

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Public Service Commission  
Practice and Procedure  
Rulemaking

Case No. AD-14-762

PUBLIC SERVICE COMMISSION STAFF TESTIMONY  
December 15, 2014

Good afternoon Commissioners, my name is Austin Lafferty. I am a legal intern with the Public Service Commission's legal department. The proposed procedural rules before the Commission create changes in four areas: (1) the service of formal complaints; (2) individual customer notice in utility rate related cases (bill stuffers); (3) appearances at formal hearings, and (4) protection of information.

**(1) Service of Formal Complaints (N.D. Admin Code §§ 69-02-02-02 and 03)**

The existing procedure for serving formal complaints is being clarified, rather than changed by the proposed rules. The current language can be ambiguous, and the proposed changes incorporate current practices to clarify that the complaint and notice of hearing may be served concurrently, or separately.

The proposed rule currently calls for both the complaint and notice of hearing to be served at least 45 days prior to the hearing date. However, upon further review of the standards set forth in North Dakota Century Code Section 28-32-10, we recommend that the proposed rule be revised to require that only the complaint must be served at least 45 days before the hearing date. This change would allow the notice to be served with the complaint (at least 45 days

before the hearing), or later, so long as it is served as required by law, usually at least 20 days before the hearing. This proposed change is attached to this testimony for your review.

The proposed rules also slightly alter when an answer to a complaint may be filed, changing it to twenty days from service of the complaint rather than from service of the complaint and notice of hearing. It is usually more efficient to serve the complaint alone first, and then later schedule the hearing and issue notice after the parties have knowledge of the case and are able to provide input.

**(2) Rate Case Bill Stuffers (N.D. Admin Code § 69-02-04-01)**

The existing rule lists several cases in which the applicant utility must provide individual notice of the application to customers. The proposed change adds one additional type of case, an advanced determination of prudence, case, to this list. Advanced determination of prudence cases have ratemaking consequences and thus should require individual customer notice. Current practice is to require and provide individual customer notices in these types of cases due to the ratemaking consequences, so the rule change should have no impact on industry, customers, the public, or other stakeholders.

**(3) Appearances at Formal Hearings (N.D. Admin Code § 69-02-04-02)**

The existing rule requires that staff analysts who work on the case be noted in the Appearances. At hearings, counsel introduces the staff working on the case, but the rule requiring these staff members be listed in the Appearances has been inconsistently followed and serves no discernable purpose. Repealing that language would have no impact on any stakeholder.

#### **(4) Protection of Information (N.D. Admin. Code Chapter 69-02-09)**

The current rules provide the procedure to use when an applicant wants to protect information from disclosure under North Dakota's open records requirements. As written, the rules appear to apply only to requests regarding "trade secret information," although they have been used when processing applications to protect other types of information, as well. Since the writing of the existing rules, the legislature has added several additional open records exemptions. This chapter is being revised to reflect the existence of these additional exemptions and accommodate filings that may deserve protection under current state law, but would not be considered "trade secret filings." Additionally, for certain telecommunications filings, case by case applications for protection, and case by case processing, will no longer be necessary, saving time and costs for both the telecommunications companies and the state.

To date, there was only one comment filed on the proposed rules, specifically for Chapter 69-02-09, Protection of Information. This comment addressed two typographical errors that should be made. One is to add a new line item (69-02-09-13) to the list of sections at the beginning of the Chapter, and the other to change a mistyped number in the new language added to section 69-02-09-12. The language should reference section 13, not section 14.

These changes make the rules more versatile, more useful, more easily implemented, and clearer to those asking for protection for information, especially for information that is not strictly "trade secret." These changes will have no negative impact on regulated industry, the Commission, the state, the

public or any other stakeholder. The only impact from these changes will be to make filing and processing of applications to protect information easier and more efficient for everyone involved.