

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott
Edward A. Garvey
Joel Jacobs
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Revision to Remove
Obsolete Provisions in *Minnesota Rules*,
Chapters 7810, 7820, 7825, 7827, 7829, 7849,
7851, 7853 and 7855

ISSUE DATE: March 21, 2002

PUC DOCKET NO. U-999/R-00-1661

ORDER ADOPTING RULE AMENDMENTS

PROCEDURAL HISTORY

On December 26, 2000, the *State Register* published the Commission's Request for Comments, initiating this docket. The Commission received only one comment, from the Office of Attorney General's Residential and Small Business Utilities Division (OAG-RUD). OAG-RUD argued that rules governing telephone metering should be retained.

On November 20, 2001, after notifying those who had asked to receive notice of Commission rulemakings, the Commission convened a public hearing on whether to proceed to publish a Notice of Intent to Amend Rules to eliminate obsolete rule provisions and make conforming changes. After providing opportunity for comment, the Commission unanimously approved proceeding in this matter. (The changes approved by the Commission did not include the changes opposed by the OAG-RUD.)

On November 28, 2001, the Commission issued its 2001 Obsolete Rules Report, identifying the rules it had approved for revision on November 20 and reporting that the current rulemaking was underway.

On December 19, 2001, the following events occurred:

- The Office of Administrative Hearings (OAH) approved the Commission's proposed draft Notice of Intent to Adopt Rules (Dual Notice), and its Additional Notice Plan.
- The Commission issued its Dual Notice. The Dual Notice announced the Commission's plan to change its rules without a hearing. It also invited members of the public to comment, to request a hearing, or to ask to be notified if the proposed amendments are eventually submitted to the OAH for review.

- The Commission issued its Statement of Need and Reasonableness (SONAR). The SONAR sets forth the basis for the Commission’s proposed amendments and fulfilling other procedural requirements. The SONAR contains the approved Additional Notice Plan.
- The Commission mailed a copy of the SONAR to the Legislative Reference Library.
- The Commission mailed a copy of the Dual Notice and the SONAR to various ranking legislators on committees with jurisdiction over the Commission.

The Commission implemented its Additional Notice Plan to publicize the rulemaking. Specifically, the Commission –

- mailed its Dual Notice and proposed rules to all persons who had asked to be informed of Commission rulemakings generally, and of this rulemaking specifically,
- issued a press release on December 21, 2001, and
- placed a continuing notice in its *Weekly Calendar* and on its World Wide Web site, <http://www.puc.state.mn.us/>.

On December 31, 2001, the *State Register* published the Commission’s Dual Notice and proposed rule amendments.

On January 30, 2002, the period for the public to comment on the rulemaking ended. The Commission received no comments, no requests for a hearing, and no requests to be notified when the amendments would be submitted to the OAH.

The Commission, with a quorum of its members present, met to consider this matter on February 26, 2002.

FINDINGS AND CONCLUSIONS

I. RULEMAKING PROCESS

Minnesota’s Administrative Procedure Act (Minnesota Statutes chapter 14) sets forth the requirements for a state agency to adopt, amend and repeal rules. The steps relevant to the current rulemaking are summarized below:

An agency that wants to change its rules must publish in the *State Register* a request for comments on the rulemaking’s topic. After considering the comments, the agency drafts its proposed rules.

The agency then publishes its proposed rules, along with a notice of its intent to adopt the rules, in the *State Register*, in a form approved by the OAH. At the same time, the agency issues a Statement of Need and Reasonableness (SONAR), supporting the need for and reasonableness of the proposed rules. The agency must notify all entities that had requested in be informed of agency rulemakings. In addition, the agency must provide a copy of the SONAR to the Legislative Reference Library. Moreover, the agency must give a copy of the SONAR and the notice of intent to adopt rules to ranking legislators on committees with jurisdiction over the agency. Finally, the agency must give any additional notice that it had promised to give.

If fewer than 25 people request a hearing, the agency may proceed to adopt its rules.

II. RULEMAKING SUBSTANCE

The Commission has set forth the merits of the proposed amendments in its SONAR. In summary, the amendments make changes warranted by the following circumstances:

- The Commission repealed Minn. Rules chapter 7830 (Practice and Procedure) when it adopted chapter 7829, but many Commission rules retain references to chapter 7830.
- Minn. Rules part 7810.3400, subp. 2, addresses eight-party local telephone service. This rule is obsolete because multi-party service has been virtually eliminated by Minnesota Statutes § 237.068 and Commission orders implementing that section.
- Minnesota Statutes § 237.5799 contained sunset clauses for §§ 237.58; 237.60, subd. 1, 2 and 5; 237.62; and 237.625. Sections 237.58 and 237.62 pertained to noncompetitive telecommunications services. Section 237.625 pertained to incentive regulation for telephone companies. And section 237.60, subd. 2, pertained to emerging telephone competition. The expiration of these statutes also rescinded the Commission’s authority for a number of rules.
- Minn. Rules chapter 7827 provides transition rules occasioned by the federal Tax Reform Act of 1986. This chapter is now unnecessary because adjustments for the Tax Reform Act are now fully implemented.
- The Revisor of Statutes changed the codification of Minn. Stat. § 216B.2421, warranting a corresponding change to the citations in Minn. Rules part 7849.0010.
- A number of rules refer to large oil facilities and oil refineries. The Legislature removed these entities from Commission jurisdiction when it changed the definition of “large energy facility” at *Minnesota Statutes* § 216B.2421, subd. 2.
- The Commission repealed Minn. Rules chapter 7847 (Large Energy Facilities), but some Commission rules retain references to that chapter.

- The Revisor of Statutes has identified various changes to improve or simplify the language of the Commission's rules without altering their substance.

III. ANALYSIS AND COMMISSION ACTION

As a matter of process, the Commission finds that it has complied with all the requirements to amend its rules.

As a matter of substance, the Commission finds that the proposed amendments are needed and reasonable. Consequently, the Commission will adopt them. Further, the Commission will authorize its Executive Secretary to take the necessary steps to make the provisions effective, including securing the approval of the Office of Administrative Hearings and the Revisor of Statutes and causing the amendments to be published in the *State Register*.

ORDER

1. All notice and procedural requirements in Minnesota Statutes, chapter 14, Minnesota Rules, chapter 1400, and other applicable law have been complied with.
2. The Commission received no written comments and submissions on the rule amendments. Therefore, there are not 25 or more outstanding requests for a public hearing.
3. The rule amendments are needed and reasonable.
4. The Commission, with a quorum of its members present, adopts the above-captioned rule amendments, in the form set out in the *State Register* on December 31, 2001, pursuant to authority vested in the Commission at Minnesota Statutes §§ 216A.05, 216B.08, 216B.09, 237.10, 237.16 and 237.74. The Commission authorizes its Executive Secretary to sign this order, and to take the necessary steps to implement the amendments.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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