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April 8, 2013

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

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

Dear Dr. Haar:

Attached are the comments of the Minnesota Department of Commerce in the following matter:

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

The Department is available to answer any questions the Commission may have.

Sincerely,

/s/ SUSAN MEDHAUG
Supervisor, Energy Regulation and Planning

/s/ DIANE DIETZ
Public Utilities Rate Analyst

/s/ DONNA HEASTON
Public Utilities Rate Analyst



BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

**COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE**

DOCKET NO. U999/R-13-24

I. BACKGROUND

On June 11, 1992, the Commission issued its Findings of Fact, Conclusions, and Order Adopting and Repealing Rules in the matter of the proposed new rules governing practice and procedure in Docket No. U999/R-86-147. In that Order, the Commission adopted Minn. Rules pts. 7829.0100 through 7829.3200 governing practice and procedure. In that same Order, the Commission repealed the then-existing rules of practice and procedure in Minn. Rules pts. 7830.0100 through 7830.4400 and the then-existing rules governing procedures for acting on applications for certificates of need for large energy facilities in Minn. Rules pts. 7847.0010 through 7847.0320.

On January 14, 2011, the Commission adopted amendments to the Rules of Practice and Procedure, in Minn. Rules, Ch. 7829, to establish new notice requirements for certificate of need applications for pipelines in Docket U999/R-06-212.

II. STATUTORY AUTHORITY

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

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

III. COMMENTS

A. *MINN. RULES PT. 7829.0100, SUBP. 21 UTILITY*

The Commission proposes to amend Minn. Rules pt. 7829.0100 (Definitions), subp. 21 (Utility) as follows:

“Utility” means a gas, electric, or telecommunications service provider ~~telephone company~~—subject to the jurisdiction of the commission.

The term “telecommunications service provider” is not defined in Minn. Rules Ch. 7829 or Minn. Stat. Ch. 237, which governs the regulation of telephone, telegraph and telecommunications companies. The term “telephone utility” is defined in Minn. Rules pt. 7810.0100, subp. 37 as “...any person, firm, partnership, cooperative organization, or corporation engaged in the furnishing of telecommunication service to the public under the jurisdiction of the commission.” This term, as defined, is sufficiently broad to include all telecommunication providers that are “under the jurisdiction of the commission.”

Therefore, the Department proposes that the Commission instead use the term “telephone utility” as follows:

“‘Utility’ means a gas or electric service provider, or telephone utility, subject to the jurisdiction of the commission.”

B. *MINN. RULES PT. 7829.0500, PROTECTED DATA*

The Commission proposes to amend Minn. Rules pt. 7829.0500 to update the procedure for filing protected data. The proposed amendment reads as follows:

Minn. Rules pt. 7829.0500, subp. 2 Procedure for excision. Persons filing documents containing ~~proprietary information, trade-protected data~~ or other privileged information shall file one copy of the document 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 for PRIVILEGED) DATA HAS BEEN EXCISED. The beginning and end of the excised protected data must be identified.

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

In the past, the Commission has made exceptions to its procedures when dealing with issues and circumstance involving voluminous or highly sensitive data. For example, there have been instances where voluminous data was provided on a CD rather than filed using the electronic submission process. The Department does not believe the proposed changes limit the Commission's flexibility to deal with these special circumstances. To the extent the Commission believes otherwise, it may wish to consider how this flexibility can be reflected in the Rule.

C. MINN. RULES PT. 7829.1300 MISCELLANEOUS FILINGS

The Commission proposes to amend Minn. Rules pt. 7829.1300 (Miscellaneous Filings) as follows:

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

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

The term "miscellaneous filing" is defined as follows in Minn. Rules pt. 7829.0100, subp.9 (currently subp. 11):

"Miscellaneous ~~tariff~~ filing" means a request or notice that does not require determination of the utility's revenue requirement. A miscellaneous ~~tariff~~ filing includes a filing involving a new service

offering; a change in a utility's rates, services, terms, or conditions of service; a change in a utility's corporate structure, assigned service area, or capital structure, when conducted separately from a general rate proceeding; filings made under the rules governing automatic adjustment of charges (Minn. R. 7825.2390 – 2850); or any related matter. ~~The term also includes a language change filing, cost increase filing, and rate reduction filing.~~ 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.

Minnesota law and Commission rules occasionally establish effective dates for certain filings that are contrary to those set out in Minn. Rules pt. 7829.1300. For example, Minn. Stat. § 237.16, subd. 4 allows competitive local carriers to expand their service area and states, "If no objection is filed with the commission by any interested party or raised by the commission within 20 days of the filing, it is considered approved, except if it involves an acquisition governed by section 237.23, in which case no certificate shall be granted until approval is obtained pursuant to that section and subdivision 1." Additionally, Minn. Rules pt. 7812.2210, subp. 3A establishes, "A new service, price decrease, promotion, or insubstantial change in the terms or conditions of a service may take effect immediately upon filing. A price decrease may take effect without notice to customers."

Therefore, the Department recommends the following addition to Minn. Rules pt. 7829.0100, subp.9:

"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. Procedures established in this Rule apply only to the extent that procedures relating to certain listed filings have not been otherwise prescribed by statute or rule."

D. MINN. RULES PT. 7829.1700 FORMAL COMPLAINT

The Commission is proposing no revisions to Minn. Rules pt. 7829.1700 relating to formal complaints. Minn. Rules pt. 7829.1700, subp. 2 (Mailing and filing) states that "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." Emphasis added.

While the text of Minn. Rules pt. 7829.1700, subp. 2 requires that formal complaints must be “mailed,” the Commission is proposing to revise Minn. Rules pt. 7829.0400 (Service and Filing Requirements), subp. 1 (Filing) to require that “[d]ocuments must be filed in a manner consistent with the *electronic filing* requirements of Minnesota Statutes, section 216.17, subdivision 3.” Emphasis added. In other parts of Minn. Rules Ch. 7829, the Commission also proposes to introduce references to electronic service of documents.

The Department recommends the following addition to Minn. Rules pt. 7829.1700, subp. 2:

“Formal complaints may also be filed in a manner consistent with the *electronic filing* requirements of Minnesota Statutes, section 216.17, subdivision 3. If filed electronically in this manner, a formal complaint does not need to be mailed to the state agencies.”

E. MINN. RULES PT. 7829.3150 UNTIMELY FILINGS

The Commission proposes to introduce the following procedure in Minn. Rules pt. 7829.3150 regarding untimely filings:

Subpart 1. When filings may be excluded. 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.

Subp. 2. Required statement. 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.

The proposed text of subpart 1 indicates that untimely filings are included in the record, but may be excluded at the discretion of the Commission. However, subpart 2 requires the person making the untimely filing to explain “why it should be considered by the commission.” To make these subparts consistent, the Department recommends the following revision of subpart 2:

“Subp. 2. Required statement. 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.”

CERTIFICATE OF SERVICE

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

**Minnesota Department of Commerce
Comments**

Docket No. U999/R-13-24

Dated this **8th** of **April, 2013**

/s/Sharon Ferguson

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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