any embedded information for which confidential treatment is sought is nonviewable, nonsearchable, and nonreversible. Each page of the confidential version of the document shall be marked in a way that identifies it as belonging to the confidential version of the document. The confidential material itself shall be highlighted or otherwise distinguished on the page to identify what specific information is confidential.⁹

v. North Dakota

Trade secret information is defined by North Dakota statute, and N.D. Admin. Code Ch. 69-02-09 describes North Dakota Public Service Commission trade secret procedures. Filers requesting trade secret protection must include an application addressing six points justifying protection:

1. A general description of the nature of the information sought to be protected;
2. An explanation of why the information derives independent economic value, actual or

⁹ Iowa Admin. Code § 199—14.12.

potential, from not being generally known to other persons;

3. An explanation of why the information is not readily ascertainable by proper means by other persons;
4. A general description of the persons or entities that would obtain economic value from disclosure or use of the information;
5. A specific description of known competitors and competitors' goods and services that are pertinent to the tariff or rate filing; and
6. A description of the efforts used to maintain the secrecy of the information.

Staff reviews the application and makes a recommendation upon which the Commission must act. The trade secret material must be separately bound and placed in a sealed envelope, or other appropriate, sealed container, which must be labeled: TRADE SECRET – PRIVATE.

vi. South Dakota

Under S.D. Admin. R. 20:10:01:39 – :43, a request for confidential treatment must accompany confidential information. Information is then treated as confidential until the designation is challenged, at which time the Commission makes a determination. Applications for confidential treatment must include:

1. An identification of the document and the general subject matter of the materials or the portions of the document for which confidentiality is being requested;
2. The length of time for which confidentiality is being requested and a request for handling at the end of that time. This does not preclude a later request to extend the period of confidential treatment;
3. The name, address, and phone number of a person to be contacted regarding the confidentiality request;
4. The statutory or common law grounds and any administrative rules under which confidentiality is requested. Failure to include all possible grounds for confidential treatment does not preclude the party from raising additional grounds in the future; and
5. The factual basis that qualifies the information for confidentiality under the authority cited.

Each page must clearly be marked “confidential” in large, bold letters. Information submitted by mail or hand delivery must be in a separate, sealed envelope and clearly state in large, bold letters on the envelope that confidential treatment is requested. If filed electronically, the information must be filed as a separate document.

vii. Wisconsin

Wis. Admin. Code PSC 2.12 governs confidential handling of documents filed with the Wisconsin Public Service Commission. A filing designated as confidential must be accompanied by a request for confidential handling, along with an affidavit supporting the request. The request must include:

1. The name and address of the person making the request.
2. The name and position of the individual filing the request on the person's behalf.
3. An accurate and complete summary of the contents of the record.
4. How the record satisfies one of the criteria warranting protection under Wisconsin rule or statute.

Records only partially eligible for confidential handling must be submitted in both unredacted and redacted versions. The Commission must then make a determination. The rules do not specify any particular requirements for labeling of the redacted or unredacted versions.

C. Discussion of Draft Protected Data Rule in Light of Commission Rulemaking Goals and Authority and Practices in Other States

In preparing the proposed rule amendments prior to the Request for Comment, staff reviewed the existing rule, the present language of the Minnesota Government Data Practices Act, and the Commission's Revised Procedures for Handling Trade Secret and Privileged Data.

The revisions were chiefly limited to: (1) expressly defining a class of data as "protected data" so that the term may be used consistently in rules; and (2) incorporation of aspects of the Commission's Revised Procedures for Handling Trade Secret and Privileged Data in the rule so that the rule reflects established Commission practice and so Commission requirements are easier for practitioners to find.

Having now additionally reviewed the protected data rules in other states, staff did not find any consensus among the states in the process of seeking protected status of data, nor about the manner of labeling or redacting public versus nonpublic versions of protected documents. The rule draft appears to be among the less burdensome, as it requires no affidavit, motion, or Commission action to initially protect nonpublic data.

The use of the term "nonpublic" rather than "trade secret" or "confidential" in the draft Rule 7829.0500 reflects the use of terms defined in the Minnesota Government Data Practices Act. Nonpublic data under the statute includes "trade secret information," "security information," and other classes of information, all with their own definitions.¹⁰ The term "confidential" carries its

¹⁰ Minn. Stat. § 13.37.

own distinct meaning under the statute.¹¹ Substitution of similar terms for the purpose of conforming this Commission’s rule to the rules of another state could be a source of confusion.

Accordingly, labeling protected data as “nonpublic” rather than “confidential,” or “trade secret,” better advances the Commission’s goal of clarity in its rules.

V. Comments: August 7 Notice of Comment Period

At its August 1, 2013, meeting, the Commission directed that comments be accepted on the rule draft. The Commission issued a notice soliciting comments on the entire draft, and specifically on possible revisions that the Commission discussed at its August 1 meeting. The notice sought comment on:

- Any issue arising from the draft of possible amendments filed in the Commission’s electronic filing system in this docket as an attachment to Staff Briefing Papers on July 25, 2013—with emphasis on the following possible revisions:
- What should the Commission consider when deciding whether to include language that discusses possible sanctions for violations of the proposed Commission rule governing representations of fact or law to the Commission (Part 7829.0250)?
- Assuming that the Commission were to decide that a sanctions provision is appropriate, the Commission seeks comment on the following proposed 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.
- What should the Commission consider when deciding whether to add “to the extent practicable” and to remove the limitation to oral comment from rule part 7829.2600 which currently reads in relevant part: “If commission staff recommend action not advocated by any party, all parties must be granted oral comment at the request of any party.”?

Dakota Electric Association, Minnesota Power, Otter Tail Power Company, Minnesota Energy Resources Corporation (MERC), Minnesota Cable Communications Association (the MCCA), the Department, CenterPoint Energy, NoCapX 2020 and United Citizens Action Network (NoCapX and U-CAN), Communities United for Responsible Energy (CURE), and Xcel Energy

¹¹ See Minn. Stat. § 13.02, subd. 3, “Confidential data on individuals.”

filed comments. Several parties acknowledged that there is broad agreement to many of the draft amendments.

This section will summarize issues identified in comments, with each issue followed by staff's recommendation. At this stage, the Commission may determine proposed rule language and authorize staff to issue a Notice of Intent to Adopt, or the Commission may identify one or more issues about which it seeks further public input.

A. Possible Sanctions for Violation of Draft Rule 7829.0250 (Representations to the Commission)

The Commission requested comments on the following possible additional subpart providing for sanctions for violating a provision similar to rule 11 in federal and state civil courts:

Language Proposed for Comment (7829.0250, subp. 2)

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.
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i. Public Comments

Comments predominantly opposed language providing for sanctions. Xcel, CenterPoint, the MCCA, MERC, CenturyLink, Minnesota Power, and Dakota Electric Association objected to a provision expressly providing for sanctions for violations of proposed new rule 7829.0250. Objecting comments offered the following reasons that the language should not be adopted:

- it may conflict with or exceed the Commission's statutory authority under Minn. Stat. §§ 216B.57 – .61;¹²
- it would exceed the Commission's statutory authority under Minn. Stat. § 216A.05, subd.1;
- the Commission's authority to impose sanctions is limited to the circumstances expressly identified in statute;
- the proposal is unnecessary;
- it would create ambiguity concerning the representations that may give rise to sanctions;
- attorneys are already subject to rules of professional conduct requiring candor to the Commission; and,

¹² Minn. Stat. § 216B.57 provides for penalties concerning knowing and intentional violations of Commission orders, or of Minn. Laws 1974, chapter 429. Laws 1974, ch. 429, among other statutory changes, enacted Minn. Stat. ch. 216B (concerning regulation of public utilities).

- the Commission's power to raise concerns about veracity or candor in its orders is adequate sanction.

Although not expressly opposing the proposed sanctions language, Otter Tail Power recommended the Commission more thoroughly research similar sanction provisions in other jurisdictions or agencies to inform the Commission's determination about the suitability of sanctions language for its own rules. Otter Tail Power also suggested that Minn. Stat. § 216B.57, governing penalties for knowing and intentional violation of a Commission order, should be considered when contemplating sanctions language.

Minnesota Power stated that the Commission has statutory authority to impose sanctions, and that it should not go beyond its statutory authority in rules. Dakota Electric Association stated that, although it did not believe a sanctions provision is needed, it approved of the proposed sanctions language to the extent that it provides discretion to the Commission to impose a sanction (rather than a mandatory sanction).

MERC opposed sanctions language on grounds of the Commission's lack of authority to impose them, and alternatively argued that the phrase "or comparable conduct by others similarly situated" should not be included in the rule because it would extend the sanction to an impermissibly vague determination of what might deter future wrongdoers.

NoCapX and U-CAN recommended adoption of a sanctions requirement. They offered examples of conduct that they assert would justify imposition of sanctions. They supported the proposed sanctions language as acceptable and necessary, and stated a preference for even stronger language. NoCapX and U-CAN also recommended that the sanctions provision specify a nonexclusive list of possible sanctions, such as exclusion of filings, striking argument, or dismissal.

The Department did not object to the proposal, but recommended that the Commission may consider alternatives to sanctions proceedings, such as addressing Commission concerns about veracity or candor in Commission orders.

ii. Staff Discussion

Minn. Stat. § 216A.05, subd. 1, authorizes the Commission to "prescribe such rules, and issue such orders with respect to the control and conduct of the businesses coming within its jurisdiction as the legislature itself might make but only as it shall from time to time authorize."

The Commission's authority to adopt a rule providing for sanctions should not be conflated with the Commission's authority to apply the rule and impose a particular sanction in a specific circumstance. To the extent that statutory limits may apply to the Commission's authority to impose a sanction for violation of any of its rules, those limitations do not necessarily render a rule providing for sanctions, generally, invalid on its face.

The weight of the comments undoubtedly would support a determination not to include specific sanctions language in the Commission’s rules. The Commission may conclude that its power to express disapproval in its orders together with whatever other powers it already has to penalize parties and participants, is sufficient.

The Commission may also wish to consider the implied legal significance of including a sanctions provision in connection with violation of this particular procedural rule, but not others. Rule language providing only for sanctions related to violations of part .0250 could be construed to impliedly limit the Commission’s freedom to impose sanctions in other circumstances.

If the Commission determines that it is reasonable and necessary to expressly provide for sanctions in connection with violations of this particular rule, the Commission may prefer to circumscribe the possible sanctions to a list of procedural rather than economic sanctions (i.e., exclusion of filings, striking argument, or dismissal). Such a limitation would minimize the possibility of conflict with statutes limiting economic penalties when applying the sanctions provision.

B. Amendments to Rule 7829.2600 (Comments Following Staff-Recommended Action)

The Commission sought comment on the following amendment to the rule governing Commission proceedings when Commission staff recommend action not advocated by any party:

RFC Draft Language	Language Proposed for Comment
<p>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, all parties must be granted oral comment at the request of any party.</p>	<p>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, <u>at the request of any party and to the extent practicable, all parties must be granted an opportunity to comment.</u></p>

i. Public Comments

Comments predominantly opposed adding “to the extent practicable” to Rule 7829.2600. Xcel, MERC, CenterPoint, CenturyLink, Otter Tail Power, and Minnesota Power objected to including the phrase in the rule. Objecting comments offered the following reasons that the language should not be adopted:

- the possible denial of comment opportunity may violate due process rights;
- if the Commission applies the rule to solicit written comments, it would introduce unacceptable delay into the Commission’s process;

- the proposal is unnecessary; and
- the current rule has created no problems or concerns.

Otter Tail Power, CenterPoint, Minnesota Power, and Xcel object to all of the proposed amendments to this rule part, and contend that the existing rule adequately describes a reasonable process and does not need to be modified. They contend that the draft language reduces certainty in the process that would be provided in the event staff recommends actions not advocated by a party, introduces the possibility of delay for written comments, and does not specify what circumstances “to the extent practicable” would include or exclude.

Dakota Electric Association expressed concern over the potential for delay if the opportunity to respond provided by the rule involved written comments.

NoCapX and U-CAN recommended adoption of the language.

The Department supports the amendments to 7829.2600, including the phrase “to the extent practicable.” It commented that it expected findings of impracticality would be infrequent, because the Commission relies on the opportunity to comment to create a clear and complete record and to protect due process rights.

ii. Staff Discussion

Objections to the phrase “to the extent practicable” primarily concern the potential for depriving a party of due process if the Commission applies the rule to preclude comment on staff recommended action. Objections to the remainder of the draft amendments to 7829.2600 concern the potential for introducing delay into the process if the Commission applies the rule to solicit written replies to staff recommended action. Both issues represent potential pitfalls for future Commission actions implementing the rule, but do not necessarily render the amendments unreasonable on their face.

The proposed amendment would not grant unfettered discretion to the Commission; it would require that the Commission make a determination that receipt of comments would be impractical. As the Department identifies, such determinations are not likely to be frequent; ordinarily parties are present and able to make oral comments at the time the Commission is considering staff-recommended action.

The draft language appropriately allows the Commission to receive comments in whatever format they feel will best inform its decision making, and with procedures appropriate to the circumstance. The amendments are not required to establish the Commission’s power to require written comments on any issue if it determines that written comments are warranted under the circumstances. And, the addition of “to the extent practicable” together with the removal of specifying “oral” comments may lead a reasonable reader to conclude that the Commission must make an affirmative practicality determination in every case to determine whether written or oral comments are more appropriate.

Staff recommends that the Commission amend Rule 7829.2600 only if the Commission concludes that adding the phrase “to the extent practicable,” and omitting the requirement that comments be oral, are necessary changes to accomplish the Commission’s purposes.

C. End-of-day Filing Deadline (7829.0400)

The Office of the Attorney General – Antitrust and Utilities Division (the OAG) recommended that the rule provision concerning service and filing requirements be revised to allow filing through midnight. The recommendation was reflected in the attached draft at the previous Commission meeting. Several parties commented on the proposal in response to the Commission’s most recent request for comments.

i. Public Comments

Comments predominantly opposed revising Commission rules to provide a midnight filing deadline. Xcel, CenterPoint, CenturyLink, and Otter Tail Power objected to possibly extending the ordinary Commission filing deadline to midnight. Objecting comments offered the following reasons that the language should not be adopted:

- it is not consistent with the Commission’s stated rulemaking goals,
- it increases the potential for delay before parties receive filed documents,
- it increases the potential for delay between filing and when a filing becomes available in e-dockets,
- it introduces hardship for strategic or operational reasons not imposed upon parties or participants by a 4:30 deadline, and
- electronic filing with the Commission does not function similarly to electronic filing with other bodies that have midnight deadlines because Commission filings are not publicly available until accepted by the Department.

The OAG originally recommended this amendment, and though the Office did not respond to the August 7 Notice of Comment Period, it continued to support the recommendation at the August 1 Commission meeting. The OAG argued in its initial comments that because the Commission has an electronic filing system, the practical basis for requiring filings before the end of the business day no longer exists.

The Department does not support a midnight filing deadline. The Department offered two possible objectives for a rule governing filing deadlines: (1) to minimize the time between when the document is submitted and when it is accessible, and (2) to enable access to filings by everyone as close to the same time as possible. The Department stated that extending the filing deadline past regular business hours would not serve either objective. It further suggested, instead that a deadline of 3:00 or 3:30 p.m. would better serve those objectives as it would permit agency staff to verify and accept filings before the end of the business day.

ii. Staff Discussion

The overwhelming weight of public comments opposes amendments changing the filing deadline. The Department's opposition to the proposal carries particular weight because the Department administers the Commission's electronic filing system.

Staff agrees with the principles the Department identified in selecting an appropriate generally applicable filing deadline. Because the Department must accept filings before they become publicly available, a practical basis for requiring filings by the close of business still exists notwithstanding that the Commission has an electronic filing system.

A midnight filing deadline may also give rise to parties and participants, not all of whom have experience using e-dockets, seeking help with the electronic filing system to meet a deadline after business hours when nobody is available to assist them.

Staff recommends that the Commission not amend the 7829.0400 "regular business hours" filing deadline unless it concludes that the benefit of extending the time to file documents past 4:30 outweighs the effects on parties, participants, and the Department, as identified in the comments.

D. Comments Concerning Other Proposed Changes

Xcel, CenterPoint, the Department, the MCCA, MERC, Otter Tail Power, NoCapX and U-CAN, and CURE each raised a number of additional issues about the draft in response to the Commission's notice for comments. They are summarized below.

i. Representations to the Commission (7829.0250, subp. 1)

The Minnesota Cable Communications Association recommended that the language in 7829.0250 more closely conform to the language in the rules of civil procedure. It argues that the rule should allow more leeway to make arguments by changing the draft's use of "reasonable extension or reversal of existing law" to allow for "nonfrivolous" arguments. It also proposes limiting the application of the rule to written filings, contending that oral presentations concerning matters that come up for the first time during an oral presentation should be afforded greater leniency than might be appropriate for written representations.

The MCCA proposes the following revisions to 7829.0250:

RFC Draft Language	MCCA Recommended Language
<u>Any person who signs a filing or enters an appearance at a commission meeting, by doing so, represents that he or she is authorized to do so and has a good faith belief that statements of fact made are true and correct, and that</u>	<u>Any person who signs a pleading, motion or similar filing or enters an appearance at a commission meeting, by doing so, represents that he or she is authorized to do so and has a good faith belief that statements of fact made</u>

<p><u>legal assertions made are warranted by existing law or by a reasonable extension or reversal of existing law.</u></p>	<p><u>therein are true and correct, and that legal assertions made by him or her therein are warranted by existing law or by a reasonable nonfrivolous argument for the extension or reversal of existing law or the modification or establishment of regulations.</u></p>
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The proposal largely tracks the recommendation made by the Charter Entities, in their February 19th comments, but is revised apparently to address staff's concern regarding the Commission's authority to modify or establish common law.

Because the MCCA's proposed language has been revised to address this concern, staff recommends the proposal be incorporated into the draft.

ii. Protected Data (7829.0500)

Otter Tail Power reiterated its concerns about the draft revisions to pertaining to protected data. It argues that the rule should clearly state that nothing in rules would require public *or non-public* disclosure of privileged information. Although Otter Tail Power acknowledges that "regardless of the language used in the rule, privileged information would not be disclosed even in non-public documents," it asserts that the rule should expressly acknowledge this so as not to create confusion over what might be required in filings with the Commission.

CenterPoint, however, argues that regardless of the Commission's rules, the Commission cannot compel the production of privileged materials, and that for clarity references in the rule to privileged information should be removed.

The rule as drafted does not purport to require the disclosure of privileged information. The amendments define protected data to include "data protected from disclosure to the rules of privilege recognized by law," which carries forward a definition in the Commission's existing Revised Procedures for Handling Trade Secret and Privileged Data. The rule draft states that "nothing in this chapter requires public disclosure of protected data."

Because at least one party would find value in Otter Tail Power's proposed clarification, staff recommends that subpart 1 be amended to add "nor to require any disclosure of privileged data."

iii. Official Service List (7829.0700)

The MCCA, MERC, Otter Tail Power, and Minnesota Power oppose limiting participation in the service list to one individual per party or participant. They argue that there is little hardship in delivering notices to multiple representatives, that any hardship involved is likely to diminish as more parties and participants use electronic service, and limiting list membership may pose a

challenge when a party or participant’s sole designated recipient is absent from work. MERC contends that the change is not needed nor reasonable. Otter Tail Power contends that the limitation could have unintended consequences in combination with other rules, such as the rule concerning service on counsel resulting in an effective requirement that parties list an attorney as their designated service list representative.

NoCapX and U-CAN support the revisions and reiterate Legalectric’s initial recommendation discussed in section III, above. CenterPoint acknowledged the possible burden of requiring paper service, and suggested revising the rule to limit parties who receive *paper* service to one recipient.

The Department recommends against the limitation. The Department states that the service list generated by E filing does not currently associate individuals with the parties they represent, and that providing for this function in order to carry out this proposed revision would require an application design change.

In light of the concerns raised by the the Department, MCCA, MERC, Otter Tail Power, and Minnesota Power, staff recommends excluding the amendment limiting participation in the official service list from the draft. Electronic service substantially reduces any burden on providing service to multiple representatives of the same party or participant, and the net benefits of the existing rule do not appear to be outweighed by the net benefits of the proposed change.

iv. Filing Requiring Determination of Gross Revenue (7829.2400)

The OAG recommends that the Commission revise subpart 5 as follows:

RFC Draft Language	Recommended Language
<p>The commission shall reject a filing under this part that is found to be substantially out of compliance with Minnesota Statutes, section 216B.16 or 237.075, or other requirement imposed by rule, statute, or previous commission order.</p>	<p>The commission <u>may accept</u> a filing under this part that is found to be substantially out of compliance with Minnesota Statutes, section 216B.16 or 237.075, or other requirement imposed by rule, statute, or previous commission order <u>if it finds that the filing does not impair the parties’ ability to evaluate the need for a change in gross revenue of a utility.</u></p>

Because the OAG’s recommended language may appear to imply the Commission has authority to accept filings that it determines do not comply with statutory requirements, the attached draft was revised using different language, but in a manner consistent with the OAG’s suggestion.

MERC, Otter Tail Power, Minnesota Power, and CenterPoint contend that the recommended changes to 7829.2400, as initially proposed by the OAG and as revised and incorporated into the draft by staff, are unnecessary and should not be adopted. MERC asserts that the existing rule provides an adequate and appropriate amount of discretion to the Commission concerning when to reject a filing that does not comply with relevant statutory or other requirements.

The OAG’s proposed language, MERC argues, “proposes a new and uniquely vague standard,” and the staff’s revised proposal “inappropriately limits the Commission’s discretion,” and is “impermissibly vague” and unnecessary because the existing rule language is not problematic. MERC states that it believes the Commission’s ability to determine whether a filing must be rejected on a case-by-case basis should not be constrained.

Otter Tail Power also argues that the proposed language substantially changes the standard, and renders the standard less clear.

By contrast, the OAG’s initial recommendation argued that the *existing* rule “is vague and provides little guidance for parties or the Commission.” The OAG proposed language to provide a “more meaningful benchmark for the Commission to consider.”

Staff recommends that the proposed amendment be excluded from the draft, unless the Commission concludes that it contributes needed clarity to the existing rule.

v. Recommended Clarifications and Corrections

The MCCA recommend that the required motion notice be changed in draft part 7829.0410, subpart 1, to match the time required for a response in subpart 2, and recommends the following clarifying changes to 7829.1300:

RFC Draft Language	MCCA Recommended Language
<p>Subp. 3 Content of filing subject to specific requirements. [...] <u>F. if the contents of the filing are not established by another commission rule, a description of the filing, its impact on rates and services, its impact on the utility and affected ratepayers, and the reasons for the filing.</u></p>	<p>Subp. 3 Content of filing [...] <u>F. if the contents of the filing are not established by another commission rule, a description of the filing, its impact on rates and services, its impact on the utility and affected ratepayers, and the reasons for the filing.</u></p>

The Department recommended changing language throughout the rule that refers to the “commission’s electronic filing system” to refer to the “agencies’ electronic filing system,” to reflect that the Commission and the Department work together to operate and administer the electronic filing system.

The Department also suggested technical revisions to draft parts 7829.0400 and .3150, pertaining to the function of EFiled, so the rule language conforms to the way EFiled currently operates.

Staff has no objection to these proposed clarifications.

vi. Comment and Comment Period Language Consolidated into 7829.1400 and 7829.3100

NoCapX, U-CAN, and CURE objected to the repeal of various subparts pertaining to comments in rule parts 7829.1400, 7829.1900, 7829.2100, 7829.2300, and 7829.2500. They argue that the repeal of those parts “delete all but initial comments and the Department of Commerce opportunity to request an extension[.]”

However, the substance contained in the repealed subparts appears in the draft—in parts 7829.1250 (“Comment Procedure Variation”) and 7829.3100 (“Time Periods Varied”).¹³ Draft rule 7829.1250, together with 7829.3100, contain the language that appeared separately in each of the various subparts proposed for repeal identified by NoCapX and U-CAN. The intention behind the proposed repeal is to consolidate the redundant rule language and not to substantively change comment procedures.

vii. Striking “Residential Utilities Division” Throughout

NoCapX, U-CAN, and CURE also objected to the striking of language referring to the “Residential Utilities Division of the” Office of the Attorney General.¹⁴ They contend that the amendment would not be in the public interest because they believe there is a relevant distinction between references to the Attorney General’s office generally, and to the specific division within the Attorney General’s office that represents ratepayer interests in Commission proceedings (now the Antitrust and Utilities Division). NoCapX, U-CAN, and CURE recommend replacing “Residential Utilities Division” with “Antitrust and Utilities Division” and further amending in the event of future reorganizations within the Attorney General’s office.

The proposed amendments leave the words “Office of the Attorney General” in the rule. The intention behind striking the words “Residential Utilities Division of the” throughout the rules is

¹³ The Revisor’s format of the draft—the basis for this round of comments—caused some confusion. The draft did not restate Rule 7829.3100, because it is not among the rule parts subject to a contemplated amendment or repeal. This led some commenting participants to conclude that it was omitted due to repeal.

Rule 7829.3100 was excluded from the draft, like several other rule parts not affected by possible amendments, only because no changes have been proposed. Only the rule parts listed in the Repealer at the end of the draft are currently proposed for possible repeal.

¹⁴ E.g., 7829.0800, .1300, .1700, .1800, .1900, .2000, .2199, .2300, .2400, .2500, and .2560.

intended only to reflect that the Commission does not control the organization of the Attorney General's office. Almost every reference to the division in Commission rules arises when the rules identify entities to be served as part of Commission proceedings. Naming a particular division within the Attorney General's office in Commission rules does not accomplish anything substantive, and introduces language that will become obsolete when the Attorney General next reorganizes.

Specifically, naming a specific division within the Attorney General's office does not have the effect of requiring the Attorney General to participate in Commission proceedings in any particular way. The rules grant a right of intervention to, and require service upon, the Attorney General. Both can be accomplished without identifying an Attorney General's office division by name in the rule.

With that stated, staff does not believe there is a substantive difference between the draft and the proposal to replace "Residential Utilities Division" with "Antitrust and Utilities Division."

VI. Internally Proposed Changes

Additional internal discussion led to four additional possible amendments to be incorporated in the Commission's draft.

i. Definition of Utility (7829.0100, subp. 21)

The first recommended revision concerns adding additional detail to the definition of utility so it does not appear to be circular. The recommendation of the Department for 7829.0100, subp. 21, was to incorporate the definition of "telephone utility" contained in 7810.0100, sup. 37. Staff recommends that the definition in 7829.0100 expressly reference that definition, as follows:

Draft Language	"Utility" means a gas or electric service provider, or telephone utility, subject to the jurisdiction of the commission.
Revised Recommended Language	"Utility" means a gas or electric service provider, or telephone utility <u>under Rule 7810.0100, subp. 37</u> , subject to the jurisdiction of the commission.

ii. Uncontested Proceeding Subcommittee (7829.1050)¹⁵

The second recommended revision would add detail to the provision describing the Commission's uncontested proceeding subcommittee, as follows:

¹⁵ This new rule part has been renumbered from 7829.1250 in the initial draft to 7829.1050 to be adjacent to 7829.1000, another rule describing referral of Commission matters.

Draft Language	<p>7829.1050 UNCONTESTED PROCEEDING SUBCOMMITTEE</p> <p>Subpart 1. Consent calendar subcommittee.</p> <p>The commission may refer filings to a subcommittee for disposition as authorized by Minnesota Statutes, section 216A.03, subdivision 8, when</p> <ul style="list-style-type: none"> a) the proceeding involves no disputed or novel issues, and b) no person has requested that the proceeding not be delegated to a subcommittee.
Revised Recommended Language	<p>7829.1050 UNCONTESTED PROCEEDING SUBCOMMITTEE</p> <p>Subpart 1. Delegation of uncontested proceedings.</p> <p>As authorized by Minnesota Statutes, section 216A.03, subdivision 8, the commission may by order establish a subcommittee for the purpose of acting on uncontested proceedings. This subcommittee will act on behalf of the commission only when</p> <ul style="list-style-type: none"> a) commission staff determines that a proceeding involves no disputed or novel issues, and b) no party, participant, or commissioner has requested that the proceeding not be delegated to a subcommittee. <p>The commission will maintain a list on its website of proceedings delegated under this subpart, and upon disposition will indicate the subcommittee's disposition of each proceeding. Electronic filing of an order reflecting subcommittee disposition constitutes receipt by parties, participants, and commissioners for purposes of Minn. Stat. § 216A.03, subd. 8(b).</p>

The revised recommendation adds detail about how the Commission will delegate matters under this rule part, and how the public will be informed of those delegations. The revised recommendation also provides the opportunity to object to a “party, participant, or commissioner,” which are the persons entitled to object under the statute.

iii. New Emergency Circumstances Rule Part

Minnesota Statutes section 13D.021 provides for meetings consistent with the state open meetings law in circumstances of declared emergency or health pandemics. The statute allows that some or all commissioners could meet by telephone or other electronic means under certain circumstances. The following language is proposed to effectuate the Commission's authority to meet in accordance with that statute:

7829.3300 EMERGENCY CIRCUMSTANCES

Subp. 1. Declared Emergency or Pandemic.

If the Executive Secretary determines that an in-person meeting of the commission is not practical or prudent because of a health pandemic or an emergency declared under Minnesota Statutes Chapter 12, commissioners may participate by telephone or other electronic means. If at least one commissioner intends to participate remotely, the commission shall provide the public notice required by Minn. Stat. § 13D.021, subd. 4.

Subp. 2. Remote Participation.

If the required public notice has been given, the commission shall afford any absent commissioner or commissioners an opportunity to participate in a commission meeting by telephone or other electronic means in a manner consistent with Minn. Stat. § 13D.021. The commission shall ensure that all commissioners, regardless of their location, can hear all discussion, testimony, and votes. Unless the meeting is closed for reasons authorized by statute, the commission shall ensure that members of the public who are present at the regular meeting location or monitoring remotely can hear all discussion, testimony, and votes. Commission votes shall be conducted via roll call.

The Commission may decide to incorporate this language into the draft, seek further public comment on the proposal, or exclude it from the draft.

Because Publishing a Notice of Intent to Adopt triggers a public comment period, the public will have an opportunity to respond to whatever rule language the Commission proposes. The Commission will then have an opportunity to reconsider the proposed rule if it wishes.

iv. New Withdrawal of Filings Rule Part

Requests to withdraw filings are subject to Commission consideration, and the Commission handles requests for withdrawal differently depending on whether the requests are contested or

uncontested. The following draft language would codify the Commission's existing practices concerning withdrawal requests:

7829. _____ WITHDRAWAL OF FILINGS

Subp. 1. Uncontested Withdrawal

The commission delegates to the Executive Secretary authority to issue orders approving the withdrawal of a filing if the following conditions are met:

1. The party that submitted the filing has requested that the filing be withdrawn;
2. No person has expressed opposition to withdrawal of the filing; and
3. No commissioner or commission staffperson, has identified a reason that the matter should not be withdrawn.

Subp. 2. Contested Withdrawal

If any person opposes a withdrawal request, the commission will allow a filing to be withdrawn at the request of the filing party if the commission determines that the proposed withdrawal:

1. does not contravene the public interest;
2. does not prejudice any party; and
3. does not concern a filing that raises issues requiring commission action.

If the commission determines that withdrawal would contravene the public interest or would prejudice a party, the commission may permit withdrawal only subject to conditions that mitigate the harm identified.

The Commission may decide to incorporate this language into the draft, seek further public comment on the proposal, or exclude it from the draft.

Because Publishing a Notice of Intent to Adopt triggers a public comment period, the public will have an opportunity to respond to whatever rule language the Commission proposes. The Commission will then have an opportunity to reconsider the proposed rule if it wishes.

VII. Rulemaking Procedural Issues

i. Notice to Legalectric

Legalectric, Inc., on behalf of NoCapX and U-CAN, expresses concern about the rulemaking process; in particular, notice of the initial Request for Comments was sent to an out of date P.O. Box for Legalectric and was therefore not received in time to file comments in the initial

comment period. Legalectric reiterates its request for an advisory committee on behalf of Carol Overland, NoCapX and U-CAN.

The Commission accepted and considered Legalectric's comments, including the request for an advisory committee, though they were received outside the initial comment period. In its August 1 meeting the Commission considered and decided against appointing an advisory committee.

Legalectric and CURE also request a reply comment period to address issues raised in the most recent comment period. Among the reasons offered, they contend that "few had input into the draft rules, and no one had an opportunity to comment on the material changes in the rule presented to the PUC."

Whether the Commission determines that additional comments or an advisory committee are necessary to reach conclusions about amended rule language, the record does not reflect a lack of notice or inadequate possibility for public input. The Request for Comments was published in the state register, and the Commission additionally notified by direct mail or electronic service hundreds of additional parties of the initial Request for Comments and of the additional comment period following the Commission meeting. Because Publishing a Notice of Intent to Adopt triggers a public comment period, the public will have an additional opportunity to respond to whatever rule language the Commission proposes before it is adopted.

Though the first mailing to Legalectric was apparently incorrectly addressed, Legalectric did receive actual notice of the possible rulemaking and was provided an opportunity to comment outside the initial comment deadline. Those comments were accepted and considered by the Commission. Legalectric has since been added to the electronic service list for the rulemaking.

ii. Advisory Committee

Minn. Stat. § 14.101, subd. 2, authorizes the Commission to appoint a committee to offer advice on the subject matter of proposed rules. Legalectric, Inc. recommended that the Commission appoint an advisory committee. In its initial comments, CenturyLink suggested a workshop focused on protected data rules. Otter Tail Power suggested that an advisory committee may be helpful to the Commission in identifying possible unintended adverse effects of rule amendments under consideration. Otter Tail Power, NoCapX, and U-CAN, and Xcel expressed interest in participating in an Advisory Committee if one is appointed.

Additional rounds of comment or an advisory committee prior to publication of a Notice of Intent to Adopt are at the Commission's discretion. If the Commission is satisfied that it has sufficient information to determine proposed rule language, it need not solicit additional comments. If the Commission concludes it requires additional public input to reach conclusions about proposed rule language, staff recommends that the Commission expressly limit the scope of additional process—whether an additional comment period or an advisory committee—to issues the Commission concludes cannot yet be resolved.

Because Publishing a Notice of Intent to Adopt triggers a public comment period, the public will have another opportunity to respond to whatever rule language the Commission proposes. The Commission will then have an opportunity to reconsider the proposed rule if it wishes.

VIII. Alternatives for Commission Action

A. Modify the draft (electronically filed in this docket on July 25, 2013), solicit additional comments, and/or appoint an advisory committee as follows:

1. Possible Sanctions for Violation of 7829.0250

- a. Exclude sanctions-related language from the draft; or
- b. Find that it is reasonable and necessary to expressly provide for possible sanctions in connection with violation of rule 7829.0250, and:
 1. Add the sanctions-related language from the August 7 Notice of Comment Period to the draft; or
 2. Appoint an advisory committee to consider and recommend sanctions-related language. Delegate to the Executive Secretary the authority to determine the size and composition of the advisory committee; or
 3. Direct staff to solicit additional comments on this issue.

2. Comments Following Staff-Recommended Action (7829.2600)

- a. Exclude amendments to 7829.2600 from the draft; or
- b. Find that the draft amendments to Rule 7829.2600 are reasonable and necessary, and:
 1. Include the phrase “to the extent practicable” in the draft; or
 2. Appoint an advisory committee to consider and report on the effects of the draft Rule 7829.2600 on Commission proceedings, parties, and participants. Delegate to the Executive Secretary the authority to determine the size and composition of the advisory committee; or,
 3. Direct staff to solicit additional comments on this issue.

3. End-of-day Filing Deadline (7829.0400)

- a. Restore the existing rule language establishing a “regular business hours” filing deadline to the draft; or
- b. Find that the amendment changing the filing deadline to midnight is reasonable and necessary, and:
 1. Retain the language in the draft; or
 2. Appoint an advisory committee to consider and report on the effects of the filing deadline on Commission proceedings, parties, and participants. Delegate to the Executive Secretary the authority to determine the size and composition of the advisory committee; or,
 3. Direct staff to solicit additional comments on this issue.

- 4. Representations to the Commission, subpart 1 (7829.0250)**
 - a. Adopt MCCA's recommended language for subpart 1: "Any person who signs a pleading, motion or similar filing or enters an appearance at a commission meeting, by doing so, represents that he or she is authorized to do so and has a good faith belief that statements of fact made therein are true and correct, and that legal assertions made by him or her therein are warranted by existing law or by a reasonable nonfrivolous argument for the extension or reversal of existing law or the modification or establishment of regulations."
 - b. Do not adopt MCCA's recommended language.
- 5. Protected Data (7829.0500)**
 - a. Add clarifying language as proposed by Otter Tail Power to "state that nothing in rules would require disclosure of privileged information."
 - b. Do not add the clarifying language.
- 6. Official Service List (7829.0700)**
 - a. Exclude amendments limiting the official service list to one individual per party or participant.
 - b. Include amendments limiting the official service list to one individual per party or participant.
- 7. Filing Requiring Determination of Gross Revenue (7829.2400)**
 - a. Exclude OAG-proposed amendments modifying Subp. 5.
 - b. Include OAG-proposed amendments modifying Subp. 5.
- 8. MCCA and Department Recommended: clarifying changes**
 - a. Include the recommended clarifying changes discussed in section V(D)(v).
 - b. Exclude the recommended clarifying changes discussed in section V(D)(v).
- 9. Definition of Telephone Utility (7829.0100)**
 - a. Include the clarified definition of telephone utility discussed in section VI(i).
 - b. Exclude the clarified definition of telephone utility discussed in section VI(i).
- 10. Uncontested Proceeding Subcommittee (7829.1050)**
 - a. Include the expanded language discussed in section VI(ii).
 - b. Exclude the expanded language discussed in section VI(ii).
- 11. Emergency Circumstances**
 - a. Include the language pertaining to emergency circumstances discussed in

section VI(iii).

- b. Exclude the language pertaining to emergency circumstances discussed in section VI(iii).

12. Withdrawal of Filings

- a. Include the language pertaining to withdrawal requests discussed in section VI(iv).
- b. Exclude the language pertaining to withdrawal requests discussed in section VI(iv).

B. Direct staff to prepare a Notice of Intent to Adopt and a Statement of Need and Reasonableness using the draft, including the above modifications, and in consultation with the Revisor. [Only if the Commission does not select an option in A requiring additional comments or an advisory committee.]

C. Take other action as the Commission deems appropriate.

Staff Recommends: A(1a, 2a, 3a, 4a, 5a, 6a, 7a, 8a, 9a, 10a, 11a, 12a) and B.

1.1 **Public Utilities Commission**

1.2 **Proposed Permanent Rules Governing Utility Proceeding, Practice, Procedure**

1.3 **7829.0100 DEFINITIONS.**

1.4 [For text of subps 1 to 4, see M.R.]

1.5 Subp. 5. [See repealer.]

1.6 [For text of subps 6 to 9, see M.R.]

1.7 Subp. 10. [See repealer.]

1.8 Subp. 11. **Miscellaneous tariff filing.** "Miscellaneous tariff filing" means a request
1.9 or notice that does not require determination of the utility's revenue requirement.

1.10 A miscellaneous tariff filing includes a filing involving a new service offering; a
1.11 change in a utility's rates, services, terms, or conditions of service; a change in a utility's
1.12 corporate structure, assigned service area, or capital structure, when conducted separately
1.13 from a general rate proceeding; filings made under parts 7825.2390 to 7825.2850
1.14 governing automatic adjustment of charges; or any related matter. ~~The term also includes~~
1.15 ~~a language change filing, cost increase filing, and rate reduction filing.~~

1.16 The inclusion of a particular type of filing in this list does not require a filing that
1.17 would not otherwise be required or confer jurisdiction that would not otherwise be present.

1.18 Subp. 11a. **Motion filing.** "Motion filing" means a written request for specific
1.19 commission action by a party within the context of an ongoing proceeding. This does not
1.20 include recommendations for action made in comments authorized by part 7829.1400, nor
1.21 motions made during a proceeding before an administrative law judge.

1.22 [For text of subps 12 to 16, see M.R.]

1.23 Subp. 17. [See repealer.]

1.24 [For text of subp 18, see M.R.]

2.1 Subp. 19. **Proof of service.** "Proof of service" means a certificate of service stating
2.2 the facts of service, including the time and manner of service and the parties served.

2.3 Subp. 19a. **Protected data.** "Protected data" means data filed with the commission
2.4 that is either:

2.5 A. nonpublic data or private data on individuals under the Minnesota
2.6 Government Data Practices Act, Minnesota Statutes, section 13.37; or

2.7 B. data that is protected from disclosure pursuant to the rules of privilege
2.8 recognized by law.

2.9 Subp. 20. [See repealer.]

2.10 Subp. 20a. **Qualified complainant.** "Qualified complainant" means a person
2.11 authorized by statute to make a formal complaint to the commission.

2.12 [For text of subps 21 and 22, see M.R.]

2.13 Subp. 23. **Utility.** "Utility" means a gas; or electric service provider, or a telephone
2.14 company utility, subject to the jurisdiction of the commission.

2.15 **7829.0250 REPRESENTATIONS TO COMMISSION.**

2.16 A person who signs a filing or enters an appearance at a commission meeting, by
2.17 doing so, represents that the person is authorized to do so and has had a good faith belief
2.18 that statements of fact made are true and correct, and that legal assertions made are
2.19 warranted by existing law or by a reasonable extension or reversal of existing law.

2.20 **7829.0400 SERVICE AND FILING REQUIREMENTS.**

2.21 Subpart 1. **Filing.** ~~Documents are filed with the commission when they are received~~
2.22 ~~in the commission offices during regular business hours. Specific documents may be filed~~
2.23 ~~by facsimile transmission or filed when mailed, with the consent of the executive secretary.~~
2.24 ~~Documents must be directed to the attention of the executive secretary.~~ The commission
2.25 only accepts filings made in a manner with the filing requirements of Minnesota Statutes,

3.1 section 216.17, subdivision 3, which describes who must use the commission's electronic
3.2 filing system. Documents must be directed to the attention of the executive secretary.

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

3.6 B. If not filed electronically, documents are considered filed when received in
3.7 the commission offices during regular business hours. Specific documents may be filed by
3.8 facsimile transmission or filed when mailed, with the consent of the executive secretary.

3.9 Subp. 2. [See repealer.]

3.10 [For text of subp 3, see M.R.]

3.11 Subp. 4. **Format.** Filings must identify the nature of the filing as briefly as possible,
3.12 for example, "Replies to Exceptions to Report of Administrative Law Judge," and
3.13 indicate that the matter is before the Minnesota Public Utilities Commission. Filings
3.14 after the original filing must include the title and commission-assigned docket number
3.15 of the matter. Paper filings must be on 8-1/2 by 11-inch paper, unless the executive
3.16 secretary authorizes a nonconforming filing for good cause shown. Electronic filings
3.17 must be submitted in a text-searchable format, and any scanned documents must include
3.18 optical character recognition data. Filings made pursuant to parts 7810.8620, 7810.8685,
3.19 and 7825.3900, as well as schedules provided pursuant to Minnesota Statutes, section
3.20 216B.16, subdivision 17, paragraph (a), shall also include the required data in an industry
3.21 standard spreadsheet format.

3.22 Subp. 5. **Service; method.** ~~A document filed with the commission must be served~~
3.23 ~~the same day on the persons listed on the appropriate service list, except when this chapter~~
3.24 ~~permits service of a summary of the filing.~~ Service may be accomplished by first class
3.25 mail ~~or~~₂ by delivery in person, or electronically upon recipients who have agreed to
3.26 electronic service as provided in Minnesota Statutes, section 216.17, subdivision 4, unless

4.1 otherwise provided by law or commission order. Service may also be accomplished by
4.2 facsimile transmission, followed by first class mail. ~~Service on the department is complete~~
4.3 ~~upon receipt by the department. For all other persons;~~

4.4 Subp. 5a. **Service; completion.** A document filed with the commission must be
4.5 served the same day on the persons listed on the appropriate service list, except when
4.6 this chapter permits service of a summary of the filing. Unless the executive secretary
4.7 directs otherwise for specific documents, electronic service is complete upon electronic
4.8 transmission of the document. Service by mail or facsimile transmission plus mail is
4.9 complete upon mailing, ~~unless the executive secretary directs otherwise for specific~~
4.10 ~~documents~~ except service upon the department, which is complete upon receipt by the
4.11 department. When a party or participant is represented by an attorney, service upon the
4.12 attorney is considered service upon the party or participant.

4.13 [For text of subp 6, see M.R.]

4.14 **7829.0410 MOTION FILINGS.**

4.15 Subpart 1. **Form and content.** A party to a proceeding making a motion filing
4.16 shall make it in writing, state the grounds for the motion, and set forth the requested
4.17 commission action. A party shall serve a motion filing on the persons listed on the official
4.18 service list and file it consistent with the electronic filing requirements of Minnesota
4.19 Statutes, section 216.17, subdivision 3. A party shall, as a part of a motion filing, advise
4.20 other parties that if they wish to oppose the motion they must file and serve on the same
4.21 list of persons a written response within ten days. The commission will consider only
4.22 motion filings signed by a party or the party's attorney or authorized representative.

4.23 Subp. 2. **Responses.** A party responding to a motion filing shall serve a response
4.24 on the persons listed on the official service list and file it consistent with the electronic
4.25 filing requirements of Minnesota Statutes, section 216.17, subdivision 3, within 14 days
4.26 of service of the motion filing.

5.1 **7829.0500 ~~TRADE SECRET AND PROPRIETARY INFORMATION~~**
5.2 **PROTECTED DATA.**

5.3 Subpart 1. **Confidentiality protected.** Nothing in this chapter requires the public
5.4 disclosure of ~~privileged proprietary information, trade secrets, or other privileged~~
5.5 ~~information~~ protected data.

5.6 Subp. 2. **Procedure for excision.** ~~Persons~~ A person filing documents containing
5.7 ~~proprietary information, trade secrets, protected data~~ or other privileged information shall
5.8 ~~excise this information in all copies but the original and six copies.~~ file one copy of the
5.9 document with the information redacted. The first page or cover page of a document
5.10 from which protected information has been excised must be clearly captioned in bold
5.11 print "PUBLIC DOCUMENT - NONPUBLIC (OR PRIVILEGED) DATA HAS BEEN
5.12 EXCISED." The beginning and end of the excised protected data must be identified. One
5.13 copy of the document without redactions shall be filed, designated as required in subpart
5.14 4, and identified as a nonpublic document during the electronic submission process.

5.15 Subp. 3. **Identification of excised material.** When a person classifies an entire
5.16 document, or a substantial part of a document, as protected ~~information~~ data, the person
5.17 shall file a description of the excised material that includes at least the following
5.18 information: the nature of the material, its authors, its general import, and the date on
5.19 which it was prepared.

5.20 Subp. 4. **Document containing protected information.** The first page or cover
5.21 page of a document containing protected ~~information~~ data must be clearly marked in
5.22 bold print "~~TRADE SECRET INFORMATION~~ NONPUBLIC DOCUMENT – NOT
5.23 FOR PUBLIC DISCLOSURE" or with words of similar import. Every page on which
5.24 protected information appears must be similarly marked and the protected information
5.25 must be underlined, placed in brackets, or otherwise clearly identified as the information
5.26 which is to be protected from disclosure.

6.1 Subp. 5. **Statement required.** In all cases where a person or entity files data with the
6.2 commission that is identified as protected data, an accompanying statement justifying the
6.3 state agencies treating the data as protected data must also be filed. This justification must
6.4 include an explanation of how the data is classified under Minnesota Statutes, section
6.5 13.37, or is privileged under a rule of privilege recognized by law.

6.6 **7829.0600 GENERAL SERVICE LIST.**

6.7 Subpart 1. **Establishing list.** Persons desiring to receive notice of particular types of
6.8 filings and who are qualified to intervene under part 7829.0800 shall file with the utility a
6.9 written list of the types of filings they wish to receive, and an electronic address if they agree
6.10 to electronic service. The utility shall maintain general service lists of persons who have
6.11 filed these requests. The utility shall add to each list the persons who intervened in its last
6.12 general rate case and persons on the official service list for its last filing of the same type.

6.13 [For text of subps 2 to 5, see M.R.]

6.14 **7829.0700 OFFICIAL SERVICE LIST.**

6.15 Subpart 1. **Content.** The official service list for each proceeding consists of the
6.16 names of the parties and the names of participants who have filed a written request for
6.17 inclusion on the service list with the executive secretary. The official service list shall be
6.18 limited to one individual per party or participant.

6.19 Subp. 2. **Establishment and updating.** The commission shall establish the official
6.20 service list at the conclusion of the initial comment period and shall mail a copy of the
6.21 list to the parties and to participants who have filed written requests for inclusion. A list
6.22 established before commission action on a petition for intervention must include those
6.23 persons whose intervention petitions are pending. The commission shall mail an updated
6.24 official service list to the parties and participants if the official service list is later expanded
6.25 or reduced. The commission need not mail the official service list in proceedings when
6.26 the only parties are the department and a petitioner, complainant, or respondent. The

7.1 commission shall provide the official service list electronically rather than by mail to a
7.2 party who has agreed to electronic service as provided in Minnesota Statutes, section
7.3 216.17, subdivision 4.

7.4 Subp. 3. **Limiting service list.** On its own motion or at the request of a party, the
7.5 commission shall limit the service list to parties to the proceeding if it finds that requiring
7.6 service on participants is unduly burdensome.

7.7 Subp. 4. **Name and address change.** A party or participant who wishes to change
7.8 the name or address of a person receiving service on behalf of the party or participant shall
7.9 provide written notice of the change to the executive secretary and to persons on the
7.10 official service list. The commission shall remove a participant from the official service
7.11 list after two attempts at service are returned as undeliverable.

7.12 [For text of subp 5, see M.R.]

7.13 **7829.0800 PETITION TO INTERVENE.**

7.14 [For text of subps 1 and 2, see M.R.]

7.15 Subp. 3. **Intervention as of right.** The department and the Office of the Attorney
7.16 General, ~~through its Residential Utilities Division,~~ may intervene as of right in any
7.17 proceeding before the commission. They become parties upon filing comments under this
7.18 chapter and need not file petitions to intervene, except when the rules of the Office of
7.19 Administrative Hearings require it.

7.20 [For text of subps 4 to 6, see M.R.]

7.21 **7829.1050 UNCONTESTED PROCEEDING SUBCOMMITTEE.**

7.22 Subpart 1. Consent calendar subcommittee. The commission may refer filings to a
7.23 subcommittee for disposition as authorized by Minnesota Statutes, section 216A.03,
7.24 subdivision 8, when:

7.25 A. the proceeding involves no disputed or novel issues; and

8.1 B. no person has objected to subcommittee delegation.

8.2 Subp. 2. **Other subcommittees.** This part does not limit the circumstances under
8.3 which the commission may delegate functions to a subcommittee.

8.4 **7829.1250 COMMENT PROCEDURE VARIATION.**

8.5 Subpart 1. **When applied.** Unless otherwise provided in statute or rule, this part shall
8.6 apply to all comment periods established in this chapter.

8.7 Subp. 2. **Additional comments and comments on supplemental or corrected**
8.8 **filings.** If further information is required to make a fully informed decision, the
8.9 commission shall require additional comments and identify specific issues requiring
8.10 further development. The commission shall provide opportunity for other parties to
8.11 respond to a supplemental or corrected filing when the filing raises a new issue.

8.12 **7829.1300 MISCELLANEOUS TARIFF AND PRICE LIST FILINGS.**

8.13 Subpart 1. **Summary.** A miscellaneous tariff filing and price list filing must include,
8.14 on a separate page, a one-paragraph summary of the filing, sufficient to apprise potentially
8.15 interested parties of its nature and general content.

8.16 Subp. 2. **Service.** The filing utility shall serve copies of each miscellaneous tariff
8.17 filing on which commission action is required within 60 days of filing, and each price
8.18 list filing increasing the price of a competitive service, on the persons on the applicable
8.19 general service list, on the department, and on the Residential Utilities Division of the
8.20 Office of the Attorney General. For other filings, the utility may serve the summary
8.21 described in subpart 1 on persons on the applicable general service list. The utility shall
8.22 serve with the filing or the summary a copy of its general service list for the filing.

8.23 Subp. 3. **Content of filing subject to specific requirements.** In addition to
8.24 complying with specific requirements imposed by statute or rule, miscellaneous tariff and
8.25 price filings subject to specific filing rules must contain at least the following information:

9.1 A. the name, address, and telephone number of the utility, without abbreviation;

9.2 B. the name, address, electronic address, and telephone number of the attorney
9.3 for the utility, if the utility is using an attorney;

9.4 C. the date of the filing and the date the proposed rate or service change will
9.5 go into effect;

9.6 D. the statute that the utility believes controls the time frame for processing
9.7 the filing; ~~and~~

9.8 E. the signature, electronic address, and title of the utility employee responsible
9.9 for the filing; and

9.10 F. if the contents of the filing are not established by another commission rule,
9.11 a description of the filing, its impact on rates and services, its impact on the utility and
9.12 affected ratepayers, and the reasons for the filing.

9.13 Subp. 4. [See repealer.]

9.14 [For text of subp 5, see M.R.]

9.15 Subp. 6. **Compliance filings.** Unless otherwise ordered by the commission, utilities
9.16 shall file a compliance filing within ten days of a commission order requiring it.

9.17 **7829.1400 COMMISSION ACTION ON MISCELLANEOUS ~~TARIFF, PRICE~~**
9.18 **~~LIST FILING; COMMENTS.~~**

9.19 Subpart 1. **Initial comments.** A person wishing to comment on a miscellaneous
9.20 ~~tariff or price list~~ filing shall do so within 30 days of its filing with the commission. A
9.21 ~~person wishing to comment on one of the following noncompetitive rate change filings~~
9.22 ~~shall do so within 20 days of its filing with the commission: a rate reduction filing, a cost~~
9.23 ~~increase filing, or a request for a significant change in a condition of telephone service.~~ A
9.24 person wishing to comment on a new telephone service, competitive or noncompetitive,

10.1 shall do so within ten days of its filing with the commission. Comments must be served on
10.2 the persons on the utility's general service list for the filing, as well as on the filing utility.

10.3 [For text of subp 2, see M.R.]

10.4 Subp. 3. **Comments to include procedural recommendation.** A person
10.5 commenting on a miscellaneous ~~tariff or price list~~ filing and recommending its rejection,
10.6 denial, or modification shall specify whether the person believes the filing requires a
10.7 contested case proceeding, informal proceeding, expedited proceeding, or some other
10.8 procedural treatment, together with the person's reasons for recommending a particular
10.9 procedural treatment.

10.10 Subp. 4. **Reply comments.** The utility and other persons have ten days from the
10.11 expiration of the original comment period to file reply comments. Reply comments must
10.12 be served on the utility and persons who have filed comments on the miscellaneous ~~tariff~~
10.13 filing. Reply comments must be limited in scope to the issues raised in the initial comments.

10.14 Subp. 5. [See repealer.]

10.15 Subp. 6. [See repealer.]

10.16 Subp. 7. [See repealer.]

10.17 [For text of subp 8, see M.R.]

10.18 Subp. 9. **Requests for contested case proceedings.** Upon receipt of initial comments
10.19 requesting a contested case proceeding on a miscellaneous ~~tariff filing or price list~~ filing,
10.20 the commission shall immediately set the matter for consideration on a date after the time
10.21 period for reply comments has run. If the commission finds a contested case proceeding is
10.22 required, the commission shall refer the matter to the Office of Administrative Hearings
10.23 pursuant to part 7829.1000, and the utility shall file its direct testimony in question and
10.24 answer form within 20 days of the commission's notice and order for hearing.

11.1 **7829.1500 INFORMAL COMPLAINT.**

11.2 Persons engaged in disputes with utilities may submit informal complaints by letter or
11.3 other writing, by telephone, electronically, or in person. Commission staff shall accept
11.4 these complaints and shall prepare a memorandum setting forth the substance of each
11.5 complaint and identifying the customer, the service address, and the utility.

11.6 **7829.1700 FORMAL COMPLAINT.**

11.7 [For text of subp 1, see M.R.]

11.8 Subp. 2. **Mailing and filing.** A formal complaint must be mailed to the respondent,
11.9 the department, and ~~the Residential Utilities Division~~ of the Office of the Attorney
11.10 General, as well as filed with the commission. Formal complaints may also be filed in a
11.11 manner consistent with the electronic filing requirements of Minnesota Statutes, section
11.12 216.17, subdivision 3. If filed electronically, a formal complaint does not need to be
11.13 mailed to the state agencies.

11.14 **7829.1800 INITIAL CONSIDERATION OF FORMAL COMPLAINT.**

11.15 [For text of subp 1, see M.R.]

11.16 Subp. 2. **Answer.** On concluding that it has jurisdiction over the matter and that
11.17 investigation is warranted, the commission shall serve the complaint on the respondent,
11.18 together with an order requiring the respondent to file an answer either stating that it
11.19 has granted the relief the complainant requests, or responding to the allegations of the
11.20 complaint. The answer must be filed with the commission and served on the complainant,
11.21 ~~the department, and the Residential Utilities Division~~ of the Office of the Attorney General
11.22 within 20 days of service of the complaint and order.

11.23 Subp. 3. **Reply.** Replies are not required unless the answer alleges that respondent
11.24 has granted the relief sought by complainant. In that case, the complainant shall file a
11.25 reply within 20 days admitting or denying that relief has been granted. If the complainant

12.1 fails to file the reply, the commission shall dismiss the complaint. Copies of the reply must
12.2 be served on the respondents, the department, and ~~the Residential Utilities Division of the~~
12.3 Office of the Attorney General.

12.4 [For text of subp 4, see M.R.]

12.5 **7829.1900 COMMISSION ACTION ON FORMAL COMPLAINT; COMMENTS.**

12.6 [For text of subp 1, see M.R.]

12.7 Subp. 2. **Initial comments.** A person wishing to comment on a formal complaint
12.8 shall do so within 30 days of the date of a commission order requiring an answer to the
12.9 complaint. Comments must be served on the complainant, respondent, department,
12.10 ~~Residential Utilities Division of the~~ Office of the Attorney General, and any other known
12.11 parties.

12.12 Subp. 3. **Reply comments.** A commenting party has ten days from the expiration of
12.13 the original comment period to file reply comments. Reply comments must be limited in
12.14 scope to the issues raised in the initial comments and must be served on the complainant,
12.15 respondent, department, ~~Residential Utilities Division Of the~~ Office of the Attorney
12.16 General, and any other known parties.

12.17 [For text of subps 4 and 5, see M.R.]

12.18 Subp. 6. [See repealer.]

12.19 Subp. 7. [See repealer.]

12.20 Subp. 8. [See repealer.]

12.21 [For text of subp 9, see M.R.]

12.22 **7829.2000 ELECTRIC SERVICE AREA COMPLAINT.**

12.23 [For text of subp 1, see M.R.]

13.1 Subp. 2. **Service and filing.** A service area complaint must be served on the
13.2 respondent, department, and ~~Residential Utilities Division of the Office of the Attorney~~
13.3 General, as well as filed with the commission.

13.4 **7829.2100 COMMISSION ACTION ON SERVICE AREA COMPLAINT;**
13.5 **COMMENTS.**

13.6 Subpart 1. **Answer.** Within ten days of service of a service area complaint, a
13.7 respondent shall file an answer with the commission and serve it on the complainant,
13.8 department, and ~~Residential Utilities Division of the Office of the Attorney General.~~

13.9 Subp. 2. **Initial comments.** A person wishing to comment on a service area
13.10 complaint shall do so within ten days of the date the person was served. Comments must
13.11 be served on the complainant, respondent, department, ~~Residential Utilities Division of~~
13.12 ~~the Office of the Attorney General,~~ and any other known parties.

13.13 [For text of subp 3, see M.R.]

13.14 Subp. 4. [See repealer.]

13.15 Subp. 5. [See repealer.]

13.16 Subp. 6. **Time for disposition.** Service area complaints must come before the
13.17 commission within 15 days of filing. The commission shall issue its order within 30
13.18 days after the hearing.

13.19 **7829.2300 CLASSIFICATION PETITION.**

13.20 [For text of subp 1, see M.R.]

13.21 Subp. 2. **Service.** A utility filing a classification petition shall serve copies of the
13.22 petition on the department and ~~Residential Utilities Division of the Office of the Attorney~~
13.23 General. The utility shall serve the petition or the summary described in subpart 1 on those
13.24 persons on the applicable general service list and on those persons who were parties to its
13.25 last general rate case or incentive plan proceeding, if applicable.

14.1 Subp. 3. **Challenges to form and completeness.** A person wishing to challenge the
14.2 form or completeness of a classification petition shall do so within ten days of its filing.
14.3 The filing utility shall reply to the challenge within five days of its filing. Challenges and
14.4 responses must be served on the department, ~~Residential Utilities Division~~ of the Office
14.5 of the Attorney General, persons on the general service list for the filing, and any other
14.6 known parties.

14.7 [For text of subp 4, see M.R.]

14.8 Subp. 5. **Initial comments.** A person wishing to comment on a classification
14.9 petition shall file initial comments within 20 days of the filing. Initial comments must
14.10 include a recommendation on whether the filing requires a contested case proceeding,
14.11 expedited proceeding, or some other procedural treatment, together with reasons for
14.12 recommending a particular procedural treatment. Initial comments must be served on the
14.13 utility, department, ~~Residential Utilities Division~~ of the Office of the Attorney General,
14.14 persons on the general service list for the filing, and any other known parties.

14.15 [For text of subps 6 and 7, see M.R.]

14.16 Subp. 8. [See repealer.]

14.17 Subp. 9. [See repealer.]

14.18 [For text of subps 10 to 12, see M.R.]

14.19 Subp. 13. **Extending disposition period.** The commission may extend the
14.20 eight-month time frame set forth in subpart 12 with the agreement of all parties or upon
14.21 a finding that the case cannot be completed within the required time and that there is
14.22 a substantial probability that the public interest would be harmed by enforcing the
14.23 eight-month time frame.

14.24 **7829.2400 FILING REQUIRING DETERMINATION OF GROSS REVENUE.**

14.25 [For text of subp 1, see M.R.]

15.1 Subp. 2. **Service.** A utility filing a general rate change request shall serve copies of
15.2 the filing on the department and ~~Residential Utilities Division of the Office of the Attorney~~
15.3 General. The utility shall serve the filing or the summary described in subpart 1 on the
15.4 persons on the applicable general service list and persons who were parties to its last
15.5 general rate case or incentive plan proceeding.

15.6 [For text of subp 3, see M.R.]

15.7 Subp. 4. **Challenge to form and completeness.** A party wishing to challenge the
15.8 form or completeness of a general rate case filing shall do so within ten days of its filing.
15.9 The filing utility shall reply to the challenge within five days of its filing. Challenges and
15.10 responses must be served on the department, ~~Residential Utilities Division of the Office~~
15.11 of the Attorney General, persons on the general service list for the filing, and any other
15.12 known parties.

15.13 Subp. 5. **Rejection of filing.** The commission shall reject a filing under this part ~~that~~
15.14 ~~is found to be~~ as substantially out of compliance with Minnesota Statutes, section 216B.16
15.15 or 237.075, or other requirement imposed by rule, statute, or previous commission order,
15.16 if it finds the filing will impair the commission's ability to evaluate the need for a change
15.17 in gross revenue of a utility. A filing under this part not rejected within 60 days of filing is
15.18 considered accepted as in substantial compliance with applicable filing requirements.

15.19 [For text of subps 6 and 7, see M.R.]

15.20 **7829.2500 CERTIFICATE OF NEED FILING.**

15.21 Subpart 1. **Compliance.** Certificate of need applications must comply with the
15.22 requirements of Minnesota Statutes, sections 216B.2421 and 216B.243; Minnesota
15.23 Rules, chapters 7851, 7853, and 7855, ~~and parts 7849.0010 to 7849.0400;~~ and any other
15.24 requirements imposed by rule or statute.

15.25 [For text of subp 2, see M.R.]

16.1 Subp. 3. **Service.** A certificate of need applicant shall serve copies of the filing on
16.2 the department and ~~Residential Utilities Division of the Office of the Attorney General.~~
16.3 The applicant shall serve the filing or the summary described in subpart 2 on those persons
16.4 on an applicable general service list and on those persons who were parties to its last
16.5 general rate case or incentive plan proceeding, if applicable.

16.6 Subp. 4. [See repealer.]

16.7 [For text of subp 5, see M.R.]

16.8 Subp. 6. **Solicitation of comments on filing compliance.** The commission shall
16.9 request comments on the filing's compliance with Minnesota Statutes, sections 216B.2421 to
16.10 216B.243, and Minnesota Rules, chapters 7851, 7853, and 7855, ~~and parts 7849.0010 to~~
16.11 ~~7849.0400~~, when it determines that comments would be helpful in evaluating the filing's
16.12 substantial compliance with the requirements of those statutes and rules. The commission
16.13 may delegate the authority to request these comments to the executive secretary.

16.14 Subp. 7. **Rejection of filing.** The commission shall reject a filing under this part
16.15 that is found to be substantially out of compliance with Minnesota Statutes, sections
16.16 216B.2421 to 216B.243; Minnesota Rules, chapters 7851, 7853, and 7855, ~~and parts~~
16.17 ~~7849.0010 to 7849.0400~~; and any other requirements imposed by rule or statute. A filing
16.18 under this section not rejected within 15 days of filing must be considered accepted as in
16.19 substantial compliance with applicable filing requirements.

16.20 [For text of subps 8 and 9, see M.R.]

16.21 **7829.2560 NOTICE PLANS WHEN SEEKING CERTIFICATION OF PIPELINES.**

16.22 Subpart 1. **Filings required, service requirements.** At least three months before
16.23 filing a certificate of need application for any pipeline under chapter 7851, 7853, or 7855,
16.24 the applicant shall file a proposed plan for providing notice to all persons reasonably

17.1 likely to be affected by the proposed pipeline. Applicants shall serve their proposed
 17.2 plans on the following persons:

17.3 A. the Office of Energy Security of the Department of Commerce;

17.4 B. ~~the Residential and Small Business Utilities Division~~ of the Office of the
 17.5 Attorney General; and

17.6 C. the Army Corps of Engineers.

17.7 [For text of subps 2 to 8, see M.R.]

17.8 **7829.2600 STAFF COMMENTS.**

17.9 Written comments on a filing by commission staff must be made available to those
 17.10 persons on the service list at the same time they are provided to the commission. If
 17.11 commission staff recommend action not advocated by any party, at the request of any party
 17.12 all parties must be granted ~~oral~~ an opportunity to comment at the request of any party.

17.13 **7829.2700 PROCEDURE AFTER ADMINISTRATIVE LAW JUDGE REPORT.**

17.14 Subpart 1. **Exceptions to administrative law judge's report.** Except in cases
 17.15 subject to statutory deadlines, parties shall file and serve on the other parties any
 17.16 exceptions to an administrative law judge's report within 20 days of its filing unless
 17.17 otherwise specified by order. In cases subject to statutory deadlines, exceptions must be
 17.18 filed and served within 15 days of the filing of the report.

17.19 [For text of subp 2, see M.R.]

17.20 Subp. 3. **Oral Argument.** Parties must be granted an opportunity for ~~oral~~ argument
 17.21 before the commission as required under Minnesota Statutes, section 14.61.

17.22 **7829.2900 DECISION AND ORDER.**

17.23 The executive secretary shall serve a decision and order of the commission on all
 17.24 parties and participants in the proceeding who are on the official service list.

18.1 **7829.3000 PETITION AFTER COMMISSION DECISION.**

18.2 Subpart 1. **Time for request.** A party or a person aggrieved and directly affected by
18.3 a commission decision or order may file a petition for rehearing, amendment, vacation,
18.4 reconsideration, or reargument within 20 days of the date the decision or order is served
18.5 by the executive secretary. This subpart does not affect any statutory limit on the time
18.6 allowed for a petition for judicial review that may run concurrently.

18.7 [For text of subp 2, see M.R.]

18.8 Subp. 3. **Service.** A petition for rehearing, amendment, vacation, reconsideration,
18.9 or reargument, and an answer, reply, or comment, must be served on the parties and
18.10 participants in the proceeding ~~to which they relate.~~

18.11 [For text of subps 4 to 7, see M.R.]

18.12 **7829.3150 UNTIMELY FILINGS.**

18.13 Subpart 1. **When filings may be excluded.** On its own motion or at the request of
18.14 any party or participant, the commission may exclude a filing from the record:

18.15 A. when the filing was not made within a time period established by rule,
18.16 notice, or commission order; and

18.17 B. upon a commission determination that the value of the document to the
18.18 commission's deliberative process is outweighed by prejudice to a party, participant, or the
18.19 public interest caused by the untimeliness.

18.20 Documents in the commission's electronic filing system excluded under this part shall
18.21 remain in the commission's electronic filing system, but shall be marked as "excluded
18.22 from record by commission order."

18.23 Subp. 2. **Required statement.** A person filing a document outside a time period
18.24 established by rule, notice, order, or statute shall include a statement explaining why the
18.25 filing was untimely and why it should not be excluded by the commission.

19.1 **RENUMBERING INSTRUCTION.** The provisions of Minnesota Rules listed in
 19.2 Column A shall be renumbered to those listed in Column B. The revisor of statutes shall
 19.3 also make necessary cross-reference changes in Minnesota Rules consistent with the
 19.4 renumbering.

	<u>Column A</u>	<u>Column B</u>
19.6	<u>7829.2300, subpart 5</u>	<u>7829.2350, subpart 1</u>
19.7	<u>7829.2300, subpart 6</u>	<u>7829.2350, subpart 2</u>
19.8	<u>7829.2300, subpart 7</u>	<u>7829.2350, subpart 3</u>
19.9	<u>7829.2300, subpart 10</u>	<u>7829.2350, subpart 4</u>
19.10	<u>7829.2300, subpart 11</u>	<u>7829.2350, subpart 5</u>
19.11	<u>7829.2300, subpart 12</u>	<u>7829.2350, subpart 6</u>
19.12	<u>7829.2300, subpart 13</u>	<u>7829.2350, subpart 7</u>

19.13 **REPEALER.** Minnesota Rules, parts 7829.0100, subparts 5, 10, 17, and 20; 7829.0400,
 19.14 subpart 2; 7829.1300, subpart 4; 7829.1400, subparts 5, 6, and 7; 7829.1900, subparts
 19.15 6, 7, and 8; 7829.2100, subparts 4 and 5; 7829.2300, subparts 8 and 9; and 7829.2500,
 19.16 subpart 4, are repealed.