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September 6, 2013



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

**RE: Possible Amendment to Rules Governing Utility Proceeding, Practice, and Procedure, Minnesota Rules Chapter 7829, excluding part 7829.2550, which is subject to a separate pending rulemaking  
Docket No. U-999/R-13-24  
Additional Comments**

Dear Dr. Haar:

Otter Tail Power Company ("Otter Tail") submits these Comments in response to the Minnesota Public Utilities Commission's ("Commission") August 7, 2013 Request for Comments in the above-captioned matter.

Otter Tail has electronically filed this document with the Commission and is serving a copy on all persons on the official service list for this docket. A Certificate of Service is also enclosed.

If you have any questions regarding this filing, please contact me at 218-739-8838 or at [rlspangler@otpc.com](mailto:rlspangler@otpc.com).

Sincerely,

*/S/ RON L. SPANGLER JR.*  
Ron L. Spangler Jr.  
Rate Case Manager

jce  
Enclosures  
By electronic filing  
c: Service List

**STATE OF MINNESOTA  
BEFORE THE  
MINNESOTA PUBLIC UTILITIES COMMISSION**

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

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

**OTTER TAIL POWER COMPANY'S  
ADDITIONAL COMMENTS**

**I. INTRODUCTION AND BACKGROUND**

Otter Tail Power Company (“Otter Tail” or “Company”) is filing these Additional Comments in response to the Commission’s August 7, 2013 Notice of Comment Period in the above-captioned docket. Otter Tail previously filed Comments in this docket on April 8, 2013. On August 1, 2013, the Minnesota Public Utilities Commission (“Commission”) considered the matter at its regular agenda meeting, after which a second notice was issued, requesting additional comments on the draft of possible amendments and possible revisions thereto.

As a preliminary matter, Otter Tail notes that there has been an evolution of what possible rule amendments are being contemplated in this docket, starting with the original February 15, 2013 Notice, then moving to additional proposals in party comments filed on April 8, 2013 (and Comments filed by Carol A. Overland/Legalectric, Inc. (“Legalectric”) on June 10, 2013), additional revisions to some of those proposals in the Briefing Papers issued on July 25, 2013, prior to the August 1 Commission meeting, and then again in the August 7, 2013 Notice. This complex evolution makes it somewhat unclear what might be the latest version of possible revisions the Commission might be working from. Also, through this evolution, what began as clarifying changes in some instances appear to have evolved into proposals that would have a more substantive impact on parties and Commission proceedings.

Given this growing complexity, it may be appropriate for the Commission to appoint an advisory committee to consider the possible amendments. Such a committee could consider the effect of such changes on Commission proceedings, including possible unintended consequences. Such a committee could also provide adequate focus to consider what effects

each proposed change might have on Commission proceedings and the parties who appear before the Commission.

That having been said, Otter Tail is filing these Comments to address issues that it sees with some of the possible amendments. These Comments focus on Otter Tail's understanding of what's currently being considered, based on the July 25, 2013 Briefing Papers (and attached strike-underline draft revisions) and the August 7, 2013 Notice. Specifically, the possible amendments addressed in these Comments, include:

1. Rule 7829.0400--The possible amendment proposed by the Office of the Attorney General, Antitrust and Utilities Division ("OAG") that would change to the filing deadline.
2. Rule 7829.0500--The possible amendment proposed by Otter Tail that would clarify how certain protected information should be handled in Public and Non-Public Filings.
3. Rule 7829.0700--The possible amendment proposed by Legalectric that would limit each party to having just one person identified on the service list for a matter.
4. Rule 7829.2600--The possible amendment proposed by Legalectric that would alter the process for parties wishing to address the Commission regarding staff recommended actions not advocated by any party.
5. Rule 7829.2400--The possible amendment proposed by the OAG that would change the standard applied by the Commission when it decides whether to accept or reject Rate Case filings as being substantially complete.
6. Rule 7829.0250, subpart 2--The possible amendment proposed in the August 7, 2013 Notice that would add possible sanctions for violation of the proposed Commission rule governing representations of fact or law to the Commission.

**II. Rule 7829.0400 -- The possible amendment proposed by the Office of the Attorney General, Antitrust and Utilities Division ("OAG") that would change to the filing deadline.**

With respect to the possible amendments to Rule 7829.0400, Service and Filing Requirements, Otter Tail is not in favor of possible amendment to subpart 1, paragraph A, which would authorize filings to be made at any time, including outside regular business hours. Otter Tail understands that this amendment would allow filings to be considered made on a date submitted even up until midnight on that date. The current rules consider documents to be filed when received by the

Commission during regular business hours. In most cases, in order to meet a filing deadline, a filing must be made by 4:30 p.m. on the date filed, or they may be treated as having been filed on the next business day.<sup>1</sup>

The proposed revision to this rule would in many cases unreasonably inhibit parties' ability to receive filings on the date made and it would thereby effectively shorten the time within which a party would be permitted to consider whether and how to respond to those filings. Several other Commission rules and Commission orders prescribe the response timing for filings, and in many instances the time for responsive filings are calculated based upon calendar days (instead of business days). If the possible amendment were adopted by the Commission as proposed, in many instances it would effectively prevent parties from receipt of filings until well after the filings were made. For example, a filing made after business hours on a Friday might not be received and considered until the following Monday (or later in the event of a legal holiday). By that time several calendar days will have passed, thereby depriving the recipients of a reasonable opportunity to consider and prepare their responses.

In many instances the rules require responses to filings within relative short timeframes (e.g, within ten calendar days). As a practical matter, adopting the rule as proposed would effectively shorten those response times significantly, and with weekends and holidays it could be a substantial portion of the entire time allotted for a response. Therefore Otter Tail recommends the Commission keep the currently established filing deadline of during Commission regular business hours for a filing to be treated as having been made on that calendar day.

If the commission determines that changes to filing deadlines should be considered, they should not be considered in isolation. The other rules addressing the timing of filings and responses should be also considered to ensure that any possible changes will not inadvertently inhibit parties' reasonable opportunity to consider and respond to filings.

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<sup>1</sup>7829.0400 SERVICE AND FILING REQUIREMENTS. Subpart 1 Filing. Documents are filed with the commission when they are received in the commission offices during regular business hours. Specific documents may be filed by facsimile transmission or filed when mailed, with the consent of the executive secretary. Documents must be directed to the attention of the executive secretary.

**III. Rule 7829.0500—The possible amendment proposed by Otter Tail that would clarify how certain protected information should be handled in Public and Non-Public Filings.**

In its initial Comments, Otter Tail recommended clarifying or eliminating the word “privileged” in Rule 7829.0500, subpart 2. Otter Tail’s request was intended to clarify that information covered by legal privilege would not be included either in the public or non-public versions of filings. This is consistent with the Commissions practices and the law of legal privileges. In the July 25, 2013 Briefing Papers filed by Commission Staff in this matter, Staff indicated that subpart 1 of Rule 7829.0500 seemed to address Otter Tail’s recommendation. However, Rule 7829.0500, subpart 1 is actually recommended for revision as part of this proceeding and, therefore, the issue raised by Otter Tail would not be addressed in the rule. Additionally, Rule 7829.0500 subpart 1 (even if it were not recommended for revision) does not entirely address the issue identified in Otter Tail’s initial Comments. Charter Entities recommended the following change to Rule 7829.0500 Subp. 1, which Commission Staff incorporated into the draft proposed rules through the July 25, 2013 Briefing Papers.

7829.0500 ~~TRADE SECRET AND PROPRIETARY~~ INFORMATION PROTECTED DATA.

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

In addition, Rule 7829.0100 Subp. 19 – Protected data was added and states:

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

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

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

When these two rules are considered together, the definition of “Protected Data” could be mistakenly interpreted to include data that is protected from disclosure pursuant to the rules of privilege recognized by law. The Rule should make clear that there will not be a public or non-public disclosure of information covered by legal privilege (i.e. such privileged information will not be included in public or non-public filings). As indicated in Otter Tail’s original Comments, legal

privileges prevent the compelled disclosure of certain information from any party other than those parties to whom the privilege applies, and therefore regardless of the language used in the rule, privileged information would not be disclosed even in non-public documents. However, as indicated in the original Comments, the Rules should be written in a way that will not create confusion over whether information covered by legal privilege should be included in non-public filings.

**IV. Rule 7829.0700 – The possible amendment proposed by Legalectric that would limit each party to having just one person identified on the service list for a matter.**

The change proposed that would limit each party to having just one person identified on the service list for a matter would materially impede parties' participation in Commission proceedings. Many Commission proceedings involve several substantive matters on differing subjects, and thus it is common for parties to have more than one representative involved in a proceeding (i.e. a lead subject matter expert that can adequately follow on each issue of substance). In addition to subject matter experts, it is common for parties to have legal representation (in-house or outside counsel) that also has substantial involvement in the proceeding. If the rule were amended as proposed, it would unreasonably impair these individuals from participation in these matters. Furthermore, because service can be accomplished electronically, there does not appear to be a significant inconvenience posed on parties by the current rule. Otter Tail also believes that the proposed change would create unintended administrative difficulties when considered in combination with other rules such as those regarding service being accomplished by service on counsel (for example Rule 7829.0400, subp 4, in which case the proposed change would appear to effectively require that only the attorney be identified for a party on the service list (and no non-attorney representative)).

**V. Rule 7829.2600 – The possible amendment proposed by Legalectric, as revised in the Staff Briefing Papers and in the August 7 Notice, that would alter the process for parties wishing to address the Commission regarding staff recommended actions not advocated by any party**

This possible amendment appears to create greater confusion as to what process might be involved in response to staff recommended actions not advocated by any party. Otter Tail would understand this to typically apply to decision alternatives presented in Commission Staff Briefing Papers. It's not clear whether the amendment allows for written or oral Comments and it's not clear what circumstances might make such an additional process "practicable" as the term is used in the

revision included in the August 7 Notice. Otter Tail also would be concerned that if the possible amendment is interpreted to allow for written comment, it would delay many proceedings to accommodate additional rounds of comments. Otter Tail also does not believe the current process, where parties make oral comments at the Commission meetings, requires alteration. The current rule describes that process reasonably well and therefore it should not be changed.

**VI. Rule 7829.2400, subpart 5 – The possible amendment proposed by the OAG, that would change the standard applied by the Commission when it decides whether to accept or reject Rate Case filings.**

The proposed revisions to this rule substantially changes the standard for what is considered a substantially complete rate case filing and makes the standard less clear not more clear. The rule currently in effect clearly defines when the Commission shall reject a rate case filing. The current rule provides that a rate case filing shall be rejected if it is found to be substantially out of compliance with Minnesota Statute 216B.16 or other requirements imposed by rule, statute or previous Commission orders. In addition to the clarity of the current rule, the substantially complete standard has been defined in other rate case proceedings. The proposed amendments to this rule require the Commission to reject a rate case if the Commission finds the filing will “impair the Commission’s ability to evaluate the need for a change in the utilities gross revenue.” There are no definitions for the terms used in this new standard from which filings could reasonably be assessed for completeness. The proposed amendments to this rule make the requirements and standards of a substantially complete rate case less clear not more clear. Therefore, Otter Tail recommends the Commission not adopt the revisions to this rule.

**VII. Rule 7829.0250, subpart 2 – The possible amendment proposed in the August 7 Notice that would add possible sanctions for violation of the proposed Commission rule governing representations of fact or law to the Commission.**

With respect to the recommended language for subpart 2 of Rule 7829.0250, the introduction of sanctions is a substantial change to the existing rules and the possible effects of such a change should be considered carefully. Otter Tail fully supports that parties appearing before the Commission should be held to a high ethical standard. Otter Tail believes that the Commission may want to investigate how similar sanction provisions in procedural rules are articulated and put into practice. In addition to the Court rules regarding sanctions it may be that other agencies or other jurisdictions have promulgated such rules. A survey of those provisions and their application might help inform what

the Commission may want to consider for its rules. The Commission should also consider Minn. Stat. Section 216B.57, which is the Minnesota Legislature's penalty provisions for those who would knowingly violate the law or a Commission Order. It would seem that any contemplated rule regarding sanctions should be reconciled with this provision of the statutes.

Dated: September 6, 2013

Respectfully submitted,  
OTTER TAIL POWER COMPANY

By: /s/ RON L. SPANGLER JR.

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## CERTIFICATE OF SERVICE

**RE: Possible Amendment to Rules Governing Utility Proceeding, Practice, and Procedure, Minnesota Rules Chapter 7829, excluding part 7829.2550, which is subject to a separate pending rulemaking  
Docket No. U-999/R-13-24**

I, Jana Emery, hereby certify that I have this day served a copy of the following, or a summary thereof, on Dr. Burl W. Haar and Sharon Ferguson by e-filing, and to all other persons on the attached service list by electronic service or by First Class mail.

**Otter Tail Power Company  
Comments**

Dated this **6th** day of **September, 2013**

/s/ JANA EMERY

Jana Emery  
Regulatory Filing Coordinator  
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