

May 22, 2023

**VIA EFILING ONLY**

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Industry  
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**Re: In the Matter of the Proposed Rules of the Minnesota Board of  
Electricity Relating to the Adoption of 2023 National Electrical Code  
OAH 23-9001-39062; Revisor R-4778**

Dear Mr. Lebowski:

Enclosed herewith and served upon you is the **ORDER ON REVIEW OF RULES UNDER MINN. STAT. § 14.26** in the above-entitled matter. The Administrative Law Judge has determined there are no negative findings in these rules.

The Office of Administrative Hearings has closed this file and is returning the rule record so that the Minnesota Department of Labor and Industry can maintain the official rulemaking record in this matter as required by Minn. Stat. § 14.365. Please ensure that the agency's signed order adopting the rules is filed with our office. The Office of Administrative Hearings will request the finalized rules from the Revisor's office following receipt of that order. Our office will then file the adopted rules with the Secretary of State, who will forward one copy to the Revisor of Statutes, one copy to the Governor, and one to the agency for its rulemaking record. The Minnesota Board of Electricity will then receive from the Revisor's office three copies of the Notice of Adoption of the rules.

The Minnesota Board of Electricity's next step is to arrange for publication of the Notice of Adoption in the State Register. Two copies of the Notice of Adoption provided by the Revisor's office should be submitted to the State Register for publication. A permanent rule without a hearing does not become effective until five working days after a Notice of Adoption is published in the State Register in accordance with Minn. Stat. § 14.27.

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If you have any questions regarding this matter, please contact William Moore at (651) 361-7893, [william.t.moore@state.mn.us](mailto:william.t.moore@state.mn.us) or via facsimile at (651) 539-0310.

Sincerely,

  
SAMANTHA COSGRIFF  
Legal Assistant

Enclosure

cc: Legislative Coordinating Commission  
Revisor of Statutes

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Rules of the  
Minnesota Board of Electricity Relating to  
the Adoption of 2023 National Electrical  
Code

**ORDER ON REVIEW OF  
RULES UNDER  
MINN. STAT. § 14.26**

The Minnesota Board of Electricity (Board) is seeking review and approval of the above-entitled rules, which were adopted by the agency pursuant to Minn. Stat. § 14.26 (2016). On May 8, 2023, the Office of Administrative Hearings received the documents that must be filed by the Board under Minn. Stat. § 14.26 and Minn. R. 1400.2310 (2021). Based upon a review of the written submissions and filings, Minnesota Statutes, Minnesota Rules, and for the reasons in the Memorandum that follows,


**IT IS HEREBY DETERMINED:**

1. The Board has the statutory authority to adopt the rules.
2. The rules were adopted in compliance with the procedural requirements of Minn. Stat. ch. 14 (2022) and Minn. R. 1400 (2021).
3. The Board demonstrated that it met the criteria set forth in Minn. Stat. § 326B.13, subd. 8 (2022), when it ordered that the 2023 National Electrical Code (NEC) shall become effective July 1, 2023, or five days after the Notice of Adoption is published in the *State Register*, whichever is later.
4. The record demonstrates the rules are needed and reasonable.

**IT IS HEREBY ORDERED THAT:**

The rules are **APPROVED**.

Dated: May 22, 2023

  
SUZANNE TODNEM  
Administrative Law Judge

## MEMORANDUM

Minnesota Statutes, section 326B.13, subdivision 8, delays the effective date of rules amending the State Building Code for 270 days after publication of the rule's notice of adoption in the *State Register*. The statute allows for an earlier effective date "if the . . . board proposing the rule finds that an earlier effective date is necessary to protect public health and safety after considering, among other things, the need for time for training of individuals to comply with and enforce the rule."

The Board seeks review of a rule that has an effective date of July 1, 2023, or five days after the Notice of Adoption is published in the *State Register*, whichever is later. This effective date is earlier than the 270-day period required by Minn. Stat. § 326B.13, subd. 8. In the Statement of Need and Reasonableness (SONAR), the Board states that it chose the earlier date because:<sup>1</sup>

- 1) The latest edition of the National Electrical Code has routinely been adopted in Minnesota and made effective July 1 of each code edition year. The electrical industry in this state strongly supports and is anticipating another July 1 effective date for the revised NEC and is already in the process of updating the implementing necessary business changes, protocol, training and practices.
- 2) Industry and enforcement training on the 2023 NEC have already been developed and are scheduled in anticipation of a July 1, 2023, effective date. Training for the 2023 NEC began in the summer of 2022 and continues today.
- 3) A July 1 effective date would lessen confusion in the industry, expedite installations and increase public and workplace health and safety. A July 1 effective date will also promote uniformity among and between states adopting the 2023 NEC and will result in a freer flow of commerce and employees across state lines.

Gary Thaden, Government Affairs Director for the National Electrical Contractors Association (NECA), submitted a written comment that NECA has been conducting training on the 2023 NEC since 2022 with an anticipated effective date of July 1, 2023.<sup>2</sup>

The Administrative Law Judge finds that the Board demonstrated "that an earlier effective date is necessary to protect public health and safety after considering, among other things, the need for time for training of individuals to comply with and enforce the rule." Therefore, the early effective date in the proposed rule is approved and the Commissioner of Labor and Industry must publish an electronic version of the entire adopted rule chapter on its website within ten days of receipt from the revisor of statutes and clearly indicate the effective date of the rule on the Department's website.

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<sup>1</sup> Ex. D (SONAR).

<sup>2</sup> Ex. J.1 (Thaden comment (April 14, 2023)).

Lastly, the Administrative Law Judge recommends modifications to the proposed Order Adopting Rule.<sup>3</sup> The first paragraph references the January 31, 2023, Board meeting at which the Board authorized proposing the rules. However, the Administrative Law Judge encourages the Board to consider the November 1, 2022, Board meeting minutes and determine if that is the correct date authorization to propose the rules was given. Additionally, as required in Minn. R. 1400.2090, the Administrative Law Judge recommends adding a statement about the number of persons who requested notice that the rule has been submitted to the Office of Administrative Hearings and attaching copies of the referenced meeting minutes and Board authorization to the proposed order.

**S. T.**

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<sup>3</sup> Ex. N (Unsigned Order Adopting Rules).