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September 4, 2013

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

Subject: Comments of Dakota Electric Association on the Commission Notice of Comment Period on Possible Amendments to Rule Chapter 7829, Excluding Part 7829.2550 Docket No. U-999/R-13-24

Dear Dr. Haar:

On August 7, 2013, the Minnesota Public Utilities Commission (MPUC or Commission) issued a *Notice of Comment Period on Possible Amendments to Rule Chapter 7829, Excluding Part 7829.2550* (Notice) in the above-referenced docket. This Notice indicates that topics open for comment are as follows:

- 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 amend rule part 7829.2600 to read “If commission staff recommend action not advocated by any party, at the request of any party and to the extent practicable, all parties must be granted an opportunity to comment.”?

Dakota Electric Association (Dakota Electric or Cooperative) submits these Comments in response to the Commission’s August 7 Notice. Dakota Electric’s comments will 1) summarize relevant docket background and 2) provide comments on the topics open for comment.

Docket Background

Following is background on this docket as contained in the MPUC Notice in this matter:

On September 13, 2012, 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.

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 which appear in the Commission’s electronic filing system.

In light of the comments received, a revised draft was presented to the Commission at its meeting on August 1, 2013. The Commission directed that public comments be taken on the issues identified above.

Dakota Electric Comments

Following are Dakota Electric comments on topics identified in the August 7 Notice.

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)?

The proposed rule governing representations of fact (7829.0250 REPRESENTATIONS TO COMMISSION) states:

A person who signs a filing or enters an appearance at a commission meeting, by doing so, represents that the person is authorized to do so and has had a good faith

belief that statements of fact made are true and correct, and that legal assertions made are warranted by existing law or by a reasonable extension or reversal of existing law.

First, Dakota Electric would ask the Commission to consider the need for sanctions. Has the Commission experienced cases where it believes people have intentionally made statements of fact that are not true or correct?

Second, the Commission should consider what criteria it would use to distinguish “miscommunication” or “misinterpretation” from intentional statements of fact that are not true or correct. Important language in proposed rule 7829.0250 is “good faith belief that statements of fact made are true and correct.” Intent is an important consideration. How would the Commission definitively identify statements that are not made in good faith from more common miscommunication or misinterpretation?

Third, the Commission should consider the availability of other means to guide the actions of those appearing before the Commission. For example, Commission expressions of concern about the validity of statements of fact in a written order could be a very powerful tool to shape behavior without the need to impose sanctions.

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.

While Dakota Electric does not believe a sanction provision is needed, the proposed language above appropriately allows for discretion (“*the commission may impose a sanction*”) rather than a mandatory sanction. Intent and individual circumstances are important.

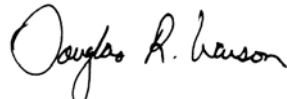
What should the Commission consider when deciding whether to amend rule part 7829.2600 to read “If commission staff recommend action not advocated by any party, at the request of any party and to the extent practicable, all parties must be granted an opportunity to comment.”?

While Dakota Electric believes it is important to allow/provide for an opportunity to comment on actions recommended by Commission staff that have not been advocated by a party previously, a delay caused by such additional comment could be adverse to the utility or consumers affected by the filing. Such adverse impact from delay could be addressed by comments being either in written form prior to Commission deliberation or verbally at the Commission deliberation. The goal should be to add clarity to the record and not be used by parties as a tool for delay.

Conclusion

If you have any questions about the comments in this filing, please call me at (651) 463-6258.

Sincerely,



Vice President of Regulatory Services
Dakota Electric Association
4300 220th Street West
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Certificate of Service

I, Cherry Jordan, hereby certify that I have this day served copies of the attached document to those on the following service list by e-filing, personal service, or by causing to be placed in the U.S. mail at Farmington, Minnesota.

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

Dated this 4th day of September, 2013

/s/

Cherry Jordan

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