

1 Public Utilities Commission

2

3 Adopted Permanent Rules Relating to Ex Parte Communication

4

5 Rules as Adopted

6 7845.7000 DEFINITIONS.

7 Subpart 1. Scope. The terms used in parts 7845.7000 to
8 7845.7600 have the meanings given them in this part.

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

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22 notice of dispute is withdrawn in writing or when the commission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

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

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

35 Subp. 6. Party. "Party" means a person by or against whom

1 a proceeding before the commission is commenced or a person
2 permitted to intervene in a proceeding before the commission. A
3 party includes a petitioner, complainant, intervenor, applicant,
4 and respondent, and their attorneys, agents, or representatives.

5 7845.7100 PERMISSIBLE EX PARTE COMMUNICATIONS.

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

8 7845.7200 PROHIBITED EX PARTE COMMUNICATIONS.

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

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

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

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

25 D. other communications prohibited by law such as:

26 (1) offers of employment to commissioners, as
27 described in Minnesota Statutes, section 216A.036, and in parts
28 7845.0700 and 7845.0800;

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

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

1 7845.0700.

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

5 7845.7300 HANDLING PROHIBITED EX PARTE COMMUNICATIONS.

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

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

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

24 A. the name and docket number of the proceeding;

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

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

31 D. a summary of the matters discussed; and

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

35 Subp. 3. Notice to parties. The commission's executive

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

10 7845.7400 HANDLING PERMISSIBLE EX PARTE COMMUNICATIONS.

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

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

21 Subp. 3. Oral communications with staff. Decision-making
22 personnel who receive or generate a permissible oral ex parte
23 communication that is prohibited for commissioners under part
24 7845.7200 shall ensure that the substance of the communication
25 and the name of the maker or recipient of the communication is
26 recorded in a signed memorandum to the commission's public file
27 within 48 hours. If a proceeding has been assigned to an
28 administrative law judge, a copy of the memorandum must be sent
29 to the judge.

30 Subp. 4. Interim rate proceedings; compliance filings.
31 Commissioners and decision-making personnel may receive or
32 generate written or oral ex parte communications with a party in
33 the setting of interim rates or the review of compliance filings
34 following the issuance of a final order or order after
35 reconsideration. Commissioners and decision-making personnel

1 who receive or generate written or oral ex parte communications
2 in these situations shall place a signed note in the
3 commission's public file containing the name of the party, date,
4 docket number of proceeding, and topic as soon as practicable,
5 but no later than the issuance of the interim rate order or the
6 compliance filing order.

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

11 7845.7500 SANCTIONS.

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

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

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

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

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

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

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

34 (3) do not prejudice other parties to the
35 proceeding; and

1 (4) do not taint the evidence or pleadings.

2 7845.7600 VIOLATIONS BY COMMISSION AND STAFF.

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

7 Decision-making personnel who intentionally violate parts
8 7845.7000 to 7845.7500 must be removed from participating in a
9 staff support capacity or prohibited from offering advice on the
affected case if the violation has substantially interfered with
11 the process in the proceeding.