

4.2 RIGHT TO A HEARING ARISING FROM STATUTE OR RULE

Many substantive statutes under which state agencies operate specifically create the right to a contested case hearing under chapter 14. The right to a contested case hearing may also be created by a state agency rule.¹ Where a right to a hearing is created by statute or rule but without specific reference to chapter 14, the statute or rule is usually interpreted to require a contested case pursuant to the APA.² The right to a hearing may also be implied, even though it is not specifically stated in an agency's statute. The Minnesota Supreme Court has held that a right to a contested case hearing was implied by an examination of the purpose of an environmental act.³ The court noted that chapter 14 hearings were granted in other sections of the act and that there was a strong public demand for a review of the environmental questions involved.⁴

However, even where a statute or rule specifically creates a right to a contested case hearing, there may be limitations on that right. For example, the Minnesota Supreme Court has held that where a statute only required a contested case hearing when a "significant issue" was unresolved and the petitioner failed to contest the issue or request a contested case hearing, no contested case hearing was required.⁵ Likewise, the Minnesota Court of Appeals determined that challengers to a permit issued by the Minnesota Pollution Control Agency were not entitled to a contested case hearing where they failed to raise material fact issues that would aid the agency in its decision.⁶ The court held that the burden of demonstrating the existence of material facts is on the petitioners.⁷

In *In re Hibbing Taconite Co.*,⁸ the Minnesota Court of Appeals found that the Pollution Control Agency's denial of a contested case hearing was error where it was established that specific facts needed to be developed concerning potential long-term pollution problems and the financial viability of a party. Similarly, where a cooperative electric power association raised issues of material fact regarding potential duplication of

¹ See *In re N. States Power Co.*, 676 N.W.2d 326, 336 (Minn. Ct. App. 2004).

² *Minn. Pub. Interest Research Group v. Minn. Envtl. Quality Council*, 306 Minn. 370, 380-81, 237 N.W.2d 375, 381-82 (1975) (concluding that a contested case hearing is implied by purpose of statute requiring environmental impact statement); cf. *N. States Power*, 676 N.W.2d at 332-35 (stating that utilities-regulation statutes do not imply such a right to a hearing).

³ *Minn. Pub. Interest Research Group*, 306 Minn. at 376, 237 N.W.2d at 379. *But see* *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 660 N.W.2d 427, 434-35 (Minn. Ct. App. 2003) (interpreting the federal Clean Water Act's public hearing requirement to require public notice and comment on each city's plan for discharge of storm water rather than just one hearing on a general permit covering all cities); *M.T. Props., Inc. v. Alexander*, 433 N.W.2d 886, 891 (Minn. Ct. App. 1988) (concluding that a hearing requirement was not implied by environmental protection measures in pipeline construction statute)

⁴ *Minnesota Pub. Interest Research Group*, 306 Minn. at 378-80, 237 N.W.2d at 380-81.

⁵ *Henry v. Minn. Pub. Utils. Comm'n.*, 392 N.W.2d 209, 214-15 (Minn. 1986); see also *Tharalson v. Hennepin Parks*, 551 N.W.2d 510, 512-13 (Minn. Ct. App. 1996) (concluding that a six year statute of limitations applied to bar veterans' claims for enforcement of Veterans Preference Act rights to hearing on merits of discharge).

⁶ *In re NSP Red Wing Ash Disposal Facility*, 421 N.W.2d 398, 404 (Minn. Ct. App. 1988).

⁷ *Id.*

⁸ 431 N.W.2d 885, 891-92 (Minn. Ct. App. 1988).

services and safety hazards with city's municipal electric utility, the Minnesota Court of Appeals held that a contested case hearing was necessary to resolve these concerns.⁹

Even where there is no statutory rule or constitutional right to a hearing, an agency may choose to provide a hearing. The respondent does not acquire the right to judicial review under the APA simply because a "gratuitous hearing" was granted.¹⁰ The right to a contested case hearing may also arise by contractual means such as a collective bargaining agreement or a federal court order.

⁹ *In re People's Coop. Power Ass'n*, 447 N.W.2d 11, 13 (Minn. Ct. App. 1989)(); *see also In re City of Owatonna's NPDES/SDS Proposed Permit Reissuance for Discharge of Treated Wastewater*, 672 N.W.2d 921, 928-30 (Minn. Ct. App. 2004) (concluding that expert disagreement on effect of phosphorus discharge of wastewater treatment plants created a material issue of fact); *In re Winona Cnty. Mun. Solid Waste Incinerator*, 442 N.W.2d 344, 349 (Minn. Ct. App. 1989) concluding that a contested case hearing was required where specific issues of material fact regarding feasible alternatives to incinerator were raised), *rev'd on other grounds sub nom. City of Winona v. Minn. Pollution Control Agency*, 449 N.W.2d 441 (Minn. 1990). *But see In re Northern States Power*, 676 N.W.2d 326, 336 (Minn. Ct. App. 2004) (concluding that there were no contested material facts, which are required by PUC rule before a hearing is mandated).

¹⁰ *Setty v. Minn. State Coll. Bd.*, 305 Minn. 495, 497, 235 N.W.2d 594, 595-96 (1975).