

CHAPTER 7845
PUBLIC UTILITIES COMMISSION
EX PARTE COMMUNICATION

7845.7000 DEFINITIONS.
 7845.7100 PERMISSIBLE EX PARTE COMMUNICATIONS.
 7845.7200 PROHIBITED EX PARTE COMMUNICATIONS.
 7845.7300 HANDLING PROHIBITED EX PARTE COMMUNICATIONS.

7845.7400 HANDLING PERMISSIBLE EX PARTE COMMUNICATIONS.
 7845.7500 SANCTIONS.
 7845.7600 VIOLATIONS BY COMMISSION AND STAFF.

7845.7000 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 7845.7000 to 7845.7600 have the meanings given them in this part.

Subp. 2. **Decision-making personnel.** "Decision-making personnel" means the commission's executive secretary and professional staff, and consultants to the commission.

Subp. 3. **Disputed formal petition.** A "disputed formal petition" refers to a formal petition (1) filed with the commission, (2) for which a hearing is not automatically required, (3) for which the commission has received a written statement disputing the action or relief sought in the petition, and (4) on which the commission has ordered comments, written responses to comments, oral argument, negotiations, settlement conferences, a formal hearing, or other procedures it considers necessary or helpful to enable it to decide the petition. A petition ceases to be a "disputed formal petition" when the notice of dispute is withdrawn in writing or when the commission resolves the dispute by written order.

Subp. 4. **Ex parte communication.** "Ex parte communication" means an oral or written, off-the-record communication made to or by commissioners or commission decision-making personnel, without notice to parties, that is directed to the merits or outcome of an on-the-record proceeding. This term does not include procedural, scheduling, and status inquiries or other inquiries or requests for information that have no bearing on the merits or the outcome of the proceeding.

Subp. 5. **Material issue.** "Material issue" means an issue that may affect the merits or outcome of an on-the-record proceeding.

Subp. 6. **Party.** "Party" means a person by or against whom a proceeding before the commission is commenced or a person permitted to intervene in a proceeding before the commission. A party includes a petitioner, complainant, intervenor, applicant, and respondent, and their attorneys, agents, or representatives.

Statutory Authority: *MS s 216A.037*

History: *11 SR 1743*

7845.7100 PERMISSIBLE EX PARTE COMMUNICATIONS.

An ex parte communication is permissible except as prohibited in part 7845.7200.

Statutory Authority: *MS s 216A.037*

History: *11 SR 1743*

7845.7200 PROHIBITED EX PARTE COMMUNICATIONS.

Subpart 1. **Communications with commissioners.** An ex parte communication, either direct or indirect, must not be made or attempted to be made between a commissioner and a party concerning:

A. a material issue during a pending contested case proceeding, from the date the matter is referred to the Office of Administrative Hearings until the commission issues its final order and the time to petition for reconsideration expires, or until the commission issues a final order responding to the petition for reconsideration, whichever is later;

B. a material issue in a rulemaking proceeding after the beginning of commission deliberations, from the date the commission posts notice of its deliberations for adoption of rules on the open meeting calendar until the order adopting the rules is issued;

C. a material issue in a disputed formal petition; or

D. other communications prohibited by law such as:

(1) offers of employment to commissioners, as described in Minnesota Statutes, section 216A.036, and in parts 7845.0700 and 7845.0800;

(2) discussions with commissioners concerning past or future benefits or compensation, as described in Minnesota Statutes, section 216A.037, subdivision 2, and in parts 7845.0700 and 7845.0800; or

(3) offers to commissioners of compensation, gifts, gratuities, favors, entertainment, meals, beverages, loans, or other things of monetary value, as described in part 7845.0700.

Subp. 2. **Communications with staff.** Ex parte communications with decision-making personnel are not prohibited under Minnesota Statutes, section 216A.037.

Statutory Authority: *MS s 216A.037*

History: *11 SR 1743*

7845.7300 HANDLING PROHIBITED EX PARTE COMMUNICATIONS.

Subpart 1. **Written communication.** When possible, a commissioner who receives a prohibited written ex parte communication shall forward the communication, without reading it, to the commission's executive secretary.

A commissioner who receives and reads a prohibited written ex parte communication shall forward the communication to the commission's executive secretary within 48 hours, along with a signed statement of the source of and circumstances under which the communication was received and read.

Subp. 2. **Oral communication.** If a party makes or attempts to make a prohibited oral ex parte communication to a commissioner, the commissioner shall advise the party who makes or attempts to make the communication that the communication is prohibited and shall immediately terminate the communication. If a prohibited oral ex parte communication takes place, the commissioner who receives the communication shall forward to the commission's executive secretary, within 48 hours, a signed and dated statement that includes the following information:

A. the name and docket number of the proceeding;

B. to the extent known, the name and address of the person making the communication and the relationship, if any, to the parties to the proceeding;

C. the date and time of the communication, its duration, and the means by and circumstances under which it was made;

D. a summary of the matters discussed; and

E. whether the party making the prohibited communication persisted after being advised that the communication was prohibited.

Subp. 3. **Notice to parties.** The commission's executive secretary shall place the statement in the commission's public file within 48 hours, but shall not make the statement part of the record of the pending proceeding. The executive secretary shall serve a copy of the statement on the parties on the commission's official service list. If the statement is voluminous, the executive secretary may serve notice to the parties on the official service list that the statement is available for public inspection at the commission's offices during regular business hours.

MINNESOTA RULES 1987

7005

EX PARTE COMMUNICATION 7845.7500

Statutory Authority: *MS s 216A.037*

History: *11 SR 1743*

7845.7400 HANDLING PERMISSIBLE EX PARTE COMMUNICATIONS.

Subpart 1. **Documentation.** Documentation is not needed for permissible ex parte communications with commissioners and decision-making personnel except as provided in subparts 2 to 4.

Subp. 2. **Written communicatons with staff.** Decision-making personnel who receive or generate a permissible written ex parte communication that is prohibited for commissioners under part 7845.7200 shall file a copy of the communication in the commission's public file with a notation of the sender and recipient within 48 hours after the communication is received or generated.

Subp. 3. **Oral communications with staff.** Decision-making personnel who receive or generate a permissible oral ex parte communication that is prohibited for commissioners under part 7845.7200 shall ensure that the substance of the communication and the name of the maker or recipient of the communication is recorded in a signed memorandum to the commission's public file within 48 hours. If a proceeding has been assigned to an administrative law judge, a copy of the memorandum must be sent to the judge.

Subp. 4. **Interim rate proceedings; compliance filings.** Commissioners and decision-making personnel may receive or generate written or oral ex parte communications with a party in the setting of interim rates or the review of compliance filings following the issuance of a final order or order after reconsideration. Commissioners and decision-making personnel who receive or generate written or oral ex parte communications in these situations shall place a signed note in the commission's public file containing the name of the party, date, docket number of proceeding, and topic as soon as practicable, but no later than the issuance of the interim rate order or the compliance filing order.

Subp. 5. **Informing the public.** The commission shall make information regarding ex parte communications that occur in these situations available to the public upon reasonable request at its office during regular business hours.

Statutory Authority: *MS s 216A.037*

History: *11 SR 1743*

7845.7500 SANCTIONS.

Subject to notice and hearing, a party who makes a prohibited ex parte communication to a commissioner or who encourages or solicits others to make a prohibited ex parte communication to a commissioner is subject to the following sanctions:

A. dismissal of the proceeding if the prohibited ex parte communication has so prejudiced the proceeding that the commission cannot consider it impartially;

B. an adverse ruling on a pending issue that is the subject of the prohibited ex parte communication, when other parties are prejudiced by the prohibited ex parte communication;

C. the striking of evidence or pleadings when the evidence or pleadings are tainted by the prohibited ex parte communication; or

D. a public statement of censure by the commission, when the prohibited ex parte communication is determined to be part of a continuing pattern of improper ex parte communication or when a single prohibited communication takes place and mitigating circumstances exist that:

(1) negate the need for a more severe sanction;

(2) do not prejudice the proceeding to the extent that the commission is unable to consider it impartially;

MINNESOTA RULES 1987

7845.7500 EX PARTE COMMUNICATION

7006

- (3) do not prejudice other parties to the proceeding; and
- (4) do not taint the evidence or pleadings.

Statutory Authority: *MS s 216A.037*

History: *11 SR 1743*

7845.7600 VIOLATIONS BY COMMISSION AND STAFF.

A commissioner who intentionally violates parts 7845.7000 to 7845.7500 shall recuse himself or herself and shall not participate, offer advice, or vote in the commission's decision-making process in the pending on-the-record proceeding.

Decision-making personnel who intentionally violate parts 7845.7000 to 7845.7500 must be removed from participating in a staff support capacity or prohibited from offering advice on the affected case if the violation has substantially interfered with due process in the proceeding.

Statutory Authority: *MS s 216A.037*

History: *11 SR 1743*