

# UTILITY REFORM NOW!

January 19, 2025

In the Matter of Possible Rulemaking to Amend  
Minnesota Rules, Chapter 7825

Initial Comments of  
Utility Reform Now!

MPUC Docket No. E,G-999/R-26-81

Members of the Commission:

Mindful of the issues identified in the January 9 Notice of Comment Period, Utility Reform Now! (URN), an all-volunteer association of Minnesota ratepayers, submits its own analyses of the questions presented:

- (1) ***Should the Commission undertake a rulemaking proceeding to amend Minnesota Rules chapter 7825?*** Absolutely, for the reasons outlined in the Petition for Rulemaking. Rulemaking is necessary because the Minnesota Public Utilities Commission (MPUC or Commission) may not use or otherwise apply the unpromulgated 1982 Policy Statements in ratemaking dockets.

To do so is to “enforc[e] or attempt[] to enforce a policy, guideline, bulletin, criterion, manual standard, or similar pronouncement as though it were a duly adopted rule,” in violation of Minn. Stat. § 14.381 (2024).

- (2) ***Are there other issues or concerns related to this matter?*** Yes. In the view of URN, the Commission too often relies upon contested-case litigation to resolve policy matters – specifically, our methods for achieving just and reasonable utility rates. Rulemaking is an opportunity for the Commission.

Anyone who says that rulemaking is a drag ... just shows they’re doing it wrong.

The Commission’s approach to making assessments and solving rate-related problems is very costly to ratepayers; it’s time-consuming; it’s burdensome to staff, stakeholders and the general public; it’s unduly corrosive towards a spirit of collaboration and innovation; and it’s antithetical to the State Regulatory Policy’s call for blending “superior achievement in meeting the agency’s regulatory objectives [with] maximum flexibility for the regulated party.”<sup>1</sup>

It is also a bad look. We can and should do better.

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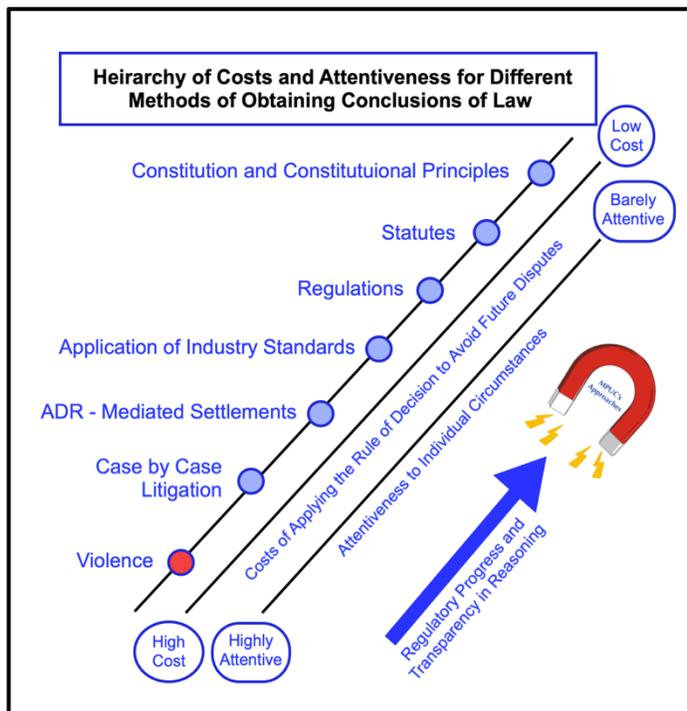
<sup>1</sup> Minn. Stat. § 14.002 (2024).

This is particularly true because the Commission is blessed with quasi-legislative powers.<sup>2</sup> It should use those powers – early and often – to shield ratepayers from regulatory expenses. That is an important service that ratepayers want from their regulators. That’s the job.

And when it comes to making assessments and solving problems, Minnesota is blessed with a robust range of alternatives to litigation. As highlighted in the adjacent chart, solving problems through litigation is only better than solving them in the parking lot, through violence. But, that’s it. Every other support for decision-making on the chart is cheaper and more transparent.

Commission policy should operate like a magnet, pulling decision-making opportunities up the hierarchy, if we can.

And Rulemaking is an opportunity. It is a chance to engage, in a transparent way, with the wisdom of the group. Who wouldn’t want that?



Forty years is a long time not to have a public conversation about the features of the 1982 Statements. They are too important.

And of all the state agencies, the Commission should be the most sensitive to public concerns in this area. It has an exemption from the ordinary way Minnesotans rouse agencies from sluggishness. Ordinarily, citizens ask agencies to collect their case-by-case decisions and make them into rules. But citizens can’t do that with the Commission’s decisions.<sup>3</sup> Perhaps for good reasons, but the Commission is still walled off from an ordinary method of accountability.

In this environment, and in our tradition, the Commission should credit regulatory signals from every direction. And rulemaking is usually a good idea. The Petition should be granted.

Very truly yours,

/s/ Eric L. Lipman

Eric L. Lipman,  
Chief Advocacy Officer

<sup>2</sup> See generally *In re Petition of N. States Power Co.*, 416 N.W.2d 719, 722 (Minn. 1987) (“in the exercise of the statutorily imposed duty to determine whether the inclusion of the item generating the claimed cost is appropriate, or whether the ratepayers or the shareholders should sustain the burden generated by the claimed cost, the MPUC acts in both a quasi-judicial and a partially legislative capacity.”).

<sup>3</sup> Minn. Stat. § 14.06(b) (2024).