

UTILITY REFORM NOW!

January 3, 2025

SENT BY PRIORITY MAIL

Honorable Sasha Bergman
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place E, Suite 350
Saint Paul, MN 55101-2147

Dear Madam Secretary:

Please accept the following Petition for Rulemaking under Minn. Stat. § 14.09 (2024).

With respect to service of these items, the regulatory requirements are very "old school": Minn. Stat. § 14.09 (2024) states that it is the Chief Administrative Law Judge who prescribes the "procedures for the[] submission, consideration, and disposition" of petitions for rulemaking and Minn. R. 1400.2500 (2025) further states that such petitions must be filed "with the executive director or head of the agency in person *or by United States mail.*"

With that said, I have likewise included a flash drive with a PDF version of the same items. And URN would be delighted to upload these items as the Commission staff may direct.

I understand from staff that the Commission does enjoy, when practicable, to hear from the public on the merits of such requests. Minn. Stat. § 14.09 (2024) has something to say on that point too: "If the agency states its intention to hold a public hearing on the subject of the request, it shall proceed according to [Minn. Stat.] sections 14.05 to 14.28."

Very truly yours,



Eric L. Lipman
Chief Advocacy Officer

Enclosures: (2)
Petition and USB Drive



BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 7th Place East – Suite 350
St. Paul, Minnesota 55101-2147

MPUC Docket No. _____.

In the Matter of the Petition of Utility Reform Now!

**PETITION FOR RULEMAKING
UNDER MINN. STAT. § 14.09 (2024)**

PETITION FOR RULEMAKING

In conformity with the filing requirements of Minn. R. 1400.2500 (2025), Utility Reform Now! (URN) submits this Petition for Rulemaking under Minn. Stat. § 14.09.

Requirements of Minn. R. 1400.2500	Contact Information and Prayer for Relief
Petitioner	Eric L. Lipman, Chief Advocacy Officer
Group	Utility Reform Now!
Address	Post Office Box 25765, St. Paul, Minnesota 55125
Requested Relief	<ol style="list-style-type: none">1. Amend Minnesota Rules Part 7825 to include any portions of the “Statements of Policy” adopted by the Commission on April 14, 1982 and June 14, 1982, that a majority of Commissioners today support; including features of the:<ol style="list-style-type: none">i. Statement of Policy on Interim Rates,ii. Statement of Policy on Updating Test Year Information,iii. Statement of Policy on Cash Working Capital,iv. Statement of Policy on Organization Dues,v. Statement of Policy on Research Expenses,vi. Statement of Policy on Charitable Contributions, and,vii. Statement of Policy on Advertising.2. Send a Notice to Commission stakeholders that the 1982 Statements of Policy are not enforceable.3. More specifically, send that Notice to the electronic service list from PR-25-18 (eDocket No. <u>202511-225069-01</u>).

<p>Proposed New Language of the Rule</p>	<p>For the purpose of complying with Minn. R. 1400.2500, URN petitions the Commission to adopt the 1982 Policy Statements word for word as amendments to Part 7825.</p> <p>With that said, however, URN shares the optimism of the Minnesota Legislature, which expressed its “expectation that better substantive results will be achieved in the everyday conduct of state government” if agencies follow the Administrative Procedure Act. See Minn. Stat. § 14.001 (2024).</p> <p>Through open and transparent rulemaking, URN is certain that Minnesotans can improve upon the text of the 1982 Statements.</p>
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FACTUAL BACKGROUND

On June 14, 1982, then-Commission Chair Lillian Warren-Lazenberry circulated a collection of memoranda to “Regulated Minnesota Utilities and Other Interested Parties.”¹ And, for the time, it was a helpful and forward-thinking package. As the Chairwoman explained:

As part of its effort to improve the regulatory process, the Commission adopted eight policy statements covering recurring rate case issues. Copies of the adopted statements are attached.

It is the Commission's hope that these statements of the Commission's general thinking on these important issues will be of assistance to utilities and rate case intervenors by *providing advance guidance on the likely treatment of these issues*.

The Commission intends to monitor the effectiveness of these policy statements, with an eye towards revising them as necessary once sufficient experience in their operation has been gained.²

Regrettably, however, that last promise was never fulfilled. The Commission does not, in fact, regularly monitor “these policy statements with an eye towards revising them,” and URN asserts that forty-three (43) years’ worth of experience would be “sufficient” for the Commission to undertake the promised revisions.

Perhaps more importantly, the Commission no longer has a choice in the matter.

After 2001, Executive Branch agencies cannot “enforc[e] or attempt[] to enforce a policy, guideline, bulletin, criterion, manual standard, or similar pronouncement as though it were a duly adopted rule”³ This conduct is unlawful.

¹ URN Schedule 2, attached.

² *Id.* at 1 (emphasis added)..

³ See Minn. Stat. § 14.381, subd. 1(a) (2024); 2001 Minn. Laws, ch. 179, § 8.

Further, Minn. Stat. § 14.381 grants to every person on Earth the legal standing to sue the Commission and obtain an court order from an Administrative Law Judge directing the agency to “cease enforcement of the unadopted rule”⁴

State agencies who apply informal memoranda (like the 1982 Statements) as if they were duly adopted rules of procedure, are frequently sued. And they lose.⁵

Further, it is beyond dispute that rate-regulated utilities in Minnesota (alongside the Department of Commerce and the Office of the Attorney General) all operate as if the 1982 Statements set forth minimum requirements that are needed for compliance. To take one of potentially dozens of different examples, the filers of the following interim rate petitions all thought that meeting every single part of the “Statement of Policy on Interim Rates” was needed in order to submit a proper application for interim recovery:

Application of the Illegal Policy in Current Dockets	eDocket Number
Notice and Petition for Interim Rates, GR-25-359 at 1	<u>202512-225487-01</u>
Notice and Petition for Interim Rates, GR-25-356, at 1	<u>202510-224501-01</u>
Notice and Petition for Interim Rates, GR-24-320 at 1	<u>202411-211511-01</u>
Direct Testimony of Olsen, GR-25-359, at Schedule 2, Page 4 of 6	<u>202510-224484-07</u>

Worse still, as a practical matter, the 1982 Statements are only accessible to insiders. As detailed in the attached schedule, a set of recently time-stamped searches to the Commission’s website for these materials leads to “no results.”⁶

The cool kids all have copies of these items, but that’s not good enough. The Commission’s directives are not where they are required to be – in statute or rule.

We don’t have secret laws in Minnesota, that are only accessible to a privileged few. It is long past the time to do some rulemaking.

ANALYSIS

I. In Commission Proceedings, the 1982 Statements Operate as Rules.

Each of the 1982 Statements suffers from the same legal defect: They operate as rules.

⁴ See Minn. Stat. § 14.381, subs. 1, 2 (2024).

⁵ See e.g., *In the Matter of the Petition of American Crystal Sugar Company*, CAH 8-2200-37302 (the Court barred the MPCA from prohibiting “the use of mixing zones to demonstrate compliance with acute toxic unit standards,” as unauthorized by the legislature and contrary to the agency’s own regulations) (Minn. Ct. Admin. Hrgs 2021) (https://mn.gov/oah/assets/2200-37302-american-crystal-sugar-company-pca-unadopted-rule-order_tcm19-491162.pdf); *In the Matter of the Petition of the Property Casualty Insurers Association of America, Inc.*, CAH 8-1000-33787, (Minn. Ct. Admin. Hrgs 2016) (the Court barred the Commerce Department from requiring Minnesota insurers to respond to the Multistate Insurance Diversity Survey).

⁶ URN Schedule-1, attached.

Returning to the example cited above, the Statement of Policy on Interim Rates, the policy functions as an administrative rule. In Minnesota, a rule is defined as an “agency statement of general applicability and future effect ... adopted to implement or make specific the law enforced or administered by that agency”⁷ The Statement of Policy on Interim Rates has all of those characteristics:

- (a) The Commission is a state “agency;”
- (b) It characterized the document as its “Statement” on Interim Rates;
- (c) The later filings cited above show that the Commission’s stakeholders believe that the requirements of the Statement apply generally to all rate-regulated utilities in Minnesota, across time, and into the future; and
- (d) Was adopted by the Commission “to implement or make specific the law ... administered by that agency” – well, at least if one believes then-Commission Chair Lillian Warren-Lazenberry. She said as much.⁸

Importantly, this same analysis could be applied to every single one of the other 1982 Statements. They are all unenforceable circulars. The Commission should concede this truth.

II. The Commission is Not Exempted from the Requirements of Minn. Stat. § 14.05, subd. 1 or Minn. Stat. § 14.06(a) (2024).

Minn. Stat. § 14.05, subd. 1 directs “each agency” to “adopt, amend, suspend, or repeal its rules in accordance with the procedures specified in sections 14.001 to 14.69.” The application of these requirements to “each agency” means that the Commission is not exempted from adopting rules in the ordinary way.

Similarly, Minn. Stat. § 14.06(a) directs “each agency” to:

adopt rules, in the form prescribed by the revisor of statutes, setting forth the nature and requirements of all formal and informal procedures related to the administration of official agency duties to the extent that those procedures directly affect the rights of or procedures available to the public.

Again, there is no statutory exemption from “each agency” for the Commission. And, as the filings cited above amply demonstrate, rate-regulated utilities think that the 1982 Statements “affect the rights of, or procedures available to” those companies. Everybody thinks that.

⁷ Minn. Stat. § 14.02, subd. 4 (2024).

⁸ Compare URN Schedule 2, at 1 with *Mapleton Community Home, Inc. v. Minnesota Dept. of Human Services*, 391 N.W.2d 798, 801 (Minn. 1986) (“[a]n agency interpretation that ‘make[s] specific the law enforced or administered by the agency’ is an interpretive rule that is valid only if promulgated in accordance with the [Minnesota Administrative Procedures Act]”) (quoting *Minnesota-Dakotas Retail Hardware Ass’n v. State*, 279 N.W.2d 360, 364 (Minn. 1979)).

Yet, if there are to be Commission-developed standards, state law requires that those standards be promulgated according to the Administrative Procedure Act. And they weren't.

III. The Exemption in Minn. Stat. § 14.06(b) (2024) Does Not Apply.

It is absolutely true that URN could not petition the Commission to – for example – fashion uniform filing practices from different interim rate decisions that have occurred in the past. Under Minn. Stat. § 14.06(b), the Commission cannot be hectored in the way that other state agencies might be pressured into doing the right thing.

But that is not what is happening here, with this Petition for Rulemaking. URN didn't prompt then-Commission Chair Lillian Warren-Lazenberry and the 1982 Commission to circulate a series of "eight policy statements covering recurring rate case issues ... providing advance guidance on the likely treatment of these issues."⁹ That was entirely *their* idea.

And with limited exceptions, that are not applicable here, an agency's interpretative rules are only valid if they are promulgated in accordance with the Administrative Procedure Act.¹⁰

Further, after the effective date of the 2001 amendments to the Act, regulatory practices of state agencies can't be guided by a stack of mimeographed sheets. Real regulators issue Notices of Intent to Adopt.

IV. Initiating Rulemaking is the Right Policy Choice.

Initiating rulemaking to promulgate some or all of the 1982 Statements is also the right thing to do. For three reasons.

First, Lillian Warren-Lazenberry promised us. She stated forthrightly that as just soon as the Commission had some experience applying features of the 1982 Statements, it would set out to revise them. The 40-year wait makes those revisions long overdue.

Second, the Policy Statements are completely hidden from ordinary view. This is directly contrary to the purposes of the Administrative Procedure Act. In fact, the Legislature made unpromulgated rules illegal because they conflict with *the Legislature's goals*; which are to:

- (1) provide oversight of powers and duties delegated to agencies;
- (2) increase public accountability of administrative agencies;
- (3) ensure a uniform minimum procedure;
- (4) increase public access to governmental information; [and]

⁹ See *id.*

¹⁰ See Minn. Stat. § 14.03, subd. 3(b) (2020); *In re Application of Q Petroleum*, 498 N.W.2d 772, 780 (Minn. Ct. App.), review denied (Minn. 1993) (citing *Mapleton Community Home*, and *Minnesota-Dakotas Retail Hardware Ass'n*, *supra*).

(5) increase public participation in the formulation of administrative rules¹¹

The public cannot aid oversight, ensure uniform standards or participate in the development of rules if agency standards are distilled in secret and shared only with other elites.

Third, there is real doubt that the rag-tag collection of blurry images that comprise what is left of the 1982 Statements,¹² meets the “Success Criteria” of the State of Minnesota’s Digital Accessibility Standard.¹³ The state’s Web Content Accessibility Guidelines require “levels A and AA,” whereas “[l]evel AAA compliance is encouraged.”¹⁴ These accessibility and readability standards apply to “[a]ll state information systems, tools and information content”¹⁵ – terms that encompass the Commission’s website and eDocket system.

Notwithstanding these inclusivity requirements, many portions of the 1982 Statements are barely legible.¹⁶ For Minnesotans with real visual impairments, the 1982 Statements are all but inaccessible. Undertaking formal rulemaking would thus mean that whatever regulatory standards are selected by the Commission, they would be accessible to disabled Minnesotans on terms like that of their non-disabled neighbors. This is state policy, but is not true at the Commission today.

CONCLUSION

To align ratemaking practice with the requirements of the Administrative Procedure Act, and state policy, the Commission should grant the Petition and the requested relief.

Respectfully submitted,



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Utility Reform Now!
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Saint Paul, Minnesota 55125
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Dated: January 5, 2026

¹¹ Minn. Stat. § 14.001 (2024).

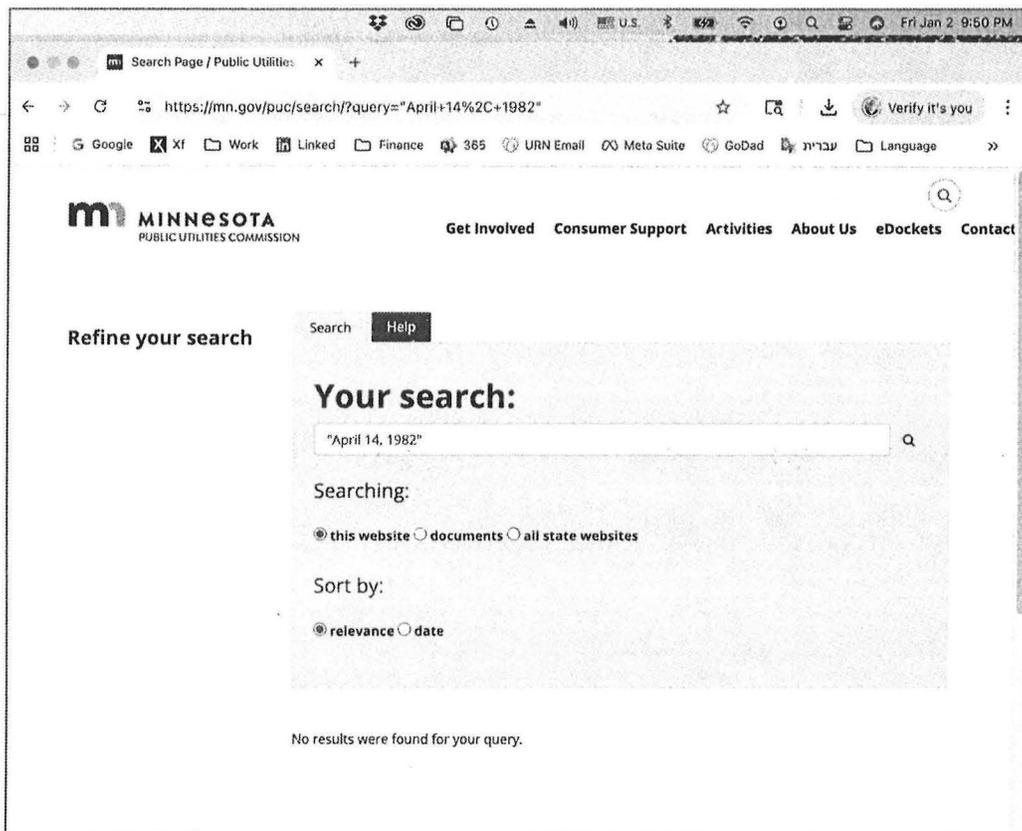
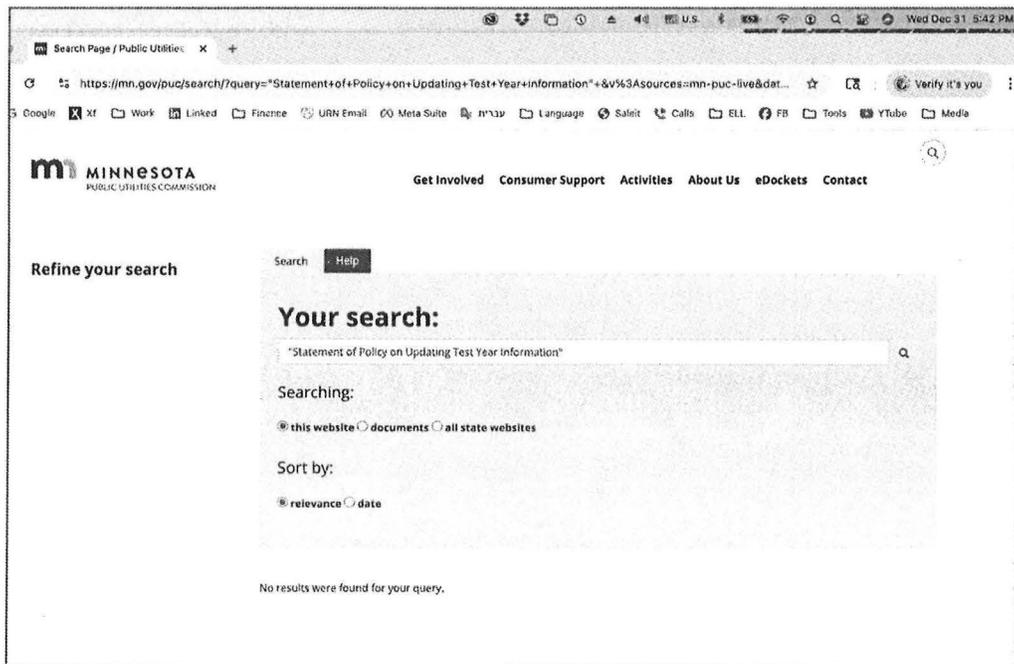
¹² URN Schedule 2.

¹³ See Web Content Accessibility Guidelines 2.1 (May 2025) (<https://www.w3.org/TR/WCAG21/>).

¹⁴ See State of Minnesota Digital Accessibility Standard (Minn. IT Servs. July 2024) (https://mn.gov/mnit/assets/MinnesotaStateAccessibilityStandard-v.4.0_tcm38-607575.pdf).

¹⁵ *Id.* at 1.

¹⁶ URN Schedule 2.



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URN Schedule 2

STATE OF MINNESOTA

JUN 28 1982

DEPARTMENT OF COMMERCE

June 14, 1982

TO: Regulated Minnesota Utilities and
Other Interested Parties

FROM: Lillian Warren-Lazenberry, Chairman
Minnesota Public Utilities Commission 

SUBJECT: COMMISSION POLICY STATEMENTS ON RATE CASE ISSUES

As part of its effort to improve the regulatory process, the Commission adopted eight policy statements covering recurring rate case issues. Copies of the adopted statements are attached.

It is the Commission's hope that these statements of the Commission's general thinking on these important issues will be of assistance to utilities and rate case intervenors by providing advance guidance on the likely treatment of these issues.

The Commission intends to monitor the effectiveness of these policy statements, with an eye towards revising them as necessary once sufficient experience in their operation has been gained.

LWL:jyp

Attachments

OAG ATTACHMENT 1



BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Lillian Warren-Lazenberry
Leo G. Adams
Roger L. Hanson
Terry Hoffman
Juanita R. Satterlee

Chairman
Commissioner
Commissioner
Commissioner
Commissioner

STATEMENT OF POLICY ON ADVERTISING

The Minnesota Public Utilities Commission recognizes that rate cases can be expedited by specifying the data needed on certain issues, such as reimbursement for advertising expenses. M. S. §§ 216B.16(8) and 237.075(7) control when an allowance for advertising expenses will be permitted in a rate case. The Commission has decided to issue this statement to explain the filing requirements a utility should follow if it desires reimbursement for advertising expenses. These filing requirements will provide information on the utility's advertising expenses that will assist the Commission in making a reasonable decision.

The Commission recognizes that a policy statement does not have the force or effect of law. Instead, it is an expression of the Commission's general intention which will be followed unless circumstances demonstrate the policy to be inappropriate. In each particular case, the policy statement can be expected to form the starting point of the Commission's decision, but the final decision will depend upon the facts of the case.

Applicability

The Commission will consider requests for reimbursement for advertising expenses in all contested cases. This includes gas, telephone and electric rate proceedings.

Procedure

If the utility company desires reimbursement for advertising expenses, it should file with the Commission the information outlined in this Policy Statement at the time it files for an increase in rates.

Information Requested

In order to assist the Commission in evaluating the dollar amount of advertising which may be allowed for ratemaking purposes, a public utility filing a general rate case petition should include complete samples of all advertising it desires to claim for ratemaking purposes.

A separate schedule should be provided which:

1. Identifies the sample ad.

2. Categorizes the advertisement by allowable and disallowable type.

a. For gas and electric companies, disallowable types include those designed to or having the effect of influencing public attitudes towards legislation, proposed legislation, rules, proposed rules, authorization or proposed authorization of the Commission or other agency regulating a utility; those designed to justify, support, or defend a rate, proposed rate, practice, or proposed practice of a utility; those designed to promote consumption of a utility's services; and those designed to promote goodwill for a utility or improve its public image. Allowable types include those designed to encourage energy conservation; those designed to promote safety; those designed to inform and educate consumers on the utility's financial services; and those incurred in disseminating information on a utility's corporate affairs to its owners.

b. For telephone companies, disallowable types include institutional advertising.

3. Defines the percentage by which the content of each ad fits into the allowable and disallowable statutory categories (M. S. §§ 216B.16(8) and 237.075(7));

4. Provides the corresponding test year dollar amount for each ad; and

5. Describes the period of time during which each ad will be used, the service area in which it will appear, and the media employed.

Dated: JUN 14 1982

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Lillian Warren-Lazenberry	Chairman
Leo G. Adams	Commissioner
Roger L. Hanson	Commissioner
Terry Hoffman	Commissioner
Juanita R. Satterlee	Commissioner

STATEMENT OF POLICY ON CHARITABLE CONTRIBUTIONS

The Minnesota Public Utilities Commission has decided to issue this Policy Statement to explain the Commission's information needs for consideration of requests for reimbursement of charitable contributions by a public utility. If a utility desires reimbursement, it must comply with the requirements of the relevant statutory provisions. (M. S. §§ 216B.16, subd. 9, or 237.075, subd. 8). The final determination on reimbursement of charitable contributions will be based upon the statutes, but the Commission's evaluation of the expenses will be assisted by the information obtained through these procedures.

The Commission recognizes that a policy statement does not have the force or effect of law. Instead, it is an expression of the Commission's general intention which will be followed unless circumstances demonstrate the policy to be inappropriate. In each particular case, the policy statement can be expected to form the starting point of the Commission's decision, but the final decision will depend upon the facts of the case.

Applicability

The Commission will consider requests for reimbursement of charitable contributions in all contested cases. This includes telephone, gas, and electric rate proceedings.

Procedure

The request for reimbursement for charitable contributions, along with the information outlined in this statement, should be filed with the Commission at the time the company petitions for an increase in rates.

Information Requested

Charitable contributions are a rate case issue and the Commission will use the information specified below to assist it in deciding who and how much of these contributions will be allowed.

In compliance with current law, the Commission shall allow as operating expenses only those charitable contributions which the Commission deems prudent

and which qualify under M. S. § 290.21, subd. 3(b). Only 50 percent of the qualified contributions shall be allowed as operating expenses.

The Commission must thus evaluate any claimed contribution for prudence and for compliance with M. S. § 290.21, subd. 3(b).

a. Prudence.

To assist the Commission in its evaluation of prudence, a utility should provide evidence as to whether each recipient of a charitable contribution;

- Serves the utility's Minnesota service area;
- Is nondiscriminatory in selecting recipients; and
- Does not promote a political or special interest group.

b. M. S. § 290.21, subd. 3(b).

To assist the Commission in its evaluation of compliance with M. S. § 290.21, subd. 3(b), a utility should provide evidence as to whether each charitable contribution is to or for the use of a community chest, corporation, organization, trust, fund, association, or foundation located in and carrying on substantially all its activities in the State, organized and operating exclusively for religious, charitable, public cemetery, scientific, literary, artistic, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

c. Itemization.

Finally, each contribution should be itemized on a schedule showing the amount, recipient, and time of the donation.

Presentation of this information as part of a utility's initial filing will enable full analysis during evidentiary hearings and will create a more complete record for Commission review.

Dated: JUN 14 1982

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Lillian Warren-Lazenberry	Chairman
Leo G. Adams	Commissioner
Roger L. Hanson	Commissioner
Terry Hoffman	Commissioner
Juanita R. Satterlee	Commissioner

STATEMENT OF POLICY ON ORGANIZATION DUES

The Minnesota Public Utilities Commission recognizes the need to address the recurring issue of reimbursement for organizational dues in rate cases. This Policy Statement outlines the procedures by which the Commission intends to review utility requests for reimbursement of dues expenses. The Commission recognizes that a policy statement does not have the force or effect of law. Instead, it is an expression of the Commission's general intention which will be followed unless circumstances demonstrate the policy to be inappropriate. In each particular case, the policy statement can be expected to form the starting point of the Commission's decision, but the final decision will depend upon the facts of the case.

Applicability

The Policy Statement applies to all utility rate filings, including gas, electric, and telephone companies.

Information Requested

To assist the Commission in evaluating dues expenses, a utility seeking to recover those expenses should include, as part of its initial filing in a general rate case, a schedule which lists:

- Each individual organization claimed for ratemaking purposes;
- The number of employees for which membership dues are paid; and
- The corresponding dollar amount of dues.

To assist the Commission, a utility seeking recovery of dues expenses should also include testimony explaining whether the primary purpose of the organization is educating and informing public utility employees about providing improved utility service; or training employees to become better qualified in providing improved utility service; or if membership in the organization is a necessary qualification for public utility employees to carry on their employment responsibilities; or if membership provides essential information to the utility.

The Commission believes that basic standards of utility regulation require the amount and purpose of the expense to be reasonable and in the best interests

of the utility's ratepayers. The Commission does not feel it can impose on customers the expense of dues when it has not been shown that customers receive any benefit from the organizations receiving the dues, as may be the case when the organizations are lobbying or social in purpose, or where there is no connection between the expense and reasonable and reliable utility service.

Dated: JUN 14 1982

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Lillian Warren-Lazenberry	Chairman
Leo G. Adams	Commissioner
Roger L. Hanson	Commissioner
Terry Hoffman	Commissioner
Juanita R. Satterlee	Commissioner

STATEMENT OF POLICY ON RESEARCH EXPENSES

The Minnesota Public Utilities Commission recognizes the need to address the recurring issue of reimbursement for research expenses in rate cases. This Policy Statement outlines the procedures by which the Commission intends to review utility requests for reimbursement of research expenses. The Commission recognizes that a policy statement does not have the force or effect of law. Instead, it is an expression of the Commission's general intention which will be followed unless circumstances demonstrate the policy to be inappropriate. In each particular case, the policy statement can be expected to form the starting point of the Commission's decision, but the final decision will depend upon the facts of the case.

Applicability

The Policy Statement applies to all utility rate filings, including gas, electric, and telephone companies.

Information Requested

To assist the Commission in evaluating research expenses, a utility seeking to recover those expenses should include, as part of its initial filing in a general rate case, a schedule which describes each research activity for which an expense is claimed and completely itemizes and supports all expenses for each activity.

To assist the Commission, a utility seeking recovery of research expenses should also include testimony which:

- Explains the nature of control of the research, including the setting of research goals and evaluation of services;
- Identifies the persons or groups who will conduct the research;
- Describes the persons who will benefit from the research and the time expected to be needed for benefits to begin to accrue to those persons; and
- Reveals the parties who will acquire ownership of any processes, patents, rights, or other tangible products that result from the research.

The Commission believes that basic standards of utility regulation require the amount and purpose of the expense to be reasonable and in the best interests of the utility's ratepayers.

Dated: JUN 14 1982

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Lillian Warren-Lazenberry
Leo G. Adams
Roger L. Hanson
Terry Hoffman
Juanita R. Satterlee

Chairman
Commissioner
Commissioner
Commissioner
Commissioner

STATEMENT OF POLICY ON CASH WORKING CAPITAL

The Commission recognizes that a policy statement does not have the force or effect of law. Instead, it is an expression of the Commission's general intention which will be followed unless circumstances demonstrate the policy to be inappropriate. In each particular case, the Policy Statement can be expected to form the starting point of the Commission's decision, but the final decision will depend upon the facts of the case. The Commission will consider requests for a cash working capital allowance in all general rate case petitions in which an allowance for cash working capital is appropriate for ratemaking purposes.

Need for Cash Working Capital

The Commission recognizes that cash working capital is a proper item to be included in rate base.

Cash working capital represents an amount of money needed for the purpose of meeting current operating expenses incurred for the purpose of providing service prior to collecting revenues for the service provided. When investors supply these funds, they are entitled to earn a return on these advances. To the extent these funds are supplied by rate payers, they are entitled to have their contribution recognized as a rate base deduction. This is accomplished by including an appropriate cash working requirement in rate base.

Procedure for Allowance

The method for determining the cash working requirement may vary with the size, nature, and operation of the regulated company. The Commission recognizes that the most precise method of determining the cash working capital requirements is to perform a lead-lag study. Such a study attempts to measure the difference in time frames between the date service is rendered until the revenues for that service are received, and the date that costs of rendering service are incurred until cash is actually disbursed. Generally, the difference between these periods, expressed in terms of days, times the average daily operating expenses, produces the cash working capital required for those operating expenses.

The largest component of utility revenues is sales to retail customers. Although there are several alternative ways to measure the lead time in providing service until the utility actually receives the revenue, one method the Commission prefers is to isolate the total lead time into three separate periods:

1. Service to meter reading;
2. Meter reading to billing; and
3. Billing to collection.

If meters are read on monthly cycle basis, the average time from rendering of service until meter reading will be one-half of a month or about fifteen days. The second time frame, from meter reading to billing, can usually be determined by analyzing the utility's schedule of cycle meter reading and billing.

The time frame from billing to collection can usually be measured by dividing the average daily accounts receivable balance by average daily revenues (both amounts should either exclude sales tax or include sales tax) to determine the average number of days of revenue in accounts receivable. By adding the three components together and performing similar measurements for other components of revenue, the average lead time from rendering service until the utility is reimbursed can be determined.

The lag time in payment of expenses must also be measured. One method the Commission prefers is to segregate expenses into components that have similar characteristics and payment patterns such as fuel, purchased power, labor, etc. For each component the payment lag can be measured by examination of vendor invoices, company procedures, or other alternative means. By weighting the payment lag for each of these components, an average lag time in the payments of expenses can be measured.

For a more detailed description of the manner in which lead-lag studies may be formulated, refer to the lead-lag study used in Northern States Power Company, Docket No. E-002/GR-77-611 (March 20, 1978).

In cases where the petitioning regulated company desires to include working capital related issues in the rate base, it is the Commission's policy that these issues be identified and included as a separate component of working capital, and not be included in the lead-lag study. Such issues may include the average or minimum cash balances required, depreciation, dividends, and interest on debt.

While the Commission desires that utilities use the lead-lag study so the cash working capital allowance will accurately reflect past historical experience, it is recognized that such a detailed study may not be feasible for the small regulated gas and electric utilities. A detailed study may be impractical from the work-time viewpoint, because of the prohibitive expense, or because the smaller utility lacks the necessary computer ability or expertise required. For the smaller gas and electric utility, the Commission will accept the 45-day F.E.R.C. method for computing the cash working capital allowance. For smaller telephone companies, the Commission may approve a working capital allowance which includes only materials and supplies.

Dated: JUN 14 1982

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Lillian Warren-Lazenberry	Chairman
Leo G. Adams	Commissioner
Roger L. Hanson	Commissioner
Terry Hoffman	Commissioner
Juanita R. Satterlee	Commissioner

STATEMENT OF POLICY ON UPDATING TEST YEAR INFORMATION

The Minnesota Public Utilities Commission recognizes the need to address the issue of the extent actual data may be submitted to update the future test year projections in a rate case. The Commission recognizes that a policy statement does not have the force or effect of law. Instead, it is an expression of the Commission's general intention which will be followed unless circumstances demonstrate the policy to be inappropriate. In each particular case, the policy statement can be expected to form the starting point of the Commission's decision, but the final decision will depend upon the facts of the case.

Ratemaking for a particular utility is the making of a forecast of its future financial condition upon the basis of its known or estimated future performance during a span of time known as a test year. The test year is used to establish operating expenses and income, rate base, and overall rate of return, which are used to calculate revenue requirements. The test year operations of a utility are utilized to determine whether that utility should be authorized to earn additional operating income from proposed rates. The test year results must be reasonably representative of normal operations.

The Commission has used, and will continue to accept the use of the future test year, based upon conditions which are expected to exist when the rates are placed into effect. When faced with the question on how to update future test year projections, the Commission will consider the most recent data to the extent the new evidence to be admitted:

1. Can be substantiated by the utility offering the data through testimony, supporting documentation, schedules, and work papers; and
2. Is admitted within a reasonable time in the course of the proceedings to allow all parties opportunity to obtain in-depth familiarity with the new data, to cross-examine the utility's witnesses regarding it, and to offer such evidence in surrebuttal as necessary.

The Commission, to determine what new evidence will be considered, must balance the interests of using more recent, actual data to base future rates on

versus the need to verify last minute filing of data. When wholly new data is furnished at the end of the case, procedural due process as well as basic considerations of fairness require time for the adversarial testing of the data. If there is insufficient time to accomplish the proceeding considerations, then the Commission may disregard the new evidence in its final deliberations.

New, revised budgets not part of the original filing will usually not be considered. If, however, during the course of the rate case, a significant unforeseen happening occurs in the actual operations of the utility or in the economy, the Commission may allow this evidence in considering the rate case.

New data will not go beyond the test year originally filed. No evidence will be considered after the evidentiary hearing.

Dated: JUN 14 1982

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Lillian Warren-Lazenberry	Chairman
Leo G. Adams	Commissioner
Roger L. Hanson	Commissioner
Terry Hoffman	Commissioner
Juanita R. Satterlee	Commissioner

STATEMENT OF POLICY ON SETTLEMENT CONFERENCES

The Minnesota Public Utilities Commission recognizes the need to expedite the rate case hearing process. This Policy Statement encourages parties to take advantage of settlement conferences, authorized in Minn. Reg. PSC 517. The use of settlement conferences will result in more pre-hearing stipulations and settlement or rate case issues, and may even be used to settle the rate case without litigation.

The Policy Statement applies to all utility rate cases, including telephone, gas, and electric. The Commission recognizes that a policy statement does not have the force or effect of law. Instead, it is an expression of the Commission's general intention which will be followed unless circumstances demonstrate the policy to be inappropriate. In each particular case, the Policy Statement can be expected to form the starting point of the Commission's decision, but the final decision will depend upon the facts of the case.

A settlement conference is permitted for any purpose related to the conduct or disposition of a proceeding, including the submission and consideration of settlement offers. If a rate settlement is offered, the offer shall include the proposed settlement or tariff changes in a form suitable for inclusion in the utility's filed rate schedules or tariffs and shall include the factual basis upon which the offer is made.

Conferences may be held to provide an opportunity for the submission and consideration of facts, arguments, proposals of adjustments, to define and stipulate issues, or for settlement of a proceeding, and for consideration of means by which the conduct of the hearing may be facilitated and the disposition of the proceeding expedited.

Other matters that may be considered are:

1. Simplifying issues;
2. Exchanging and accepting exhibits to be used as evidence;
3. Admitting or stipulating to undisputed facts and authenticating documents;

4. Limiting the number of expert witnesses; and
5. Other matters that would expedite or dispose of the hearing.

All parties shall be given due notice of the time and place of the conference and the matters to be discussed. Those participating in the conference shall come fully prepared to discuss all procedural and substantive problems, and fully authorized to make commitments with respect thereto. Failure of a party to attend the settlement conference, after being served with due notice, shall constitute a waiver of all objections to the agreements reached and any order or ruling arising from the conference.

The Commission intends that settlement conferences be useful to all parties, including those unfamiliar with the rate case process. To that end, the Commission believes it would be helpful for those state agencies charged with the responsibility to represent the public interest (the Department of Public Service, the Office of Consumer Services) to assure that any individual or group attending a settlement conference who is not familiar with the process receive advice and assistance so as to ensure their meaningful participation in the conference and rate case process.

All rulings made at the settlement conference are binding on all parties. Proposed settlement offers and stipulations not agreed to are privileged and shall not be admissible in evidence against any counsel or person claiming such a privilege.

If the matter is not adjusted or settled to the satisfaction of the Commission, it shall have to be resolved in an evidentiary hearing. In addition, M. S. § 2168.16, subd. 1a (1981) may require a contested case hearing in a larger rate case.

All settlement conferences shall be open to the public. The public shall also have access to the actual settlement agreement and all parties' support materials.

JUN 14 1982

Dated: _____

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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STATEMENT OF POLICY ON PUBLIC HEARINGS

The Minnesota Public Utilities Commission is issuing this statement to clarify its policy on public hearings. Public hearings are held for each rate case to give the general public an opportunity to comment and testify on the utility's request for a rate increase. The Commission recognizes the need for and importance of public comment for the reasoned, fair decision of the rate case.

The Commission recognizes that a policy statement does not have the force or effect of law. Instead, it is an expression of the Commission's general intention which will be followed unless circumstances demonstrate the policy to be inappropriate. In each particular case, the policy statement can be expected to form the starting point of the Commission's decision, but the final decision will depend upon the facts of the case.

Public hearings are held separately from the evidentiary hearing, but the public is welcome at both types of hearings. However, only at the public hearings may the public testify without becoming a formal party to the rate case. The Commission utilizes the information presented at the public hearings as evidence in the contested case. To insure that the public testimony is introduced into the evidentiary hearing, each public hearing is conducted by a Hearing Examiner who determines what testimony is entered into the official record. At least one Commissioner is typically present at each public hearing.

The number and location of the public hearings is determined by the geographic size of the utility, the interest shown by the public as determined by mail and calls, and the utility's service area. There is always a minimum of one public hearing for each rate case. Public hearings may be held in various cities in a larger utility's service area. Some of the hearings are held in the evening for the public's convenience. Each session will be held open for a sufficient amount of time to allow all participants the opportunity to present their views.

An authorized representative of the utility should be present at all public hearings to explain the need for increased rates, to respond to comments, and to answer questions. The utility representative will respond to questions only after all the public testimony is given. Other parties to the rate case are encouraged to attend each public hearing. A person who testifies at a public hearing is subject to questioning by the parties, but does not become a party by reason of participation.

Dated: JUN 14 1982

Interim Rates

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Lillian Warren-Lazenberry
Leo G. Adams
Roger L. Hanson
Terry Hoffman
Juanita R. Satterlee

Chairman
Commissioner
Commissioner
Commissioner
Commissioner

STATEMENT OF POLICY ON INTERIM RATES

The purpose of this policy statement is to inform regulated companies of the expectations of the Minnesota Public Utilities Commission (the Commission) concerning petitions for approval of interim rates which are filed in conjunction with general rate cases.

The Commission recognizes that a policy statement does not have the force or effect of law. Instead, it is an expression of the Commission's general intention which will be followed unless circumstances demonstrate the policy to be inappropriate. In each particular case, the policy statement can be expected to form the starting point of the Commission's decision, but the final decision will depend upon the facts of the case.

Recent changes to Minn. Stat. §§ 216B.16 and 237.075 provide in part that "the interim rate schedule shall be calculated using the proposed test year cost of capital, rate base, and expenses, except that it shall include: (1) a rate of return on common equity for the utility equal to that authorized by the Commission in the utility's most recent rate proceeding; (2) rate base or expense items the same in nature and kind as those allowed by a currently effective order of the Commission in the utility's most recent rate proceeding; and (3) no change in existing rate design." Minn. Stat. § 216B.16, subd. 3 (1982). For regulated telephone companies, the interim rate schedule shall be computed in the same manner as above, except that item (3) has been altered to provide that there will be "no change in the existing rate design, except for products and services offered by nonregulated competitors." Minn. Stat. § 237.075, subd. 3 (1982).

The Commission interprets that "no change in the existing rate design" applies to both the allocation of revenue responsibility among customer classes (or product and service categories) and the structure of the individual rates. Accordingly, interim rates should consist of the existing rate schedules with an interim rate adjustment equal to the overall requested interim increase percentage. This procedure will assure that consumption decisions will be made on the same basis as under existing rates and will allow refunds, if necessary, to be made across-the-board to all customers such that the final rates are prospective only. In the case

of telephone utilities which request rate design changes for products and services provided by nonregulated competitors which differ from the overall requested interim increase, the increase in rates for other services should be calculated at the residual average percentage increase.

Regulated gas and electric companies which have included changes in the cost of fuel, gas, or purchased power in the operating income statement may adjust interim rates to reflect the new costs resulting from the "zero-out" of the automatic adjustment charges.

The utility should keep records of all amounts collected in excess of present rates and submit monthly reports to the Commission. The interim rate adjustment should be shown as a separate item on the customer's bill, if practical.

The Commission encourages any regulated company seeking interim rates to submit to the Commission an interim rate petition as part of its general rate case filing. The interim rate petition should include a cover letter and supporting schedules.

The cover letter of the interim rate petition should provide the following information:

- 1) Name, address, and telephone number of the utility without abbreviation and the name and address and telephone number of the attorney for the utility, or other representative upon whom official service may be made.
- 2) Date of filing and date the proposed interim rates are requested to become effective.
- 3) Description and need for interim rates.
- 4) Description and corresponding dollar amount of changes included in interim rates as compared with the most current approved general rate case and with the most recent actual year for which audited data is available. The data for the most recent actual year should be for the same time period in months as the test year, if the test year is a projected test year.
- 5) Effect of the interim rates expressed in gross revenue dollars and as a percentage of test year gross revenue.
- 6) A certification, signed by the Chief Executive Officer of the utility, that affirms the proposed interim rate petition is in compliance with Minnesota Statutes.
- 7) Signature and title of the utility officer authorizing the proposed interim rates.

The supporting schedules accompanying the interim rate petition should include the following:

1) A schedule showing the interim rate of return calculation. This schedule should show the capital structure and rate of return calculation approved by the Commission in the most recent general rate case; the capital structure and rate of return calculation proposed for interim rates; and a description and corresponding dollar amount of any changes between the two capital structures.

2) A schedule showing the interim operating income statement. This schedule should show the same operating income statement accounts as filed in the general rate case. Also, the schedule should include the operating income statement approved by the Commission in the most recent general rate case; the equivalent operating income statement corresponding with the most recent actual year for which audited data is available and corresponding with the same period in months as the test year, if the test year is a projected test year; and the operating income statement proposed for interim rates. A description of all changes and corresponding dollar amounts between each of the operating income statements should be provided. Work papers should be provided which show how revenues, AFUDC, taxes, expenses, and other income statement components have been determined.

3) A schedule showing the interim proposed rate base. This schedule should show the same rate base accounts as filed in the general rate case. This schedule should include the average rate base approved by the Commission in the most recent general rate case; the equivalent average rate base corresponding with the most recent actual year for which audited data is available and corresponding with the same period in months as the test year, if the test year is a projected test year; and the average rate base proposed for interim rates. A description of all changes and corresponding dollar amounts between each of the rate bases should be provided. Workpapers should be provided which show how the rate base components have been determined.

4) A schedule showing revenue deficiency calculations for each of the operating income statements and rate bases requested in 2) and 3) above. The revenue deficiency should be calculated for the actual data and the interim data using the rate of return calculated in 1) above.

5) For regulated telephone companies which have proposed interim rate design changes based on products and services offered by nonregulated competitors, the interim rate change supporting schedules should include a complete description of these changes and show the calculation of the proposed interim rate design based on these changes.

If the Commission finds that the interim rates are in excess of the rates in the final determination, the Commission will order a refund based on its authority under Minn. Reg. PSC 401B. The utility must refund to the customers or credit to the customers' accounts the excess amount collected under the interim rate schedule. This amount will be determined in a manner prescribed by the Commission including interest at the average prime interest rate computed from the effective date of the interim rates through the date of the refund or credit. The utility will be ordered to begin distribution of the refund within 120 days of the final order, not subject to rehearing or appeal.

Dated: APR 14 1982