

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

RECEIVED
AUG 25 1976
OFFICE OF HEARING EXAMINERS

MINNESOTA STATE PLANNING AGENCY

RULES IMPLEMENTING THE MINNESOTA RAIL SERVICE IMPROVEMENT PROGRAM

SPA 260 General Provisions

A. Authority. The State Planning Agency is authorized to adopt rules and regulations necessary to carry out the provision of "the Minnesota Rail Service Improvment Act" pursuant to Minn. Laws, 1976, Chapter 204, Sec. 5.

B. Purpose. The purpose of the Minnesota Rail Service Improvement Program and these regulations is to improve rail service by providing state funds in a revolving account for the establishment of contracts according to certain guidelines between the state, rail users, and railroads for rehabilitating needed rail lines.

C. Definitions. The following terms as they appear in these rules and regulations shall have the following meanings:

1. "Act" means the Minnesota Rail Service Improvement Act, Minn. Laws, 1976, Chapter 204, Sec. 5.

2. "Agency" means the Minnesota State Planning Agency.

3. "Rail Line" means railroad roadbeds, right-of-way, track structure and other appurtenances of railroad right-of-way, including, but not limited to, public-use sidings.

4. "Railroad" means a common carrier by railroad as defined in Section 1(3) of the Interstate Commerce Act 49 U.S.C. § 1(3).

5. "Rail User" means any financially responsible shippers, consignors, consignees, or other entities, including political subdivisions of the state or legal organizations of such entities, that depend upon the movement of goods by rail service and that offers financial assistance in maintaining or improving

that rail service.

6. "Rehabilitation" means reconstructing a rail line or portions thereof in order to improve rail service or to construct a new rail line to replace the existing one.

7. "Rehabilitation Program" means the program for providing state funds for establishing contract to rehabilitate rail lines as provided for in the Act.

8. "State Rail Plan" means the plan prepared by the Agency as provided for in the Act.

9. "State Rail Service Improvement Account" means the special revenue account created in the state treasury by the Act.

10. For purposes of these regulations, certain terms or words shall be interpreted as follows: The word "shall" is mandatory, not permissive; the word "may" is permissive.

SPA 261 Program Criteria

A. Eligibility

1. Rail Line. A rail line, or portions of the rail line, is eligible if it does not meet Class II Standards according to the Federal Railroad Administration, Office of Safety, Track Safety Standards or if it does not have the required strength to support railroad cars whose gross weight is 263,000 lbs. or more; and if it is within the physical boundaries of Minnesota of predominantly serves rail users in Minnesota.

2. Project. A rail project is eligible for funding if it has both a responsible rail user and a railroad that are willing to enter into a contract for rehabilitation according to guidelines set down in these rules and

regulations.

B. Project Funding

1. The Agency may, within program fund limitations, provide eligible projects with up to two-thirds of the total amount of the contract. The extent of state participation shall be determined by the Agency according to the following factors:

a. the ability of a railroad and rail users to participate financially in the project.

b. the probability of the line profiting over a long period of time.

c. the probable social and economic impact on communities, regions, and state if the rehabilitation is not carried out.

d. the availability of state program funds.

2. Rail users shall provide a minimum of one-third and may provide up to two-thirds of the total contract amount. Railroad participation may be up to two-thirds of the total contract amount.

3. In-kind participation. Participation in a contract by any party may include non-monetary contributions such as materials, labor, land, or other contributions if agreed to by all parties of the contract. Amount and fair market value of all in-kind participation shall be clearly set out in the contract.

C. Priority Criteria. The following criteria shall be used to establish the priority of projects proposed for funding until such time as the State Rail Plan, as prepared by the Agency, is completed and approved of in formal hearings. At such time, the priority criteria identified in the State Rail

Plan shall take effect. Until such time, higher priority shall be given to projects that:

1. have a higher committed non-state share of project costs
2. have greater potential traffic volume per mile of track
3. have greater potential of repaying the rehabilitation costs
4. have less available alternative transportation facilities

D. Standards

1. Operation. Railroad service shall be provided by the railroad to adequately meet the needs of the rail users within the constraints of Interstate Commerce Commission (ICC) regulatory requirements and operational limitations. The Agency or rail users may bring a complaint before the ICC to force the provision of adequate service. The contract shall stipulate a desired level of service on the rehabilitated line during the effective period of the contract.

E. Rehabilitation. Rail rehabilitation shall be carried out to the extent that it allows the use of 263,000 pound gross weight railroad cars and meets Federal Railroad Administration, Class II, Track Safety Standards. The state shall not participate in contracts that allow for less than the above standards and shall not contribute to the additional cost of rehabilitating the line in excess of these standards.

SPA 262 Program Administration

A. Applications.

1. Railroad Applications. Applications from railroads shall include:

a. a description of the rehabilitation project proposed, including

the extent of rehabilitation proposed.

b. the estimated cost of rehabilitation

c. the amount of traffic on the line

d. present and projected operational and maintenance costs

e. present and projected revenues attributed to the railroad from shipments on the line

f. a list of the shippers and receivers on the line

g. the amount of funding the applicant is prepared to invest in the project

2. Rail user applications. Applications for rehabilitation from rail users shall include:

a. a description of the project proposed

b. the amount of traffic on the line

c. the amount of potential traffic on the line

d. the amount of shipping done by truck

e. the rates for both truck and rail shipping

f. a list of shippers and receivers on the line

g. the amount of funds the rail users on the line are prepared to contribute to the project

3. The Agency may provide application forms and may request further information from an applicant or other potential parties to the contract to aid in the establishment of eligibility and priority.

B. Determination of Eligibility. Upon receipt of application and all required information, the Agency shall determine whether or not a line is eligible. The Agency shall then contact the other potential party to the

contract to determine whether that party is willing to participate in a rehabilitation project, and if so to what extent. If there is a rail user, a railroad, and the state, prepared to enter into a contract and if the proposed amount of funds equals the total project cost and all other requirements are met, the project shall be declared eligible and a priority ranking made.

C. Priority ranking. Priority ranking shall be based on criteria identified in SPA 261 D of these rules and regulations. Information requested and not received or not arranged for within 30 days of the request may be considered adequate reason for the elimination of the project from consideration for funding.

D. Contract.

1. Contracts for rehabilitation projects may include but may not necessarily be limited to the following provisions:

a. the specific portions of trackage and rail line to be rehabilitated

b. the level of rehabilitation to be done

c. the plans, specifications, and estimates of materials, cost, and time.

d. the amount of funds, or other items of value, to contributed by each party to contract

e. set a desirable level of service to be provided on the rehabilitated line during the contract effective period

f. assurance that maintenance shall be performed on the line by the railroad

g. method of administering the contract

F. Length of Contract. The term of the contract shall be long enough to allow for the repayment of all funds in the contract based on a reasonable projection of potential traffic levels. State contributed funds not repaid by the time the contract expires shall be forgiven. The contract shall be extended in the event of, and for as long as, any cessation of service for any reason or any reduction of service below desirable service level as provided in the contract unless such reduction in service is the result of no demand for service.

G. Separate Railroad Account. A railroad may be permitted to establish and maintain a separate railroad fund to be used exclusively for rehabilitation of its other rail lines in Minnesota if the railroad can give good cause, such as legal prohibition against repayment, for not making repayment to the State Rail Service Improvement Account. Funds in such separate railroad account may only be utilized by the railroad for eligible projects as described in paragraph SPA 261 A(2) of these rules, and only if such eligible project would have been funded at that time from the State Rail Service Improvement Account as determined by the State Planning Agency. The Agency may require a railroad to deposit or invest the funds according to the instructions of the Agency and to deposit all interest and earnings received on such funds into the separate railroad account. A railroad which has funds in separate railroad accounts but which does not have eligible lines to upgrade may return those funds to the State Rail Service Improvement Account as a gift.

H. Program Implementation. The Agency may receive applications at any time. On January 1, 1977, the Agency shall make a determination of eligibility of lines and projects and establish a priority for those projects which are eligible for funding. In the event that new appropriations are made to

the program or that funds remain after the disposition of already approved project, the Agency may make public notice, set a new application deadline date, and make a new priority ranking of eligible applications received.

I. Exceptions. In the event of unusual circumstances, exceptions to these rules may be made for any particular rehabilitation contract if agreed to by all parties. No exception shall be made if such exception would be contrary to the intent of the program or if such exception would preclude the equal treatment of competing projects.

APPROVED AS TO FORM AND LEGALITY
OCT 21 1976 19
WARREN SPANNAUS, ATTORNEY GENERAL
BY /s/ Michael B. Miller
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
OCT 22 1976 - 2:45 pm
Joan Anderson Growe
Secretary of State

ADMIN 1000

STATE OF MINNESOTA

DEPARTMENT Attorney General

Office Memorandum

TO : Donald A. Kannas
Special Assistant
Attorney General

DATE: September 27, 1976

FROM : Michael B. Miller
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: State Planning Transportation Rules

The above captioned rules are returned herewith for the following corrections as to supporting documentation:

1. An affidavit by the person who mailed out the Notice of Hearing indicating that a copy of the proposed rule was sent with each such notice;

2. Findings of Fact by the agency;

3. An Order Adopting Rules;

4. Certificate of Compliance with Rulemaking Procedures.

When this additional documentation is supplied, the rules will be filed with the Secretary of State.

MBM/mb

Enclosure

262

Attorney General

151

Donald A. Kannas
Special Assistant
Attorney General

September 27, 1976

296-4692

Michael B. Miller
Special Assistant
Attorney General

State Planning Transportation Rules

The above captioned rules are returned herewith for the following corrections as to supporting documentation:

1. An affidavit by the person who mailed out the Notice of Hearing indicating that a copy of the proposed rule was sent with each such notice;

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4. Certificate of Compliance with Rulemaking Procedures.

When this additional documentation is supplied, the rules will be filed with the Secretary of State.

MBM/mb

Enclosure

(2)

Minnesota Agri-Growth Council, Inc.

6950 FRANCE AVENUE, SUITE 10, MINNEAPOLIS, MN 55435 • PHONE (612) 926-7641

OFFICERS:

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EARL B. OLSON
Jennie-O Foods, Inc.

ROBERT RUPP
Editor, Farmer Magazine

LEE WOODRUFF
Green Giant Co.

DEAN WILLIAM F. HUEG
Institute of Agriculture

September 22, 1976

CONFIDENTIAL AND PERSONAL

Honorable Warren Spannaus
State Attorney General
State Capitol
St. Paul, Minnesota 55155

Dear Warren:

You will find enclosed a copy of the proposed rules and regulations relating to the Minnesota Rail Service Improvement Act as presented by the State Planning Agency. You will note on pages 2 and 4 that we have encircled two areas that we feel should be deleted from the rules and regulations. The State Planning Agency has seen fit to disregard all of our testimony and also the testimony given by the Region Nine Development Commission. If the 263,000 lbs. figure is allowed to remain in the rules and regulations that is the end of all the branch lines in Minnesota. The State Planning Agency is completely ignoring the original intent of the State Legislature. It is truly unfortunate that we have as the head of the State Planning Agency an individual who is anti-agriculture, anti-rural Minnesota and anti-business and if he is allowed to continue in his present capacity we are going to suffer serious economic conflicts. I intend to take this matter up with the Governor.

Also enclosed is a copy of the statement which I presented at a public hearing before the Interstate Commerce Commission on September 20, 1976, in St. Paul. As you will note on page 3, I have made reference to the State Planning Agency. Obviously, I intend to expose Peter Vanderpoel.

I want you to know that I deeply appreciate your consideration in this matter. The next time that I am coming into Minneapolis, I will phone ahead to make arrangements for us to have lunch.

Very best wishes,

MINNESOTA AGRI-GROWTH COUNCIL, INC.

Russel G. Schwandt
President

RGS:pak

STATE OF MINNESOTA

COUNTY OF RAMSEY

STATE PLANNING AGENCY

In the Matter of the Proposed Rules Relating to the Use of State Funds Through the Minnesota Rail Service Improvement Act for the Rehabilitation of Rail Lines.

CERTIFICATE OF COMPLIANCE

I, Special Assistant Attorney General Donald A. Kannas do hereby declare that I have examined the proposed rules and all related documents, and that based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed.

Dated this 29 day of September, 1976.

D. A. Kannas

DONALD A. KANNAS
Special Assistant
Attorney General

Subscribed and sworn to before me this 29th day of September, 1976.

Joanne Herbenson
Notary Public

JOANNE HERBENSON
RAMSEY COUNTY
NOTARY PUBLIC-MINNESOTA
MY COMMISSION EXPIRES NOV. 30, 1982

SPA — Exhibit No. B
D-903
6-23-76

STATE OF MINNESOTA

COUNTY OF RAMSEY

STATE PLANNING AGENCY

RECEIVED
MAY 18 1976
OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed Rules Relating to the Use of State Funds Through the Minnesota Rail Service Improvement Act for the Rehabilitation of Rail Lines.

ORDER FOR HEARING

To implement the Minnesota Rail Service Improvement Program, the State Planning Agency deems it necessary to call a public hearing to consider adoption of the proposed rules captioned above, pursuant to Laws of Minnesota 1976, Chapter 204, Sec. 5.

NOW THEREFORE, IT IS ORDERED this 18th day of May, 1976, that a public hearing on the proposed rules be held in the city of Mankato, Minnesota, in the Conference Room of the Holiday Inn-North, Highway 169, on June 23, 1976, at 7:00 P.M.; in the city of St. Paul, Minnesota, in Room 81 of the State Office Building, on June 24, 1976, at 10:00 A.M.; in the city of Staples, Minnesota, in the Cafeteria of Staples High School, Third Street North, on June 25, 1976, at 10:00 A.M.

IT IS FURTHER ORDERED that notice of said hearing be given to all persons and associations who have registered their names with the Secretary of State for that purpose.

Dated this 18th day of May, 1976.

STATE OF MINNESOTA

STATE PLANNING AGENCY

Peter Vanderpoel

Peter Vanderpoel
Director

SPA Exhibit No. C
C-2776

STATE OF MINNESOTA

COUNTY OF RAMSEY

STATE PLANNING AGENCY

RECEIVED
MAY 18 1976
OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed Rules Relating to the Use of State Funds Through the Minnesota Rail Service Improvement Act for the Rehabilitation of Rail Lines.

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing will be held, pursuant to Laws of Minnesota 1976, Chapter 204, Sec. 5, in the above-entitled matter, commencing in the city of Mankato, Minnesota, in the Conference Room of the Holiday Inn-North, Highway 169, on June 23, 1976, at 7:00 P.M.; in the city of St. Paul, Minnesota, in Room 81 of the State Office Building, on June 24, 1976, at 10:00 A.M.; and in the city of Staples, Minnesota, in the Cafeteria of Staples High School, Third Street North, on June 25,1976, at 10:00 A.M. The hearing will be continued to such time and place as the hearing officer may designate until all representatives of associations or other interested groups or persons have had an opportunity to participate and be heard concerning adoption of the proposed rules captioned above by submitting either oral or written data, statements or arguments. Statements or briefs may be submitted to the Office of Hearing Examiners, Leonard Nelson, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, without appearing at the hearing and will be accepted for a period of 20 calendar days following the close of the hearing.

The proposed rules, if adopted, would govern the implementation of the Minnesota Rail Service Improvement Act.

Copies of the proposed rules are now available for review at the following location:

State Planning Agency
101 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

Notice is also given that under Minn. Stat. § 10A.01, Subd. 11 (1974), any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these rules, must

register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual. The State Ethics Commission is located at 410 State Office Building, St. Paul, Minnesota 55155.

Dated this 19th day of May, 1976.

STATE OF MINNESOTA

STATE PLANNING AGENCY

Peter Vanderpoel

Peter Vanderpoel
Director

SPA

STATE OF MINNESOTA

COUNTY OF RAMSEY

RECEIVED
AUG 25 1976
OFFICE OF HEARING EXAMINERS

STATE PLANNING AGENCY

RECEIVED
MAY 19 1976
OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed Rules Relating to the Use of State Funds Through the Minnesota Rail Service Improvement Act for the Rehabilitation of Rail Lines.

AFFIDAVIT OF MAILING

2:55

I, Linda Wiesner, first being duly sworn on oath, deposes and says that:

1. I am an employee of the State Planning Agency.

2. On May 19, 1976, I served the attached Notice of Hearing and Proposed Rules upon each of the individuals and organizations named in the Secretary of State's mailing lists that existed at that time; upon each of the Minnesota Rail Planning Advisory Committee members; and upon each of the Statewide Transportation Committee members, by depositing in the United States mail, with postage prepaid, envelopes containing a true and correct copy of the said Notice addressed to each of the names and addresses contained in the lists.

Linda Wiesner

Subscribed and sworn to before me this 19th day of May, 1976, at Saint Paul, Minnesota.

Joanne Herbenson
Notary Public

JOANNE HERBENSON
RAMSEY COUNTY
NOTARY PUBLIC-MINNESOTA
MY COMMISSION EXPIRES NOV. 30, 1982

RECEIVED
MAY 18 1976
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

STATE PLANNING AGENCY

COUNTY OF RAMSEY

SPA
Trans
6-23-76

In the Matter of the Proposed
Rules Relating to the Use of State
Funds Through the Minnesota Rail
Service Improvement Act for the
Rehabilitation of Rail Lines.

CERTIFICATE

481-labels ✓

I hereby certify that the attached one sheets constitute the complete list of persons, associations, and other interested groups who as of 11:30 o'clock A.M., this 18th day of May, 1976, have requested that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Joan Anderson Growe
Secretary of State

Joan Anderson Growe

By Gail Dixon

SPA

Q.T. #
6-27-76

RECEIVED
MAY 18 1976
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

COUNTY OF RAMSEY

STATE PLANNING AGENCY

In the Matter of the Proposed
Rules Relating to the Use of State
Funds Through the Minnesota Rail
Service Improvement Act for the
Rehabilitation of Rail Lines.

STATEMENT OF NEED

The above-captioned rules are not amendments to existing rules of the State Planning Agency.

The need to adopt these rules arises because of a legislative mandate in Laws of Minnesota 1976, Chapter 204, Sec. 5.

STATE OF MINNESOTA

STATE PLANNING AGENCY

Peter Vanderpoel

Peter Vanderpoel
Director

STATE OF MINNESOTA

COUNTY OF RAMSEY

STATE PLANNING AGENCY

In the Matter of the Proposed Rules Relating to the Use of State Funds Through the Minnesota Rail Service Improvement Act for the Rehabilitation of Rail Lines.

STATEMENT OF NEED

The above-captioned rules are not amendments to existing rules of the State Planning Agency.

The need to adopt these rules arises because of a legislative mandate in Laws of Minnesota 1976, Chapter 204, Section 5, and the necessity of a workable set of rules under which the assistance provided for therein can be distributed in other than an arbitrary fashion.

STATE OF MINNESOTA

STATE PLANNING AGENCY

Peter Vanderpoel

Peter Vanderpoel
Director

6. Regarding rule SPA II(d)(2), the Minnesota Railroad Association has testified that the program should assist rail lines to be improved to a degree higher than the standards proposed while others including the Minnesota Agri-Growth Council, Inc. have testified that the program should assist rail lines to be improved to a degree lower than the standards proposed.

7. The legislature intended that the funds expended for improvement assistance under this program be returned to the State Planning Agency or other rail accounts for further improvement assistance.

8. If any given rail line were now profitable, the railroad operating that line would keep it in repair, thus not requiring assistance under this program.

9. To reasonably expect repayment of various rail line improvement expenditures, the rail lines so improved must become profitable.

10. The one hundred ton hopper car (263,000 lb. gross weight) is desireable because the use of such cars provides a lower rate of transportation costs, thus allowing the rail line so improved to become more competitive in relation to other forms of transportation, and giving the rail line a greater opportunity to become profitable again.

11. It is the purpose of this program to upgrade existing lines to make them competitive, permanent, and viable and not to provide ordinary maintenance, or to make existing profitable lines more profitable to railroads through state assistance.

Dated: 9-29-76

STATE OF MINNESOTA

STATE PLANNING AGENCY

Peter Vanderpoel

Peter Vanderpoel
Director

STATE OF MINNESOTA

STATE PLANNING AGENCY
100 CAPITOL SQUARE BUILDING
550 CEDAR STREET
ST. PAUL, 55101

RECEIVED
JUN 30 1976
OFFICE OF HEARING EXAMINERS

SPA Exhibit No. A
J.A.O.
6-23-76

MINNESOTA STATE REGULATIONS

Rules and Regulations of

THE STATE PLANNING AGENCY

MINNESOTA RAIL SERVICE IMPROVEMENT PROGRAM

June 23-25, 1976

Minn. Reg. SPA 260

"AN EQUAL OPPORTUNITY EMPLOYER"

Minn. Reg, SPA 260

MINNESOTA RAIL SERVICE IMPROVEMENT PROGRAM

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Minn. Reg. SPA 260

MINNESOTA RAIL SERVICE IMPROVEMENT PROGRAM

I. GENERAL PROVISIONS

(a) Authority. The State Planning Agency is authorized to adopt rules and regulations necessary to carry out the provision of "the Minnesota Rail Service Improvement Act" pursuant to Minn. Laws, Chapter 204, Sec. 5 (1976).

(b) Purpose. The purpose of the Minnesota Rail Service Improvement Program and these regulations is to improve rail service by providing state funds in a revolving account for the establishment of contracts according to certain guidelines between the state, rail users and railroads for rehabilitating needed rail lines.

(c) Definitions. The following terms as they appear in these Rules and Regulations shall have the following meanings:

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(5) "Rail User" means any financially responsible shippers, consignors, consignees, or other entities, including political subdivisions of the state or legal organizations of such entities, that

depend upon the movement of goods by rail service and that offers financial assistance in maintaining or improving that rail service.

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(7) "Rehabilitation Program" means the program for providing state funds for establishing contract to rehabilitate rail lines as provided for in the Act.

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(9) "State Rail Service Improvement Account" means the special revenue account created in the state treasury by the Act.

(10) For purposes of these regulations, certain terms or words shall be interpreted as follows: The word "shall" is mandatory, not permissive; the word "may" is permissive.

II. PROGRAM CRITERIA

(a) Eligibility.

(1) Rail Line. A rail line, or portions of rail line, is eligible if it does not meet Class II Standards according to the Federal Railroad Administration, Office of Safety, Track Safety Standards or if it does not have the required strength to support railroad cars whose gross weight is 263,000 lbs. or more; and if it is within the physical boundaries of Minnesota or predominantly serves rail users in Minnesota.

(2) Project. A rail project is eligible for funding if it has both a responsible rail user and a railroad that are willing to enter into a contract for rehabilitation according to guidelines set down in these rules and regulations.

(b) Project Funding.

(1) The Agency may, within program fund limitations, provide eligible projects with up to two-thirds of the total amount of the contract. The extent of state participation shall be determined by the Agency according to the following factors:

-- the ability of a railroad and rail users to participate financially in the project.

-- the probability of the line profiting over a long period of time.

-- the probable social and economic impact on communities, region, and state if the rehabilitation is not carried out.

-- the availability of state program funds.

Rail users shall provide a minimum of one-third and may provide up to two-thirds of the total contract amount. Railroad participation may be up to two-thirds of the total contract amount.

(2) In-kind participation. Participation in a contract by any party may include non-monetary contributions such as materials, labor, land, or other contributions if agreed to by all parties of the contract. Amount and fair market value of all in-kind participation shall be clearly set out in the contract.

(c) Priority Criteria. The following criteria shall be used to establish the priority of projects proposed for funding until such time as the State Rail Plan, as prepared by the Agency, is completed and approved of in formal hearings. At such time, the priority criteria identified in the State Rail Plan shall take effect. Until such time, higher priority shall be given to projects that:

(1) have a higher committed non-state share of project costs;

(2) have greater potential traffic volume per mile of track;

(3) have greater potential of repaying the rehabilitation costs; and

(4) have less available alternative transportation facilities.

(d) Standards.

(1) Operation. Railroad service must meet minimum Interstate Commerce Commission (ICC) service standards or those greater standards agreed upon in the contract.

(2) Rehabilitation. Rail rehabilitation shall be carried out to the extent that it allows the use of 263,000 lb. gross weight railroad cars and meets Federal Railroad Administration, Class II, Track Safety Standards. The state shall not participate in contracts that allow for less than the above standards and shall not contribute to the additional cost of rehabilitating the line in excess of these standards.

III. PROGRAM ADMINISTRATION

(a) Application.

(1) Railroad applications. Applications for rehabilitation from railroads shall include a description of the rehabilitation project proposed, including the extent of rehabilitation proposed, the cost of rehabilitation, the amount of traffic on the line, present and projected operational and maintenance costs, present and projected revenues attributed to the railroad from shipments on the line, a list of the rail users on the line, and the amount of funding the applicant is prepared to invest in the project.

(2) Rail user applications. Applications for rehabilitation from rail users shall include: a description of the project proposed, the amount of traffic on the line, the amount of potential traffic on the line, the amount of shipping done by truck, the rates for both truck and rail shipping, a list of rail users on the line, and the amount of funds the rail users on the line are prepared to contribute to the project.

The Agency may provide application forms and may request further information from an applicant or other parties to the contract to aid in the establishment of eligibility and priority.

(b) Determination of Eligibility. Upon receipt of application and all required information, the Agency shall determine whether or not a line is eligible. The Agency shall then contact the other potential party to the contract to determine whether that party is willing to participate in a rehabilitation project, and if so to what extent. If there is a rail user, a railroad, and the state, prepared to enter into a contract

and if the proposed amount of fund equals the total project cost and all other requirements are met, the project shall be declared eligible and a priority ranking made.

(c) Priority Ranking. Priority ranking shall be based on criteria identified in II(d) of these rules and regulations. Information requested and not received or not arranged for within 30 days, may be considered adequate reason for the elimination of the project from consideration for funding.

(d) Contract.

(1) Contracts for rehabilitation projects may include but may not necessarily be limited to the following provisions:

-- the specific portions of trackage and rail line to be rehabilitated.

-- the level of rehabilitation to be done.

-- the plans, specifications, and estimates of materials, cost, and time.

-- the amount of funds, or other items of value, to be contributed by each party to the contract.

-- assurance that service shall be provided on the line by the railroad.

-- assurance that maintenance shall be performed on the line by the railroad.

-- method of administering the contract.

-- schedule for the repayment of funds to the rail users and the state.

-- maximum length of the contracts.

-- maintenance of records and audits.

-- other special features of the contract.

(2) Projects shall be processed and negotiated in order of priority ranking. Projects that are not finalized within a reasonable period of time as judged by the Agency may be bypassed and the next lower project negotiated and funded.

(e) Repayment Requirements. The railroad shall reimburse a rail user for funds it has contributed to a project based on a repayment schedule of dollars per carload of freight shipped. The reimbursement which shall be paid at regular intervals shall be based on the total number of railroad cars shipped by the rail user until full payment is made.

The railroad shall reimburse the state for funds it has contributed to the project in the following manner:

- State funds that are contributed and which are in excess of one-third of the total contract amount shall be repaid directly upon the completion of repayment of the rail user and on the same basis as the rail user.

- State funds contributed up to one-third of the total contract amount shall be repaid from revenues received from traffic on the line which exceeds traffic on the line for the average of the three years prior to rehabilitation. Repayment of this amount shall start upon completion of repayment of rail user funds and state funds in excess of one-third of the total contract amount.

(f) Length of Contract. The term of the contract shall be long enough to allow for the repayment of all funds in the contract based on a reasonable projection of potential traffic levels. State contributed funds not repaid by the time the contract expires shall be forgiven.

The contract shall be extended in event of, and for as long as, any cessation of service for any reason or any reduction of service below minimum ICC maintenance and service requirements.

(g) Separate Railroad Account. A railroad may be permitted to establish and maintain a separate railroad fund to be used exclusively for rehabilitation of its other rail lines in Minnesota if the railroad can give good cause, such as legal prohibition against repayment, for not making repayment to the State Rail Service Improvement Account. Funds in such separate railroad account may only be utilized by the railroad for eligible projects as described in paragraph II(a)2 of these rules, and only if such eligible project would have been funded at that time from the State Rail Service Improvement Account as determined by the State Planning Agency. The Agency may require a railroad to deposit or invest the funds according to the instructions of the Agency and to deposit all interest and earnings received on such funds into the separate railroad account.

A railroad which has funds in separate railroad accounts but which does not have eligible lines to upgrade may return those funds to the State Rail Service Improvement Account as a gift.

(h) Program Implementation. The Agency may receive applications at any time. Thirty days after the filing of these rules and regulations

with the Secretary of State, the Agency shall make a determination of eligibility of lines and projects and establish a priority for those projects which are eligible for funding.

In the event that new appropriations are made to the program or that funds remain after the disposition of already approved project, the Agency may make public notice, set a new application deadline date, and make a new priority ranking of eligible applications received.

(i) Exceptions. In the event of unusual circumstances, exceptions to these rules may be made for any particular rehabilitation contract if agreed to by all parties.

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RECEIVED

MAY 28 1976

OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA

COUNTY OF RAMSEY

STATE PLANNING AGENCY

BEFORE Leonard Nelson
HEARING EXAMINER

In the Matter of the Proposed Rules Relating to the Use of State Funds Through the Minnesota Rail Service Improvement Act for the Rehabilitation of Rail Lines

STATEMENT OF NEED

The above captioned rules are not amendments to existing rules of the State Planning Agency.

The need to adopt these rules arise from legislative mandate, to wit, Minn. Laws 1976, Chapter 204, Sec. 5, Subd. 3(d).

> The Director [of the State Planning Agency] shall have the power to adopt rules necessary to carry out the purposes of this act.

These rules are needed to provide a procedural framework and standards which are uniform for all eligible railroads and rail users, within which the railroads and the rail users will be able to apply for and receive funding for the rehabilitation of eligible rail lines.

The need for individualized rules is as follows:

II. PROGRAM CRITERIA

(a) Eligibility.

(1) Rail Line. A rail line, or portions of rail line, is eligible if it does not meet Class II Standards according to the Federal Railroad Administration, Office of Safety, Track Safety Standards or if it does not have the required strength to support railroad cars whose gross weight is 263,000 lbs. or more; and if it is within the physical boundaries of Minnesota or predominantly serves rail users in Minnesota.

This rule is needed to identify what rail lines are eligible under the intent of the law. Not all rail lines are intended to be included in the program. Only lines that are in Minnesota or that primarily serve Minnesota and that are in need of rehabilitation to allow adequate service are intended to be eligible. Reasons for the specific eligibility criteria are covered in the Standards II d(2) of these rules. This rule meets the requirements in the Minnesota Rail Service Improvement Act (Act) Sec. 5, Subd. 2.

> Subd. 2. The Director [of State Planning Agency] shall identify those rail lines that are deteriorated or are in danger of deteriorating so as to be unable to carry the speeds and weights necessary to efficiently transport the goods and products moved or sought to be moved on the lines.

(2) Project. A rail project is eligible for funding if it has both a responsible rail user and a railroad that are willing to enter into a contract for rehabilitation according to guidelines set down in these rules and regulations.

This rule is needed to specify who must be a party to a contract before it can be funded under the program and to promote efficient administration of the program by assuring that the project can be funded prior to priority evaluation and contract preparation by the staff. The Act specifically states in Sec. 5, Subd 4, that:

> Subd. 4. [RAIL LINE REHABILITATION CONTRACTS.] The director may negotiate and enter into contracts for the purpose of rail line rehabilitation. The participants in these contracts shall be railroads, rail users and the department, and may be political subdivision of the state and the federal government.

(b) Project Funding.

(1) The Agency may, within program fund limitations, provide eligible projects with up to two-thirds of the total amount of the contract. The extent of state participation shall be determined by the Agency according to the following factors:

-- the ability of a railroad and rail users to participate financially in the project.

-- the probability of the line profiting over a longer period of time.

-- the probable social and economic impact on communities, region, and state if the rehabilitation is not carried out.

-- the availability of state program funds.

This rule is necessary to identify the amount of funds the state will provide for projects and to indicate what factors will be used in deciding the level of state funding. A standardized level of state participation cannot be set because each railroad is different, each group of railroad users are different, their needs and abilities to share in the rehabilitation cost differ, the importance of the line to the state varies, and the agency desires to maximize the impact of the program funds.

The two-thirds share upper limit for state participation is set to allow contracts on projects which are very high priority to the state but which have only the minimum rail users share and no railroad share.

Rail users shall provide a minimum of one-third and may provide up to two-thirds of the total contract amount. Railroad participation may be up to two-thirds of the total contract amount.

This rule is necessary because the user must have a substantial investment in the rehabilitation to assure that the line will be used to the extent necessary for profitable operation.

Railroad participation is completely open. They may participate up to two-thirds of the project cost. The most important requirements for the railroad is that they participate in the contract, that they provide quality service on the line, and that they be willing to pay the funds back to the users and state, based on the traffic on the line.

(2) In-kind participation. Participation in a contract by any party may include non-monetary contributions such as materials, labor, land, or other contributions if agreed to by all parties of the contract. Amount and fair market value of all in-kind participation shall be clearly set out in the contract.

This rule is needed because one of the parties to a contract may desire to make available items of value other than cash for various reasons, such as: convenience, cost savings, or availability. Since in kind contributions are repaid in the same manner as other funds, the exact fair market value of the contribution must be set out in the contract.

(c) Priority Criteria. The following criteria shall be used to establish the priority of projects proposed for funding until such time as the State Rail Plan, as prepared by the Agency, is completed and approved of in formal hearings. At such time, the priority criteria identified in the State Rail Plan shall take effect.

This rule is necessary to indicate which projects will be chosen for funding and what basis they will be chosen. The Act states in Sec. 5, Subd 3, that:

> Subd. 3. The Director [of State Planning Agency] shall have the power to: (a) set priorities for the allocation of money or in kind contributions to railroads according to criteria developed by the Director. The criteria shall include the anticipated economic and social benefits to the state and to the area being served.

At the present time, there is a State Rail Plan being developed by the State Planning Agency which is authorized in the Act in Sec. 8, Subd. (a), which states that the Director of the State Planning Agency may:

> (a) Establish an adequate plan for rail service in the state as part of an overall planning process for all transportation services in the state, including a suitable process for updating, revising, and amending the plan.

When the plan is completed, it will have analyzed all eligible lines in the state based upon the same and additional criteria as those indicated in these rules. Because it is expected that the information and analysis of these lines will be more complete and accurate at that time, it is desirable that the State Rail Plan be used as a basis for ranking all eligible lines in the state. The State Rail Plan will go through formal hearings prior to its use in relation to this program.

Until such time, higher priority shall be given to projects that:

(1) have a higher committed non-state share of project costs;

This criteria indicates the extent to which those who control the success of the project (rail users and railroads) feel the project is needed for their continued well-being and is likely to be successful. It also aids the state in maximizing the effect of state program dollars.

(2) have greater potential traffic volume per mile of track;

This criteria shows which lines have the greatest use and, therefore, the greatest economic and social impact on the communities, the region, and the state.

(3) have greater potential of repaying the rehabilitation costs; and

This indicates which lines are likely to be profitable and have the quickest return of investment either because of lower rehabilitation cost, high traffic volume, or higher revenue traffic on the line. This provision also allows the rapid reinvestment of state program funds in other eligible rail lines.

(4) have less available alternative transportation facilities.

This indicates which lines would have users that would suffer most by not having the line rehabilitated.

(d) Standards.

(1) Operation. Railroad service must meet minimum Interstate Commerce Commission (ICC) service standards or those greater standards agreed upon in the contract.

This rule is necessary because without adequate rail service on a line, the rehabilitation of the track is of no benefit. The Interstate Commerce Commission (ICC) operations standards is a reasonable guideline for operation and the ICC has the power to enforce those standards. However, its rail users may require more specific assurances of service on the line and the actual traffic on the line may require even higher service levels. All these contingencies are allowed for in the rule.

(2) Rehabilitation. Rail rehabilitation shall be carried out to the extent that it allows the use of 263,000 lb. gross weight railroad cars;

This standard is based on the generally recognized railroad industry method of rating rail track weight capacity. 263,000 lb. gross weight is the weight of a 100 ton hopper car plus its full load (200,000 lb. payload + 63,000 lb. weight of the car). This is the size railroad car is in common use for hauling grain and fertilizer. Special lower rates are available on hopper cars over regular box cars. As a result, a rail users abilitiy to compete economically depends on the availability of increased capacity and lower rates.

and meets Federal Railroad Administration, Class II, Track Safety Standards.

This standard is prepared and enforced by the Federal Railroad Administration and controls the speed, maintenance level, and safety of the railroad track. If good, efficient service is to be given on these lines they should be maintained at a Class II level.

The state shall not participate in contracts that allow for less than the above standards and shall not contribute to the additional cost of rehabilitating the line in excess of these standards.

While it is necessary to maintain the track at a Class II level, it is not essential to maintain a rail line at a higher level unless the line is used for overhead traffic. In such a case others should pay for such additional upgrading. It is not an efficient use of state money to finance excess upgrading on lines, especially when there are other lines that need funding to bring them up to minimum standards.

III. PROGRAM ADMINISTRATION

(a) Application.

(1) Railroad applications. Applications for rehabilitation from railroads shall include a description of the rehabilitation project proposed, including the extent of rehabilitation proposed, the cost of rehabilitation, the amount of traffic on the line, present and projected operational and maintenance costs, present and projected revenues attributed to the railroad from shipments on the line, a list of the rail users on the line, and the amount of funding the applicant is prepared to invest in the project.

(2) Rail user applications. Applications for rehabilitation from rail users shall include: a description of the project proposed, the amount of traffic on the line, the amount of potential traffic on the line, the amount of shipping done by truck, the rates for both truck and rail shipping, a list of rail users on the line, and the amount of funds the rail users on the line are prepared to contribute to the project.

The Agency may provide application forms and may request further information from an applicant or other parties to the contract to aid in the establishment of eligibility and priority.

This rule is needed because both railroads and rail users are parties to a contract and, therefore, may initiate a project through an application. The information requested on the application is necessary to determine the eligibility of the line and the project, and to make a priority ranking of the project. The information is also necessary for purposes of preparing the contract.

(b) Determination of Eligibility. Upon receipt of application and all required information, the Agency shall determine whether or not a line is eligible. The Agency shall then contact the other potential party to the contract to determine whether that party is willing to participate in a rehabilitation project, and if so to what extent. If there is a rail user, a railroad, and the state, prepared to enter into a contract and if the proposed amount of fund equals the total project cost and all other requirements are met, the project shall be declared eligible and a priority ranking made.

This rule is needed to identify the process of determining how eligibility is determined. To minimize administrative workload and improve efficiency, each line and project must be eligible before any further processing or negotiations is done on a project.

(c) Priority Ranking. Priority ranking shall be based on criteria identified in II(d) of these rules and regulations. Information requested and not received or not arranged for within 30 days, may be considered adequate reason for the elimination of the project from consideration for funding.

This rule is necessary to describe the procedure for making a priority ranking. The rule that information must be received or arranged for within 30 days is necessary to insure the cooperation of participants in the contract and to give the agency recourse if cooperation is not forthcoming.

(d) Contract.

(1) Contracts for rehabilitation projects may include but may not necessarily be limited to the following provisions:

-- the specific portions of trackage and rail line to be rehabilitated,

-- the level of rehabilitation to be done.

-- the plans, specifications, and estimates of materials, cost, and time.

-- the amount of funds, or other items of value, to be contributed by each party to the contract.

-- assurance that service shall be provided on the line by the railroad.

-- assurance that maintenance shall be performed on the line by the railroad.

-- method of administering the contract.

-- schedule for the repayment of funds to the rail users and the state.

-- maximum length of the contracts.

-- maintenance of records and audits.

-- other special features of the contract.

This rule is descriptive of the provisions to be included in the contract and the manner in which the project is to be accomplished to bind all parties to a specific project. It also describes the requirement upon each of the parties to the contract and the methods of administering the contract.

(2) Projects shall be processed and negotiated in order of priority ranking. Projects that are not finalized within a reasonable period of time as judged by the Agency may be bypassed and the next lower project negotiated and funded.

This rule is necessary to insure that the highest priority projects get funded and to allow the bypassing of stalled projects so that the program is not halted because of one project. What constitutes a stalled project is a subjective decision. It is not desirable to put a specific time limit on project negotiations that can lead to either excessive waiting on projects obviously stalled, or the cutting off of projects that are involved in extensive but necessary negotiations prior to contract signing.

(e) Repayment Requirements. The railroad shall reimburse a rail user for funds it has contributed to a project based on a repayment schedule of dollars per carload of freight shipped. The reimbursement which shall be paid at regular intervals shall be based on the total number of railroad cars shipped by the rail user until full payment is made.

This rule is necessary to identify how the rail users are to repaid the funds they have committed to a project. The Minnesota Rail Service Improvement Act recommends in Sec. 5, Subd. b, that the repayment method be as follows:

> (b) Require a portion of the total assistance for improving a rail line to be loaned to the railroad by rail users and require the railroad to reimburse rail users for any loan on the basis of use of the line and the revenues produced when the line has been improved;

The railroad shall reimburse the state for funds it has contributed to the project in the following manner:

- State funds that are contributed and which are in excess of one-third of the total contract amount shall be repaid directly upon the completion of repayment of the rail user and on the same basis as the rail user.

- State funds contributed up to one-third of the total contract amount shall be repaid from revenues received from traffic on the line which exceeds traffic on the line for the average of the three years prior to rehabilitation. Repayment of this amount shall start upon completion of repayment of rail user funds and state funds in excess of one-third of the total contract amount.

This rule is necessary to identify how the state is to be repaid for funds committed to a project. The formula for repayment is based on recommendations as made in the Minnesota Rail Service Improvement Act, Sec. 5, Subd. c.

> (c) Determine the terms and conditions under which all or any portion of state funds allocated shall be repaid to the department [State Planning Agency] by the railroads. Reimbursement may be made as a portion of the increased revenue derived from the improved rail line.

The perceived legislative intent of the program is that the railroad, the rail user, and the state each provide one-third of the contract amount. Because of this, any state funding in excess of one-third of the contract amount is considered as additional to the standard state investment. Because of this those additional funds should be repaid as quickly as possible which the user repayment schedule is considered to identify. However, it is still the intent of the program to safeguard the investment of the user by allowing repayment of their share of the funds first and then the repayment of the additional funds to the state followed by the one-third share by the state repaid on the basis of increased freight movements.

(f) Length of Contract. The term of the contract shall be long enough to allow for the repayment of all funds in the contract based on a reasonable projection of potential traffic levels. State contributed funds not repaid by the time the contract expires shall be forgiven.

The contract shall be extended in event of, and for as long as, any cessation of service for any reason or any reduction of service below minimum ICC maintenance and service requirements.

This rule is required to set guidelines for the appropriate length of the contract. A contract should be long enough to allow repayment of funds but not so long as to require a line that is not profitable or worthy of continued operations to continue for an indeterminate length of time.

(g) Separate Railroad Account. A railroad may be permitted to establish and maintain a separate railroad fund to be used exclusively for rehabilitation of its other rail lines in Minnesota if the railroad can give good cause, such as legal prohibition against repayment, for not making repayment to the State Rail Service Improvement Account. Funds in such separate railroad account may only be utilized by the railroad for eligible projects as described in paragraph II(a)2 of these rules, and only if such eligible project would have been funded at that time from the State Rail Service Improvement Account as determined by the State Planning Agency. The Agency may require a railroad to deposit or invest the funds according to the instructions of the Agency and to deposit all interest and earnings received on such funds into the separate railroad account.

A railroad which has funds in separate railroad accounts but which does not have eligible lines to upgrade may return those funds to the State Rail Service Improvement Account as a gift.

This rule is required to specify the conditions under which the provision for a separate railroad account is allowed in the Minnesota Rail Service Improvement Act, Sec. 5, Subd. d.

(d) Require that the railroad establish and maintain a separate railroad fund to be used exclusively for rehabilitation of other rail lines in Minnesota, to which a portion of the increase in revenue derived from the improved rail line shall be credited. The terms and conditions for use of

money in the fund shall be stipulated in the contract. The contract shall also stipulate a penalty for use of such money in a manner other than as set forth in the contract and require the railroad to report to the department at such times as the director requires, concerning the disbursement of money from the fund and the general status of rail line improvements.

The prefered repayment format is described in Sec. 5, Subd c.

Any reimbursement received by the department [State Planning Agency] pursuant to this clause shall be deposited in the rail service improvement account and shall be appropriated exclusively for rehabilitating other rail lines in the state pursuant to subdivision 4;

It should be the state's option rather than the railroad's option to decide which account the funds should be repaid to. The Separate Railroad Account should only be used when direct repayment to the state is not possible and under those terms the funds should be used as nearly the same as if they were repaid directly to the State Railroad Service Improvement Account. This will help assure that state funds are used for the highest priority projects possible.

(h) Program Implementation. The Agency may receive applications at any time. Thirty days after the filing of these rules and regulations with the Secretary of State, the Agency shall make a determination of eligibility of lines and projects and establish a priority for those projects which are eligible for funding.

In the event that new appropriations are made to the program or that funds remain after the disposition of already approved project, the Agency may make public notice, set a new application deadline date, and make a new priority ranking of eligible applications received.

This rule is required to identify the time and method for the inauguration of the program. A deadline is set to allow for the identification of eligible projects which can be prioritized and ranked. Projects can then be implemented on the basis of that ranking without the continual need to rerank projects each time a new project comes in. If additional projects are submitted and additional funds become available, the program can continue by setting a new deadline and establishing a priority list of projects.

(i) Exceptions. In the event of unusual circumstances, exceptions to these rules may be made for any particular rehabilitation contract if agreed to by all parties.

This rule is required because this program is a pilot program and situations may arise that are not accounted for in these rules. This rule is not meant to bypass prior rules but rather to give the program the flexibility to respond to special circumstances.

STATE OF MINNESOTA

STATE PLANNING AGENCY

Peter Vanderpoel

Peter Vanderpoel
Director

STATE OF MINNESOTA

COUNTY OF RAMSEY

STATE PLANNING AGENCY

In the Matter of the Proposed Rules Relating to the Use of State Funds Through the Minnesota Rail Service Improvement Act for the Rehabilitation of Rail Lines.

ORDER ADOPTING RULES

The above-described matter came on for hearing before the Director of the Minnesota State Planning Agency on June 23, 1976, in Mankato, Minnesota; June 24, 1976 in St. Paul, Minnesota; and on June 25, 1976 in Staples, Minnesota, after proper notice required by Minn. Stat. § 15.0412 (1974) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein:

NOW THEREFORE IT IS ORDERED that these rules identified as SPA 260, 261, and 262 are adopted this 29 day of September, 1976, pursuant to authority vested in me by Laws of Minnesota 1976, Chapter 204, Section 5.

STATE OF MINNESOTA

STATE PLANNING AGENCY

Peter Vanderpoel

Peter Vanderpoel
Director

STATE OF MINNESOTA

STATE PLANNING AGENCY

COUNTY OF RAMSEY

In the Matter of the Proposed Rules Relating to the Use of State Funds Through the Minnesota Rail Service Improvement Act for the Rehabilitation of Rail Lines.

FINDINGS OF FACT

The above-described matter came on for hearing before the Director of the Minnesota State Planning Agency on June 23, 1976, in Mankato, Minnesota; June 24, 1976 in St. Paul, Minnesota; and on June 25, 1976 in Staples, Minnesota, after proper notice required by Minn. Stat. § 15.0412 (1974) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, I find the following:

1. The report of the Hearing Examiner, Mr. Leonard A. Nelson, including his findings of fact and conclusions, is hereby adopted in its entirety with the exception that the third convening of the hearing was held in Staples, Minnesota rather than Slayton, Minnesota.

2. The Interstate Commerce Commission has jurisdiction over rail service, thus the suggestion made at the hearing relative to this agency transferring any operational complaint jurisdiction to the State Department of Transportation cannot be complied with.

3. The Federal Railroad Administration Rail Safety Standards are adequate for the purposes of these rules.

4. The thirty-day period from date of promulgation of rules, for applying for assistance under this program under SPA 262(H) is not a sufficient application period due to the uncertainty of the date of promulgation.

5. The establishment of December 1, 1976, as a date certain to close such period of applications is preferable.

6. Regarding rule SPA II(d)(2), the Minnesota Railroad Association has testified that the program should assist rail lines to be improved to a degree higher than the standards proposed while others including the Minnesota Agri-Growth Council, Inc. have testified that the program should assist rail lines to be improved to a degree lower than the standards proposed.

7. The legislature intended that the funds expended for improvement assistance under this program be returned to the State Planning Agency or other rail accounts for further improvement assistance.

8. If any given rail line were now profitable, the railroad operating that line would keep it in repair, thus not requiring assistance under this program.

9. To reasonably expect repayment of various rail line improvement expenditures, the rail lines so improved must become profitable.

10. The one hundred ton hopper car (263,000 lb. gross weight) is desireable because the use of such cars provides a lower rate of transportation costs, thus allowing the rail line so improved to become more competitive in relation to other forms of transportation, and giving the rail line a greater opportunity to become profitable again.

11. It is the purpose of this program to upgrade existing lines to make them competitive, permanent, and viable and not to provide ordinary maintenance, or to make existing profitable lines more profitable to railroads through state assistance.

Dated: 9-29-76

STATE OF MINNESOTA

STATE PLANNING AGENCY

Peter Vanderpoel

Peter Vanderpoel
Director

STATE OF MINNESOTA
OFFICE OF HEARINGS EXAMINERS

FOR THE STATE PLANNING AGENCY

RECEIVED
AUG 25 1976
OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed Rules Relating to the Use of State Funds Through the Minnesota Rail Service Improvement Act for the Rehabilitation of Rail Lines.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Leonard A. Nelson, duly appointed Hearing Examiner in this matter, on June 23, 1976 at the City of Mankato, Minnesota; thereafter reconvened on June 24, 1976 at 10:00 a.m. in the State Office Building in St. Paul, Minnesota, and on June 25, 1976 at 10:00 a.m. in Slayton, Minnesota.

Donald Kannas, Special Assistant Attorney General, State Office Building, St. Paul, Minnesota, appeared on behalf of the State Planning Agency; Harold A. Reed, Director of Transportation Planning, 100 Capitol Square Building, St. Paul, Minnesota, and Cecil Selness, Transportation Planner, 100 Capitol Square Building, St. Paul, Minnesota, represented the State Planning Agency. Witnesses at the hearing included: Russel G. Schwandt, president, Minnesota Agri-Growth Council, Inc., Sanborn, Minnesota; Ralph Godin, Minnesota Agri-Growth Council, Inc., 6970 France Avenue, Edina, Minnesota; Mark Monson, Transportation Planner, Region Nine Development Commission, 709 Front Street, Mankato, Minnesota; Ray N.Johnson, Country Side Council, Windom, Minnesota; Jim Lund, attorney at law, 1426 Soo Line Building, Minneapolis, Minnesota; Marion Menning, State Representative, District 26A, Edgerton, Minnesota; Alan C. Williams, State Senate Counsel, 24G State Capitol Building, St. Paul; J. A. Josefson, District 20 State Senator, 310 North Grant, Minneota, Minnesota; Junior Lennox, Slayton,Minnesota and Harry Hussman, Villard, Minnesota.

Pursuant to Minn. Stat. § 15.052, subd. 3 (1975 Supp.), this Report will include Findings of Fact, Conclusions and Recommendations. The State Planning Agency and the Office of Hearings Examiners will make a copy of this Report available for review to any interested person upon request. Copies of the report will be furnished at a nominal cost.

The Agency shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record to the Chief Hearing Examiner, pursuant to HE 107, no earlier than ten days subsequent to the receipt of this Report. It shall include the rules as originally proposed, and the rules as proposed for adoption in final form. The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his report to the Agency on the issue of substantial changes in the rule within ten calendar days. The Agency will be responsible for filing the rules with the Attorney General.

Based upon the proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

1. On May 19, 1976, the Agency mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice, to all persons and associations on a list maintained by the State Planning Agency, and to all members of the Legislature.

2. The Agency filed the following documents with the Chief Hearing Examiner more than 25 days prior to the date and time of hearing:

(a) The Order for Hearing;

(b) The Notice of Hearing;

(c) The affidavit of receipt of the Secretary of State's list;

(d) The Affidavit of Mailing;

(e) The Statement of Need;

(f) The names of Agency personnel who will represent the agency;

(g) A summary of evidence.

The documents were available for inspection at the office of Hearing Examiners from the date of filing to the date of the hearing.

3. The Agency introduced as an exhibit during the hearing nine proposed amendments to the proposed rule.

4. The record remained open for 20 days for the purpose of receiving written comments or materials concerning the proposed rule. The record was thereafter closed at the end of the day on July 15, 1976.

5. Statutory authority to promulgate the proposed rule is found in Minn. Laws 1976, Chapter 204, § 5, subd. 3(d).

6. The proposed rule is needed to define the criteria and develop a procedure for the distribution of the legislative appropriation of funds for the rehabilitation of a portion of the present railway system not presently providing adequate rail service.

7. Section I of the proposed rule is needed to identify the authority for the rule, the purpose of the rule, and to supply definitions needed to interpret the rule.

8. Section II(a)(1) of the proposed rule is needed to identify the rail lines which would be eligible under the program. The statutory directive was for those rail lines which have deteriorated or are in danger of deteriorating to be eligible. Testimony in opposition to this section suggested the rail capacity minimum and speed were too high to be of benefit to the rural branch lines.

9. Section II(a)(2) of the proposed rule is needed to identify the parties essential to a contract for rehabilitation of a rail line.

10. Section II(b)(1) is needed to specify determining factors which will be used to decide the level of state funding and to specify the levels of required and permissive participation in the funding by the railroad and the rail users. The requirement of rail user participation is to assure that the upgrading of the rail line is needed and to assure that the rail line will be used after rehabilitation to the level projected.

11. Section II(b)(2) of the proposed rule is needed to permit a party to the contract to provide as part or all of its participation share to be by other means than by the payment of money. This would permit the use of items of value such as material, labor or land which may be cheaper in cost, convenient or more

readily available towards the completion of the project.

12. Subparagraph (c) of Section II is necessary to indicate which projects will be chosen for funding and on what basis they will be chosen until a State Rail Plan has been formalized by the Agency.

13. Subparagraph (d)(1) of Section II, as originally proposed by the Agency, is incapable of being uniformly interpreted, thus meaningless as a standard. The Interstate Commerce Commission has jurisdiction over rail service and would render unenforceable service standards agreed upon in a project contract. The ICC does not publish railroad service standards as such but determines whether a railroad is providing reasonable service on a case by case method. The Agency proposed amendment to this portion of its proposed rule was necessary to cure the belief that there is a definite uniform operations standard imposed on the railroad by the ICC. The subparagraph, as amended, is needed to place the railroads on notice that a reasonable level of service is to be provided. However, the subsection does little to the present legal remedies of rail line users. The Minnesota Railroads Association, through its counsel, urged that the provisions as to operation standards not be a mandatory requirement of the contract as it goes beyond the authority conferred on the Agency by statute.

14. Section II(d)(2) is needed to define a project standard as to the extent and limit that the rehabilitation must take. When general powers of statutory authority are conferred upon an Agency in broad terms, it must be an inherent part of rule promulgation to define and clarify to the greatest extent possible. Written documentation from the Minnesota Railroads Association suggested removal of the ceiling when the State will cease to participate in rehabilitation projects.

15. Section III, subdivision (a), of the proposed rule is needed in order that the Agency can determine from the information required the eligibility of the project, the priority of the project, and the preparation of the project contract. It was recommended that a proviso be added to the section to the

effect that the railroad would not be required to furnish any information where the railroad is prohibited by other federal and state rules and laws from furnishing. The suggested proviso is not necessary.

16. Subdivision (b) of Section III is needed to identify the process of how eligibility is determined.

17. Subdivision (c) provides that a 30-day period from the date a request for information was made but not received or arranged for may be an adequate reason for elimination of the project from consideration for funding. Opposition to this time period was presented complaining that the time period was too short. In the absence of the words "or arranged for", it would be necessary to agree. The subdivision is necessary to insure cooperation of project participants and to minimize unnecessary administrative lag time caused from the delays resulting from unanswered requests for information. If the additional information is "arranged for", the repeated requests and delays would not be necessary.

18. Subdivision (d)(1) is necessary to describe the requirements of the parties to the project contract, the methods of administering the project, and the manner in which the project is to be accomplished.

19. Subdivision (d)(2) is needed to allow for the funding of the highest priority program first without being stalled by projects which cannot reach a conclusion.

20. Subdivision (e) of the proposed rule, as amended by the Agency, is needed as it sets forth the method of repayment of the contract. The Agency amendment allows for repayment to the State above the initial 1/3 of project amount on a negotiated basis with the railroad.

21. Subdivision (f), as amended by the Agency at the hearing, is needed to identify the terms for the length of the contract. State contributed funds which are not repaid within the time specified are to be forgiven; however, if service by the railroad is below the level desired as specified in the contract, then the contract may be extended, and in that event, payment is

not forgiven. The Minnesota Railroad Association sought to delete the provision relating to desired service level, and in place thereof provide a provision that only events beyond the control of the parties would be the basis for extension of the contract. The proposed subdivsiion, as amended by the Agency, is also necessary as it is the most realistic provisions which would tend to increase the railroad's concern to perform to the levels of service agreed upon in the contract.

22. Subdivision (g) is needed to specify the conditions wherein a separate fund or account may be established by the railroads.

23. Subdivision (h) is required to identify the methods and time periods in which to inaugurate the program which is the subject of the proposed rules.

24. Subdivision (i) provides that exceptions may be made to the requirements of the proposed rule under certain circumstances. The Agency, by proposed amendment at the hearing, limited exceptions to the proposed rule to situations which would not be contrary to the intent of the proposed rule and which would preclude equal treatment of any competing project. As amended, this subdivision of the proposed rule is necessary to implement this pilot program.

25. The Minnesota Railroad Association proposed an additional subsection of the rule to the effect that the Agency must reimburse the railroad for any expenses or costs it may incur for special projects, inspections or research requested by the Agency when (the same) are not readily available from ordinary business reports maintained by the railroads in the regular course of business. Such a provision would be beyond the authority conferred upon the Agency by the statute and would not provide for equal treatment by other parties to the project.

CONCLUSIONS

1. That the State Planning Agency has fulfilled all relevant, substantive and procedural requirements provided by law and rule.

2. That the Agency properly documented its statutory authority to promulgate the proposed rule.

3. That the Agency demonstrated the need for and the reasonableness of the promulgation of the proposed rule and its amendments thereto by an affirmative presentation of facts.

RECOMMENDATION

It is recommended that the proposed rule, as amended by the Agency, be adopted with consideration given to the Findings of Fact and Conclusions contained herein.

Dated this 6th day of August, 1976.

LEONARD A. NELSON
Hearing Examiner

PLEASE TAKE NOTICE that pursuant to Minn. Stat.§§ 15.0412, subd. 4, and 15.052, subd. 4 (Supp. 1975), the State Planning Agency shall make this Report available to all affected individuals upon request for at least ten (10) days before the Agency takes any final action on the proposed rules.

The Agency shall, if it decides to adopt the rules as originally proposed or amended, submit the complete hearing record to the Chief Hearing Examiner no earlier than ten (10) days subsequent to the receipt of this Report. The Agency must submit the rules as originally proposed and the rules as proposed for adoption in final form.

The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his report to the Department on the issue of substantial changes in the rules within ten (10) calendar days. The Department is then responsible for filing the rules with the Attorney General.

PLAN-76-002-LN

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE STATE PLANNING AGENCY

IN THE MATTER OF THE PROPOSED RULES RELATING TO THE USE OF STATE FUNDS THROUGH THE MINNESOTA RAIL SERVICE IMPROVEMENT ACT FOR THE REHABILITATION OF RAIL LINES.

REPORT OF THE ACTING CHIEF HEARING EXAMINER

WHEREAS, hearings were held on June 23, 24 and 25, 1976, before Leonard A. Nelson, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. §15.0412, Subd. 4; and

WHEREAS the Report of Hearing Examiner made pursuant to Minn. Stat. §15.052, Subd. 3, was issued to the State Planning Agency on August 6, 1976; and

WHEREAS, the State Planning Agency has now determined to adopt rules pursuant to Minn. Stat. §15.0412, Subd. 4; and

WHEREAS, the State Planning Agency has submitted said rules to the Acting Chief Hearing Examiner for review pursuant to Minn. Stat. §15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Acting Chief Hearing Examiner finds that there are no substantial changes in said rules as originally proposed.

NOW, THEREFORE, upon receipt of this Report, the State Planning Agency has the responsibility of submitting the complete hearing record and the rules as adopted by the Agency to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. §15.0412, Subd. 4.

Dated this 25th day
of August, 1976.

Duane R. Harves

DUANE R. HARVES
Acting Chief Hearing Examiner