

Minnesota Attorney General: Administrative Rules Proceedings

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Dwight S. Wagenius
Special Assistant
Attorney General

April 28, 1977

-Energy Agency Rules Governing Contents of Applications for Certificate of Need and Criteria for Assessment of Need for Large Oil and Coal Facilities-HA 801-881

MINNESOTA ENERGY AGENCY RULES

GOVERNING CONTENTS OF APPLICATIONS

FOR CERTIFICATES OF NEED AND CRITERIA

FOR ASSESSMENT OF NEED FOR LARGE

OIL STORAGE FACILITIES

FOR ENERGY USERS

Chapter 8
EA 801-881

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EA 801	Purpose of Rules
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MINNESOTA ENERGY AGENCY RULES GOVERNING CONTENTS OF APPLICATIONS FOR CERTIFICATES OF NEED AND CRITERIA FOR ASSESSMENT OF NEED FOR LARGE OIL STORAGE FACILITIES FOR ENERGY USERS

Chapter 8
EA 801-881

EA 801 PURPOSE OF RULES

The purpose of these rules is to specify the contents of applications for certificates of need and to specify criteria for assessment of need for large oil storage facilities for energy users pursuant to Minn. Stat. §§ 116H.13.

EA 802 APPLICABILITY OF RULES

A. Each applicant for a certificate of need for a large oil storage facility to be used in conjunction with manufacturing, mining, heating, cooling, processing or generation of electricity, or for fuel storage for vehicles, locomotives or aircraft, shall provide all of the information required by these rules. The following types of oil storage facilities shall be subject to these rules:

1. a new large oil storage facility; and
2. an expansion of an existing oil storage facility, which expansion is itself of sufficient size to fall within the definition in EA 804 L.

B. Exception. The following types of facilities shall not be subject to these rules:

1. a large oil storage facility on which construction has begun or has been completed; and
2. a large oil storage facility to be constructed in conjunction with a large electric generating facility which itself requires a certificate of need, unless that proposed large oil storage facility is not

covered by the certificate of need issued for the large electric generating facility and associated facilities.

EA 803 APPLICATION PROCEDURES AND TIMING

A. Each applicant for a certificate of need shall apply in a form prescribed by the director.

B. A minimum of seven (7) bound copies and one (1) unbound copy of the application shall be filed with the director. The director may require additional bound copies. All documents, forms, and schedules filed with the application must be typed on 8½" x 11" paper except for blueprints, engineering drawings, maps, and similar materials. The date of preparation and the applicant's name shall appear on each page of the application, as well as on each document filed with the application. Each application shall contain a title page and a complete table of contents which includes the applicable rules by the titles and numbers given in these regulations.

C. Subsequent to the filing of an application, any changes or corrections to the application shall comply with rule EA 803 B as to the number of copies and size of documents. In addition, each page of a change or correction to a previously filed page shall be marked with the word "REVISED" and with the date the revision was made. The original copy of the changes or corrections shall be filed with the hearing examiner, and the remaining copies shall be submitted to the director.

D. Each application for a certificate of need shall be accompanied by a cover letter signed by an authorized officer or agent of the applicant. The cover letter shall specify the type of facility for which a certificate of need is requested, the number of copies filed, and the rules and subdivisions thereof to which the applicant has responded.

E. A hearing examiner shall be appointed and a public hearing shall be scheduled to commence no later than eighty days after the receipt of the application, in accordance

with the Minnesota Energy Agency Rules of Procedure Governing Certificate of Need Program, Minn. Regs. EA 500 et seq., and the Hearing Examiner Rules of Contested Case Procedures, Minn. Regs. HE 201 et seq.

F. A decision on an application for a certificate of need shall be made by the director no later than six months from the receipt of the application, provided that the application as filed is substantially complete.

G. The director shall notify the applicant within 15 days of the receipt of an application if the application is not substantially complete. Upon such notification, the applicant may correct the deficiency and may resubmit the application. A decision shall be made upon the revised application within six months of the date of resubmission, assuming it is substantially complete.

H. Prior to the submission of an application, a person may be exempted from any data requirement of these rules upon a written request to the director for exemption from specified rules and a showing by that person in the request that the data requirement 1) is unnecessary to determine the need for the proposed facility or 2) may be satisfied by submission of another document. A request for exemption must be filed at least 20 days prior to submission of an application. The director shall respond in writing to each such request within 15 days of receipt including reasons for his decision. The director shall file a statement of exemptions granted and reasons therefor prior to commencement of the hearing.

EA 804 DEFINITIONS

For purposes of these rules, the following definitions shall apply:

A. "Agency" means the Minnesota Energy Agency;

B. "Applicant" means the person or persons submitting a certificate of need application;

C. "Application" means a document submitted by a person or persons to the director for the purpose of obtaining a certificate of need, the contents of which are described in these rules;

D. "BTU" means British thermal unit, a common unit of energy measurement which is used in these rules for comparative purposes;

E. "Construction" means significant physical alteration of a site to install or enlarge a large energy facility, but not including activities incident to preliminary engineering or environmental studies;

F. "Demand" means the quantity of an energy product which the applicant is willing and able to purchase;

G. "Director" means the director of the Agency;

H. "Energy Product" means a product which may be used to provide energy;

I. "Forecast" means a prediction of future demand for some specified time period;

J. "Forecast Years" means the sixteen-year period consisting of the year in which an application is filed plus the next fifteen years;

K. "Joint Application" means an application submitted to the director by two or more persons;

L. "Large Oil Storage Facility" means a facility on a single site designed for or capable of storing more than one million gallons of crude petroleum or petroleum fuels or oil or derivatives thereof;

M. "Peak Day" means that day during a calendar year when the demand is the greatest;

N. "Person" means an individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or a government or governmental subdivision, unit or agency, other than a court of law;

O. "Substantially Complete Application" means an application which is deemed by the director to be

in substantial compliance with the information requirements of these rules; and

P. "Ton" means 2000 pounds.

EA 805 FILING FEES AND PAYMENT SCHEDULE

The fee for processing an applicant shall be $1,500 plus $50 per one hundred thousand gallons of design oil storage capacity. The director may assess additional fees if they are reasonably necessary for completion of the evaluation of need for the proposed facility. In no event shall the total fee required of an applicant exceed the lesser of $50,000 or 200 percent of the fee set according to the above schedule. Fifty percent of the fee set according to the above schedule shall accompany the application, and the balance shall be paid 90 days after submission of the application. The applicant shall be notified when its application is acted on by the director of any additional fees and shall pay them within 30 days of notification. The billing for such additional fees shall be accompanied by an itemized statement. No certificate of need shall be issued unless all fees are paid in full.

EA 811 CRITERIA FOR ASSESSMENT OF NEED

A. Purpose of the Criteria. The criteria for assessment of need will be used by the director in the determination of the need for a proposed large energy facility pursuant to Minn. Stat. $\frac{SS}{SS}$ 116H.01 through 116H.15. The factors listed under each of the criteria below will be evaluated to the extent that the director deems them applicable and pertinent to each facility proposed pursuant to these rules.

B. A certificate of need shall be granted to the applicant if it is determined that:

1. the probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states. In making this determination, the director shall consider:

a. the accuracy of the applicant's forecast of demand for the type of energy that would be supplied by the proposed facility;

b. the effects of the applicant's existing or expected conservation programs and state and federal conservation programs;

c. the effects of promotional practices of the applicant which may have given rise to the increase in the energy demand, particularly promotional practices which have occurred since 1974;

d. the ability of current facilities and planned facilities not requiring certificates of need to meet the future demand; and

e. the effect of the proposed facility in making more efficient use of resources;

2. a more reasonable and prudent alternative to the proposed facility has not been demonstrated. In making this determination, the following factors shall be considered:

a. the appropriateness of the size, type, and timing of the proposed facility compared to those of reasonable alternatives;

b. the cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;

c. the impact of the proposed facility upon the natural and socioeconomic environments compared to the impacts of reasonable alternatives; and

d. the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives;

3. the consequences of granting the certificate of need outweigh the consequences of denying the certificate, considering:

a. the relationship of the proposed facility to overall state energy needs;

b. the impact of the proposed facility upon the natural and socioeconomic environments compared to the impact of not building the facility;

c. the effects of the proposed facility in inducing future development; and

d. socially beneficial uses of the output of the proposed facility, including its uses to protect or enhance environmental quality;

and that

4. it has not been demonstrated on the record that the design, construction or operation of the proposed facility will fail to comply with those relevant policies, rules and regulations of other state and federal agencies and local governments which have been considered during the hearing process.

EA 821 CONTENTS OF APPLICATION

A. Each application for a certificate of need for a large oil storage facility shall include the information required by rules EA 831-834 and 841-845.

B. An application for a certificate of need, if desired by the applicant, may contain information in response to rule EA 871.

C. Joint Application. If the proposed application for a certificate of need is jointly submitted by two or more persons, then, when specified in these rules, each such person shall submit the information required by these rules.

D. Multi-Party Ownership and Use. Each application for a certificate of need for a facility which is owned and used by two or more persons shall be considered as a joint application for purposes of these rules.

EA 831 GENERAL INFORMATION

A. Each application shall contain a general information section which shall include the following information:

1. the applicant's complete name and address, telephone number, and standard industrial classification code(s);

2. the complete name, title, address, and telephone number of the official or agent to be contacted concerning the applicant's filing;

3. a brief description of the nature of the applicant's business and of the products which are manufactured, produced, or processed, or of the services rendered;

4. a brief description of the proposed facility, its complete address (if known) or general location, a brief description of its planned use, its estimated cost, its planned in-service date, and its design capacity in gallons;

5. the total fee for the application as prescribed by rule EA 805, and the amount of the fee submitted with the application; and

6. the signature(s), and title(s) of the applicant's officer(s) or executive(s) authorized to sign the application and the signature of the preparer of the application if prepared by an outside agent.

B. Each application shall contain a schedule in the general information section which shall list all known federal, state, and local agencies or authorities with which the applicant must file for the proposed facility. The following information shall be included on the schedule:

1. the names of all known federal, state, or local agencies or authorities with which the applicant must file;

2. the title of each required permit or certificate issued by the authorities named in response to rule EA 831 B 1 and needed by the applicant;

3. for each permit or certificate listed in response to rule EA 831 B 2, the date an application was filed or the projected date of future application;

4. for each permit or certificate listed in response to rule EA 831 B 2, the actual date a decision was made

on the application, or the anticipated decision date; and

5. for each permit or certificate listed in response to rule EA 831 B 2, for which an application was filed, the disposition or status of the permit or certificate.

EA 832 NEED SUMMARY

Each application shall contain a section which summarizes the major factors which justify the need for the proposed facility. This summary shall not exceed, without the approval of the director, 15 pages in length, including text, tables, schedules, graphs, and figures.

EA 833 SUMMARY OF ADDITIONAL CONSIDERATIONS

Each application shall contain a section which discusses the socioeconomic considerations listed below. The applicant shall explain the relationship of the proposed facility to each of the following:

A. socially beneficial uses of the output of the facility, including its uses to protect or enhance environmental quality;

B. promotional activities which may have given rise to the demand for the facility; and

C. the effects of the facility in inducing future development.

EA 834 CONSERVATION PROGRAMS

Each application shall contain a section which relates to conservation of energy. Separate responses are required from each person submitting a joint application.

A. Does the applicant have an energy committee or an individual responsible for determination or coordination of its energy needs?

B. Has the applicant defined energy or conservation goals or objectives?

C. What specific energy or conservation programs has the applicant considered?

D. Have any energy or conservation programs been implemented? Explain the program(s) and the measured results achieved to date.

E. Has the applicant measured or studied the energy efficiency of the facilities which will use the proposed facility as an energy source? What were the results?

F. What major accomplishments in energy efficiency or conservation have been made by the applicant within the past five years?

EA 841 HISTORICAL ENERGY DATA

Each applicant shall provide the following information on historical energy usage in a separate section of the application. The energy usage data provided shall be for the specific facility or facilities which will make use of the energy product from the proposed facility. In a joint application separate responses shall be provided by each person. Applicants who have operated for less than five years the facility or facilities which will use energy from the proposed facility should provide data for each year of operation.

A. List all energy products used for the five most recent calendar years. For each energy product used indicate the annual usage and peak day usage in the appropriate unit of measure, i.e., natural gas in thousands of cubic feet, oil by type(s) and in gallons, coal by type(s) and in tons, electricity in kilowatt hours, and liquefied gas in gallons.

B. For each energy product listed in response to rule EA 841 A, provide the annual expense in dollars and the average cost per unit of measure for each of the five most recent calendar years.

C. For each energy product listed in response to rule EA 841 A, provide the annual usage for the five most recent calendar years in BTU's and express the annual usage for each type of energy as a percentage of total annual use.

D. For each energy product listed in response to rule EA 841 A, and for the five most recent calendar years, provide the percentage of energy usage that is accounted for by each of the following categories:

1. space heating and cooling;
2. lighting;
3. manufacturing or processing;
4. electric generation; and
5. other

E. Describe any significant changes in plant or equipment within the past five years which may have had an effect upon the mix or quantities of energy products used as indicated in response the paragraphs A through D of rule EA 841.

F. If the energy products listed include oil, liquefied gas, or coal, describe the type and size of existing storage capacity, including the average number of days supply which would normally be on hand during the winter season and during the summer season.

G. For each of the energy products listed in response to rule EA 841 F, describe the applicant's handling facilities, including the method of transportation.

EA 842 FORECAST DATA

The applicant shall provide in a separate section of the application answers to each of the questions below. In the answer to each question the applicant shall provide the assumptions upon which the answer is based. Separate responses to the questions are required from each person submitting a joint application.

A. What are the applicant's projected total energy requirements in BTU's for the first six forecast years, the eleventh forecast year (the tenth year after the year of application), and the sixteenth forecast year (the fifteenth year after the year of application)?

B. For the first six forecast years, the eleventh forecast year, and the sixteenth forecast year, what percentage of the total energy requirement given in response to rule EA 842 A is

projected to be utilized for each of the following: space heating and cooling, lighting, manufacturing or processing, electricity generation and other?

C. What different energy products does the applicant expect to use during the forecast years? With respect to the various energy products, what significant shifts from current usage are expected by the applicant during the forecast years?

D. What energy supply problems, if any, does the applicant anticipate during the forecast years?

E. How much reduction, if any, in energy requirements for future years does the applicant anticipate as a result of conservation programs or improvements in the energy efficiencies of equipment?

EA 843 DESCRIPTION OF PROPOSED FACILITY

Each applicant shall provide a description of the proposed oil storage facility in a separate section of the application. Separate responses to items G through K of rule EA 843 are required from each person submitting a joint application. The following information, or as much as is known at the time of application, shall be provided:

A. a description of the proposed oil storage facility, including:

1. its design capacity in gallons;
2. the type(s) of energy products to be stored;
3. its dimensions;
4. its estimated cost;
5. its expected economic life; and
6. an appropriate drawing which shows interconnections with other facilities at the site;

B. the complete name and address of the engineer, or (if designed by an outside agent) the firm, which designed the storage facility;

C. the complete name and address of the contractor or firm which will construct the storage facility;

D. the approximate planned date for starting construction and the approximate planned in-service date;

E. a list of the sources or anticipated fuel suppliers and any contractual arrangements which assure the applicant a source of supply, including:

1. length of the contract(s) in years;

2. contractual volume per year, month, day, or as appropriate;

3. name(s) of supplier(s);

4. notification, if any, required to terminate a contract;

5. method of delivery; and

6. anticipated supply cycle (weekly, monthly, seasonally, by spot purchase, etc.);

F. an explanation of the source of supply for the proposed storage facility, if the applicant does not have a firm contract for necessary additional supplies of fuel;

G. the purpose and planned use of the proposed storage facility, including its relationship to the facility which requires it;

H. the percentage of the annual energy requirements of the energy consuming facility which will use the proposed storage facility as an energy source that will be provided by the proposed storage facility;

I. the estimated number of days of fuel requirements which are planned to be stored in the proposed storage facility during the winter season and during the summer season for the first full year of operation;

J. an explanation of the effects of the proposed storage facility upon the applicant's ability to supply its customers; and

K. an explanation of the impact, if any, of the proposed facility upon the energy efficiency of operation of the facility which will use the proposed storage facility as a fuel source.

EA 844 ALTERNATIVES

Each applicant shall respond to the following questions and submit the required data in a separate section of the application.

A. Was conservation of energy or improving the efficiency of the process requiring the proposed facility considered as an alternative to construction of the proposed facility? To what extent was it considered?

B. Are there any known restrictions or limitations on the types of alternatives available to the applicant's proposed facility?

C. Specifically, what other energy alternatives were examined? For each alternative examined provide the following information:

1. a description of the alternative;
2. when it was studies;
3. who performed the study;
4. why it was rejected;
5. whether economics was considered and to what extent; and
6. whether environmental data were considered and to what extent.

EA 845 ENVIRONMENTAL DATA

Each applicant shall provide environmental data for the proposed facility and for each alternative large energy facility described in response to rule EA 844, to the extent that such data is reasonably available. Information relating to construction and operation of these facilities shall be provided as indicated below.

A. Location

1. If the specific location for the proposed facility is known, provide the county, township, range and section(s) of that site. If a specific location has not been chosen, provide the county, township, range and section(s) for each parcel of land which in the

opinion of the applicant could serve as the site for the proposed facility.

2. For each site identified in response to rule EA 845 A 1, list:

a. the nature of the terrain at the site;

b. the general soil type at the site;

c. the depth to groundwater at the site;

d. the types of vegetation (including forest, brush, marsh, pasture, and cropland) on the site;

e. the predominate types of land use (such as residential, forest, agricultural, commercial, and industrial) within one mile of the site;

f. lakes, streams, wetlands or drainage ditches within one mile of the facility and any other lakes, streams, wetlands, drainage ditches, wells or storm drains into which liquid contaminants could flow;

g. national natural landmarks, national wilderness areas, national wildlife refuges, national wild and scenic rivers, national parks, national forests, national trails and national waterfowl production areas within one mile of the site, as mapped on the Inventory of Significant Resources by the State Planning Agency;

h. state critical areas, state wildlife management areas, state scientific and natural areas, state wild, scenic and recreational rivers, state parks, state scenic wayside parks, state recreational areas, state forests, state trails, state canoe and boating rivers, state zoo, designated trout streams, and designated trout lakes within one mile of the site, as mapped on the Inventory of Significant Resources by the State Planning Agency; and

i. national historic sites and landmarks, national monuments, National Register Historic Districts,

registered state historic or archaeological sites, state historical districts, sites listed on the National Register of Historic Places, and any other Cultural Resources within one mile of the facility site, as indicated by the Minnesota Historical Society.

B. Wastewater, Projected Air Emissions and Noise Sources

1. Discharges to Water

a. Point Discharges. Indicate the location, route and final receiving waters for any discharge points. For each discharge point indicate the source, the amount and the nature of the discharge. (Provide quantitative data if possible.)

b. Area Runoff. Indicate the area from which runoff may occur, potential sources of contamination in the area, and receiving waters for any runoff.

2. Airborne Emissions

a. Point Sources. Estimate the quantity of gaseous and particulate emissions that would occur during full operation from each emission source and indicate the location and nature of the release point.

b. Area Sources. Indicate locations which may be sources of fugitive dust and indicate the nature of the source (including type of material, amount, and turnover rate).

3. Noise. Indicate the maximum noise levels (in decibels, A scale) expected at the property boundary. Also, indicate the expected maximum increase over ambient noise levels.

C. Pollution Control and Safeguards Equipment

1. Air Pollution Controls. Indicate types of emission control devices and measures that would be used.

2. Water Pollution Controls. Indicate types of pollution control equipment and runoff control measures

that would be used to comply with applicable state and federal regulations and statutes.

3. Oil Spill Safeguards. Describe measures that would be taken to prevent oil spills or to minimize the environmental impact of a spill on surface waters and groundwaters of the state.

4. Other Safeguards and Controls. Indicate any other equipment or measures, including erosion control, that would be used to reduce impact of the facility. Indicate the types of environmental monitoring, if any, that are planned for the facility and describe relevant environmental monitoring data already collected.

D. Induced Development

1. Vehicular Traffic. Estimate the amounts and types of vehicular traffic which would be generated by the facility.

2. Utility Use. Indicate the extent to which the facility would create or add to the need for expanded utilities or public services.

3. Water Use. Indicate the amount of water which would be appropriated and the amount which would be consumed by the facility, the expected source of the water, and how the water would be used.

EA 871 OTHER DATA FILED WITH THE APPLICATION

In addition to the information required by the director, the applicant may desire to file other data. If, in the opinion of the applicant, additional relevant data should be submitted for consideration, such data should be filed in a separate section of the application.

EA 881 CERTIFICATE OF NEED MODIFICATIONS

A. Issuance of a certificate may be made contingent upon modifications required by the director. When the director denies an application, he shall state the

reason(s) for the refusal and the changes, if any, which would make the facility certifiable.

B. The following changes in a facility previously certified by the director shall not require recertification:

1. oil storage capacity additions or subtractions of less than ten (10) percent of the capacity approved by the director; and

2. changes of less than two years in the in-service date.

C. If an applicant determines that a change greater than those specified in rule EA 881 B is necessary or desirable, it shall inform the director of the desired change, accompanied by a written statement detailing the reasons for the proposed change. The director shall evaluate these reasons and within 45 days of receipt of said statement notify the applicant whether the proposed change is acceptable without recertification.

APPROVED AS TO FORM AND LEGALITY
APR 25 1977 19
WARREN SPANNAUS, ATTORNEY GENERAL
BY /s/ Michael B. Miller
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
APR 27 1977 - 10:00 am
Joan Anderson Growe
Secretary of State

MINNESOTA ENERGY AGENCY
740 American Center Building
160 East Kellogg Boulevard
St. Paul, Minnesota 55101
612-296-5120

April 1, 1977

Michael B. Miller
Special Assistant
Attorney General
Department of Administration
G-19-K State Administration
Building
50 Sherburne Avenue
Saint Paul, Minnesota 55155

Re: In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Governing Contents of Applications for Certificates of Need and Criteria for Assessment of Need for Large Oil Storage Facilities and Large Coal Storage Facilities for Energy Users, EA 801-891

Dear Mr. Miller:

Enclosed pursuant to Minn. Stat. § 15.0412 subd. 4 (1976) and Minn. Regs. Atty Gen 301 et seq. is the entire record of the above-captioned proceeding.

Sincerely,

DWIGHT S. WAGENIUS
Special Assistant
Attorney General

DSW:sc
Enc.

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Governing Contents of Applications for Certificates of Need and Criteria for Assessment of Need for Large Oil Storage Facilities and Large Coal Storage Facilities for Energy Users, EA 801-891.	Docket No. EA-76-002-WS STATEMENT OF COMPLIANCE WITH MANUAL OF RULE-MAKING PROCEDURES

I, Special Assistant Attorney General Dwight S. Wagenius, 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 Rulemaking Procedures has been followed.

Dated: April 1, 1977

Dwight S. Wagenius

Special Assistant
Attorney General

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
ROOM 300 – 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

March 29, 1977

Mr. Dwight S. Wagenius
Special Assistant Attorney General
Minnesota Energy Agency
740 American Center Building
160 East Kellogg Boulevard
St. Paul, Minnesota 55101

Re: In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency, EA 801-891.
EA-76-002-WS

Dear Mr. Wagenius:

Enclosed please find the entire record which you submitted to us for review on the issue of substantial change together with the Report of the Chief Hearing Examiner, pursuant to Minn. Stat. §15.052, Subd. 3.

Yours very truly,

DUANE R. HARVES
Chief Hearing Examiner

DRH:sh
Enc.

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA ENERGY AGENCY

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE MINNESOTA ENERGY AGENCY)
GOVERNING CONTENTS OF APPLICATIONS FOR)
CERTIFICATES OF NEED AND CRITERIA FOR)
ASSESSMENT OF NEED FOR LARGE OIL STORAGE)
FACILITIES AND LARGE COAL STORAGE FACIL-)
ITIES FOR ENERGY USERS, EA 801-891.)

REPORT OF THE
CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on June 28, 1976, before William Seltzer, 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 Findings of Fact, Conclusions and Recommendations made pursuant to Minn. Stat. §15.052, Subd. 3, were issued to the Energy Agency on January 18, 1977; and

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

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

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Energy Agency has met all requirements of Minn. Stat. §15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Energy 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 29 day
of March, 1977.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

MINNESOTA ENERGY AGENCY PROPOSED RULES

GOVERNING CONTENTS OF APPLICATIONS

FOR CERTIFICATE OF NEED AND CRITERIA

FOR ASSESSMENT OF NEED FOR LARGE

OIL STORAGE FACILITIES AND

LARGE COAL STORAGE FACILITIES

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EA 891	Application in the Alternative

* These two sections are alternatives proposed by the Agency for Environmental Data. The Agency has no preference.

MINNESOTA ENERGY AGENCY PROPOSED RULES GOVERNING CONTENTS OF APPLICATIONS FOR CERTIFICATE OF NEED AND CRITERIA FOR ASSESSMENT OF NEED FOR LARGE OIL STORAGE FACILITIES AND LARGE COAL STORAGE FACILITIES FOR ENERGY USERS

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The purpose of these rules is to specify the contents of applications for certificates of need and to specify criteria for assessment of need for large oil storage facilities and large coal storage facilities for energy users pursuant to Minn. Stat. § 116H.13.

EA 802 APPLICABILITY OF RULES

(a) Each applicant for a certificate of need for a large storage facility to be used in conjunction with manufacturing, mining, heating, cooling, processing or generation of electricity, or for fuel storage for vehicles, locomotives or aircraft, shall provide all of the information required by these rules. The following types of new storage facilities shall be subject to these rules:

(1) a large oil storage facility; and

(2) a large coal storage facility.

(b) Exception. Any person who as of the effective date of these rules has begun or has completed construction of a large storage facility shall not be subject to these rules for that facility.

EA 803 APPLICATION PROCEDURES AND TIMING

(a) Each applicant for a certificate of need shall apply in a form prescribed by the director.

(b) A minimum of seven (7) bound copies and one (1) unbound copy of the application shall be filed with the director.

The director may require additional bound copies. All documents, forms, and schedules filed with the application must be typed on 8½" x 11" paper except for blueprints, engineering drawings, maps, and similar materials. The date of preparation and the applicant's name shall appear on each page of the application, as well as on each document filed with the application. Each application shall contain a title page and a complete table of contents which includes the applicable rules by the titles and numbers given in these regulations.

(c) Subsequent to filing an application, any changes or corrections to the application shall comply with (b) as to the number of copies and size of documents. In addition, each page of a change or correction to a previously filed page shall be marked "REVISED" and dated with the date the revision was made. Revisions made to an application between the date the application is filed, but prior to public hearings, shall be filed with the director. Any revisions during or after public hearings shall be filed with the hearing examiner.

(d) Each application for a certificate of need shall be accompanied by a cover letter signed by an authorized officer or agent of the applicant. The cover letter shall specify the type of facility for which a certificate of need is requested, the number of copies filed, and the rules and subdivisions thereof to which the applicant has responded.

(e) A hearing examiner shall be appointed and a public hearing shall be scheduled to commence no later than eighty days after the receipt of the application, in accordance with the Minnesota Energy Agency Rules of Procedure Governing Certificate of Need Program, Minn. Regs. EA 500 et seq., and the Hearing Examiner Rules of Contested Case Procedures, Minn. Regs. HE 201 et seq.

(f) A decision on an application for certificate of need shall be made by the director no later than six months from the receipt of the application, provided that the application as filed is substantially complete.

(g) The director shall notify the applicant within 15 days of the receipt of an application if the application is not substantially complete. Upon such notification, the applicant may correct the deficiency and may resubmit the application. A decision shall be made upon the revised application within six months of the date of resubmission, assuming it is substantially complete.

EA 804 DEFINITIONS

(a) "Agency" means the Minnesota Energy Agency;

(b) "Applicant" means the person or persons submitting a certificate of need application;

(c) "Application" means a document submitted by a person or persons to the director for the purposes of obtaining a certificate of need, the contents of which are described in these rules;

(d) "BTU" means British thermal unit, a common unit of energy measurement which is used in these rules for comparative purposes;

(e) "Construction" means significant physical alteration of a site to install or enlarge a large energy facility, but not including activities incident to preliminary engineering or environmental studies;

(f) "Demand" means the quantity of an energy product which the applicant is willing and able to purchase;

(g) "Director" means the director of the Agency;

(h) "Energy Product" means a product which may be used to provide energy;

(i) "Forecast" means a prediction of future demand for some specified time period;

(j) "Forecast Years" means the sixteen-year period consisting of the year in which an application is filed plus the next fifteen years;

(k) "Joint Application" means an application submitted to the director by two or more persons;

(l) "Large Coal Storage Facility" means a facility designed for or capable of storing 7500 tons of coal, or a facility which is designed for an annual coal throughput in excess of 125,000 tons used to provide fuel for a coal-burning facility;

(m) "Large Oil Storage Facility" means a facility on a single site designed for or capable of storing more than one million gallons of crude petroleum or petroleum fuels or oil or derivatives thereof;

(n) "Peak Day" means that day during a calendar year when the demand is the greatest;

(o) "Person" means an individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or a government or governmental subdivision, unit or agency, other than a court of law;

(p) "Substantially Complete Application" means an application which is deemed by the director to be in substantial compliance with the informational requirements of these rules;

(q) "Ton" means 2000 pounds.

EA 805 FILING FEES AND PAYMENT SCHEDULE

The fee for processing an application shall be:

(1) $1,500 plus $10 per thousand tons of designed annual throughput for a large coal storage facility; or

(2) $1,500 plus $50 per one hundred thousand gallons of designed storage capacity for a large oil storage facility;

plus such additional fees as are reasonably necessary for completion of the evaluation of need for the proposed facility. In no event shall the total fee required of any applicant exceed $50,000. Fifty percent of the set fee (according to (1) or (2) above) shall accompany the application, and the balance shall be paid 90 days after submission of the application. The applicant shall be notified when its application is acted on by the director of any additional fees and shall pay them within 30 days of notification. The billing for such additional fees shall be accompanied by an itemized statement. No certificate of need shall be issued unless all fees are paid in full.

EA 811 CRITERIA FOR ASSESSMENT OF NEED

(a) Purpose of the criteria. The criteria for assessment of need will be used by the director in the determination of the need for a proposed large energy facility pursuant to Minn. Stat. § 116H.01 through 116H.15.

(b) A certificate of need shall be granted to the applicant if it is determined that:

(1) the probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states. In making this determination, the director shall consider:

(i) the accuracy of the applicant's forecast of demand for the type of energy that would be supplied by the proposed facility;

(ii) the effects of the applicant's existing or expected conservation programs and state and federal conservation programs;

(iii) the effects of promotional practices which may have given rise to the increase in the energy demand, particularly promotional practices which have occurred since 1974;

(iv) the ability of current facilities and planned facilities not requiring a certificate of need to meet the future demand; and

(v) the effect of the proposed facility in making more efficient use of resources;

(2) a more reasonable and prudent alternative to the proposed facility has not been demonstrated. In making this determination, the following factors shall be considered:

(i) the appropriateness of the size, type, and timing of the proposed facility compared to reasonable alternatives;

(ii) the cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;

(iii) the impact of the proposed facility on the natural and socioeconomic environments compared to the impacts of reasonable alternatives; and

(iv) the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives;

(3) the consequences of granting the certificate of need outweigh the consequences of denying the certificate, considering:

(i) the relationship of the proposed facility to overall state energy needs;

(ii) the impact of the proposed facility on the natural and socioeconomic environments compared to the impact of not building the facility;

(iii) the effects of the proposed facility in inducing future development; and

(iv) socially beneficial uses of the output of the proposed facility, including its uses to protect or enhance environmental quality;

and that

(4) the granting of the certificate of need for the proposed facility is consistent with those relevant policies, rules and regulations of other state and federal agencies and local governments which have been considered during the hearing process.

EA 821 CONTENTS OF APPLICATION

(a) Each application for a certificate of need for a large oil storage facility or a large coal storage facility shall provide the information requested in rules EA 831-834 and 841-845.

(b) An application for a certificate of need, if desired by the applicant, may contain information in response to rules EA 871 and 891.

(c) Joint Application. If the proposed application for a certificate of need is jointly submitted by two or more persons, then, when specified in these rules, each such person shall submit the information required by these rules.

(d) Multi-Party Ownership and Use. Each application for a certificate of need for a facility which is owned and used by two or more persons shall be considered as a joint application for purposes of these rules.

EA 831 GENERAL INFORMATION

(a) Each application shall contain a general information section which shall include the following information:

(1) the applicant's complete name and address,

telephone number, and standard industrial classification code(s);

(2) the complete name, title, address, and telephone number of the official or agent to be contacted concerning the applicant's filing;

(3) a brief description of the nature of the applicant's business and of the products which are manufactured, produced, or processed, or of the services rendered;

(4) a brief description of the proposed facility, its complete address (if known) or general location, a brief description of its planned use, its estimated cost, its planned in-service date, and its capacity in gallons (oil storage) or in tons (coal storage);

(5) the total fee for the application as prescribed by rule EA 805, and the amount of the fee submitted with the application; and

(6) the signature(s), and title(s) of the applicant's officer(s) or executive(s) authorized to sign the application, and the signature of the preparer of the application if prepared by an outside agent.

(b) Each application shall contain a schedule in the general information section which shall list all known federal, state, and local agencies or authorities with which the applicant must file for the proposed facility. The following information shall be included on the schedule:

(1) the name of all known federal, state, or local agencies or authorities with which the applicant must file;

(2) the title of each required permit or certificate issued by each authority named in (1) and needed by the applicant;

(3) for each permit or certificate in (2), the date an application was filed or the projected date of future application;

(4) for each permit or certificate in (2), the actual date a decision was made on the application, or the anticipated decision date; and

(5) for each permit or certificate in (2) for which an application was filed, the disposition or status of the permit or certificate.

EA 832 NEED SUMMARY

Each application shall contain a section which summarizes the major factors which justify the need for the proposed facility. This summary shall not exceed, without the approval of the director, 15 pages in length, including text, tables, schedules, graphs, and figures.

EA 833 SUMMARY OF ADDITIONAL CONSIDERATIONS

Each application shall contain a section which discusses the socioeconomic considerations listed below. The applicant shall explain the relationship of the proposed facility to each of the following:

(a) socially beneficial uses of the output of the facility, including its uses to protect or enhance environmental quality;

(b) promotional activities which may have given rise to the demand for the facility; and

(c) the effects of the facility in inducing future development.

EA 834 CONSERVATION PROGRAMS

Each application shall contain a section which relates to conservation of energy. Separate responses are required from each person in a joint application.

(a) Does the applicant have an energy committee or an individual responsible for determination or coordination of its energy needs?

(b) Has the applicant defined energy or conservation goals or objectives?

(c) What specific energy or conservation programs has the applicant considered?

(d) Have any energy or conservation programs been implemented? Explain the program(s) and the measured results achieved to date.

(e) Has the applicant measured or studied the energy efficiency of the facilities which will use the proposed facility as an energy source? What were the results?

(f) What major accomplishments in energy efficiency or conservation have been made by the applicant within the past five years?

EA 841 HISTORICAL ENERGY DATA

Each applicant shall provide the following information on historical energy usage in a separate section of the application. The energy usage data provided shall be for the specific facility or facilities which will make use of the energy product from the proposed facility. In a joint application separate responses shall be provided by each person. Applicants who have operated for less than five years the facility or facilities which will use energy from the proposed facility should provide data for each year of operation.

(a) List all energy products used for the five most recent calendar years. For each energy product used indicate the annual usage and peak day usage in the appropriate unit of measure, i.e., natural gas in thousands of cubic feet, oil by type(s) and in gallons, coal by type(s) and in tons, electricity in kilowatt hours, and liquefied gas in gallons.

(b) For each energy product listed in (a), provide the annual expense in dollars and the average annual cost per unit of measure as described in (a) for each of the five most recent calendar years.

(c) For each energy product listed in (a), provide the annual usage for the five most recent calendar years in BTU's and express the annual usage for each type of energy as a percentage of total annual use.

(d) For each energy product listed in (a), and for the five most recent years, provide the percentage of energy usage that is accounted for by each of the following categories:

(1) heating and cooling;

(2) lighting;

(3) manufacturing or processing;

(4) electric generation; and

(5) other.

(e) Describe any significant changes in plant or equipment within the past five years which may have had an effect upon the mix or quantities of energy products used as indicated in (a) through (d) above.

(f) If the energy products listed include oil, liquefied gas, or coal, describe the type and size of existing storage capacity, including the average number of days supply which would normally be on hand during the winter season and during the summer season.

(g) For each of the energy products in (f), describe the applicant's handling facilities, including the method of transportation.

EA 842 FORECAST DATA

The applicant shall provide in a separate section of the application answers to each of the questions below. In the answer to each question the applicant shall provide the assumptions upon which the answer is based. Separate responses to the question are required from each person in a joint application.

(a) What are the applicant's projected total energy requirements in BTU's for the first six forecast years,

the eleventh forecast year (the tenth year after the year of application), and the sixteenth forecast year (the fifteenth year after the year of application)?

(b) For the first six forecast years, the eleventh forecast year, and the sixteenth forecast year, what percentage of the total energy requirement given in (a) is projected to be utilized for each of the following: heating and cooling, lighting, manufacturing or processing, electricity generation and other?

(c) What different energy products does the applicant expect to use during the forecast years? With respect to the various energy products, what significant shifts from current usage are expected by the applicant during the forecast years?

(d) What energy supply problems, if any, does the applicant anticipate during the forecast years?

(e) How much reduction, if any, in energy requirements for future years does the applicant anticipate as a result of conservation programs or improvements in the efficiency of equipment?

EA 843 DESCRIPTION OF PROPOSED FACILITY

Each applicant shall provide a description of the proposed storage facility in a separate section of the application. Separate responses to (g) through (k) below are required from each person in a joint application. The following information, or as much as is known at the time of application, shall be provided:

(a) a description of the proposed storage facility; including:

(1) its design capacity in gallons (oil storage facility) or in tons and in tons of throughput per year (coal storage facility);

(2) the type(s) of energy products to be stored;

(3) its dimensions;

(4) its estimated cost;

(5) its expected economic life;

(6) engineering drawings, blueprints, and specifications; and

(7) an appropriate drawing which shows interconnections with other facilities at the site;

(b) the complete name and address of the engineer, or (if designed by an outside agent) the firm, which designed the storage facility;

(c) the complete name and address of the contractor or firm who will construct the storage facility;

(d) the approximate planned date for starting construction and the approximate planned in-service date;

(e) a list of the sources or anticipated fuel suppliers and any contractual arrangements which assure the applicant a source of supply, including:

(1) length of the contract(s) in years;

(2) contractual volume per year, month, day, or as appropriate;

(3) name(s) of suppliers;

(4) notification, if any, required to terminate a contract;

(5) method of delivery; and

(6) anticipated supply cycle (weekly, monthly, seasonal, by spot purchase, etc.);

(f) an explanation of the source of supply for the proposed storage facility, if the applicant does not have a firm contract for necessary additional supplies of fuel;

(g) the purpose and planned use of the proposed storage facility, including its relationship to the facility which requires it;

(h) the percentage of the annual energy requirements of the energy-consuming facility which will use the proposed storage facility as an energy source that will be provided by the proposed storage facility;

(i) the estimated number of days of fuel requirements which are planned to be stored in the proposed storage facility during the winter season and during the summer season for the first full year of operation;

(j) an explanation of the effects of the proposed storage facility upon the applicant's ability to supply its customers; and

(k) an explanation of the impact, if any, of the proposed facility upon the energy efficiency of operation of the facility which will use the proposed storage facility as a fuel source.

EA 844 ALTERNATIVES

Each applicant shall respond to the following questions and submit the required data in a separate section of the application.

(a) Was conservation of energy or improving the efficiency of the process requiring the proposed facility considered as an alternative to construction of the proposed facility? To what extent was it considered?

(b) Are there any known restrictions or limitations on the types of alternatives available to the applicant's proposed facility?

(c) Specifically, what other energy alternatives were examined? For each alternative examined provide the following information:

(1) a description of the alternative;

(2) when it was studied;

(3) who performed the study;

(4) why it was rejected;

(5) whether economics was considered and to what extent;

(6) whether environmental data were considered and to what extent; and

(7) whether actions or practices of competitors were considered and to what extent.

EA 845* ENVIRONMENTAL DATA

(a) Location

(1) If the specific location for the proposed facility is known, provide the county, township, range, and section(s) of that site. Also indicate the name of and distance to the nearest city. For this site provide the information requested in paragraphs (b) through (e) below.

(2) If a specific location has not been chosen, provide the county, township, range and section(s), and the name of and distance to the nearest city for each parcel of land which in the opinion of the applicant could potentially serve as the site for the proposed facility. Considering these parcels of land in the aggregate, provide the information requested in paragraphs (b) through (e) below. Where environmental data differ by parcel of land, indicate those differences.

(b) Environmental Effects

(1) Water. Provide information regarding the impact of site preparation, construction, cleanup and rehabilitation, and operation of the proposed facility on water resources, including:

(i) the amount of water used by or for the facility, whether it is surface water or groundwater, how it will be used, and how its use will vary over time;

(ii) the depth of groundwater at the site;

(iii) the approximate distance in feet to lakes, streams, drainage ditches, wells, or storm drains within one mile of the site into which liquid contaminant could flow;

(iv) the effect on drainage of the area; and

(v) the possible effect on the location, condition, quality, or quantity of Minnesota's public water resources.

* Rule EA 845 is a proposed alternative to rule EA 846. The Agency expresses no preference.

(2) Land, Minerals, Wildlife, and Historical Sites. Provide information regarding the impact of site preparation, construction, cleanup and rehabilitation, and operation of the proposed facility on Minnesota's non-water resources and historical sites, including:

(i) the nature of the terrain on which the facility is to be located;

(ii) the general soil type at the facility location;

(iii) state-designated critical areas, scientific and natural areas, wetlands, wildlife refuges, and educational areas within one mile of the site;

(iv) the types of land use in adjoining or nearby areas and the relative proportions devoted to each;

(v) unique natural land features, areas of special botanical significance, endangered species and other wildlife or fishing resources, open spaces and recreation areas within one mile of the site;

(vi) the effect on the potential use or extraction of indispensable or scarce minerals or energy resources and the amount of land so affected;

(vii) sites, structures, or landmarks of historical significance within one mile of the site; and

(viii) archaeological and paleontological sites within one mile of the site.

(3) Population Disruption; Induced Developments. Provide information regarding the capability of the proposed facility for causing population disruption or inducing other developments, including:

(i) the amount of vehicular traffic generated per day by the facility;

(ii) the effect on existing or proposed transportation systems;

(iii) the population growth likely to result in nearby areas as a result of the facility;

(iv) the extent of relocation of human beings, either directly or indirectly, as a result of construction or operation of the facility; and

(v) the extent to which the facility will create or add to the need for expanded utilities or public services.

(c) Wastes and Emissions from the Facility. Provide information regarding the impact of the proposed facility on the natural environment as a result of wastes or emissions, including:

(1) the effect of the facility on the air quality in surrounding areas, and the amount of each substance emitted by or because of the proposed facility contributing to that effect; and

(2) the quantity and type of gaseous, liquid, and solid wastes that will be discharged by the facility, the treatment facilities for those wastes, and the method(s) of disposal.

(d) Environmental Safeguards. Provide detailed information regarding the safeguards to be utilized by the applicant for mitigating the effect of the proposed facility on the environment, including:

(1) for oil storage only, a complete description of the containment dike or wall system, including:

(i) height, width at its base, and slope;

(ii) dike material;

(iii) dike capacity and freeboard;

(iv) type and depth of material or soil in the floor of the diked area; and

(v) types of drainage valves and their locations;

(2) any other type of environmental safeguard;

(3) the estimated cost of new safeguards provided specifically for the proposed facility; and

(4) for oil storage only, the provision, if any, for recycling of liquid from accidental spills.

(e) Other Mitigative Measures. Provide information on any other measures proposed by the applicant to reduce or eliminate the potential adverse effects identified above. Consider soil erosion control measures, water and air quality monitoring, landscaping, replacement acreage, alternative technologies, and other construction techniques or design alternatives.

EA 846* ENVIRONMENTAL DATA

Each application shall contain a section which compares the relative impacts upon the natural and socioeconomic environments of each of the following:

(a) the proposed facility;

(b) all alternative energy facilities described in response to EA 844; and

(c) not constructing the proposed facility or any of its alternatives.

EA 871 OTHER DATA FILED WITH THE APPLICATION

In addition to the information required by the director, the applicant may desire to file data which the director did not request. If, in the opinion of the applicant, additional relevant data should be submitted for consideration, such data should be filed in a separate section of the application.

EA 881 CERTIFICATE OF NEED MODIFICATIONS

(a) When the director denies an application, he shall state the reason(s) for the refusal and the changes, if any, which would make the facility certifiable.

(b) If an applicant determines that a change of more than two years in the in-service date is necessary or desirable for a facility previously certified by the director, he shall inform the director of the desired change of date for in-service operation, accompanied by a written statement detailing the reasons for the proposed

* Rule EA 846 is a proposed alternative to rule EA 845. The Agency expresses no preference.

change. The director shall evaluate these reasons and within 45 days of receipt of said application, notify the applicant if the proposed change of in-service date is acceptable.

(c) The following changes in a facility previously certified by the director shall not require recertification:

(1) oil storage capacity additions and subtractions of less than ten (10) percent of the capacity approved by the director; and

(2) coal storage capacity additions or subtractions of less than ten (10) percent of the capacity approved by the director.

EA 891 APPLICATION IN THE ALTERNATIVE

(a) Purpose. The purposes of this rule are to expedite the certificate of need process and to promote the examination of alternatives. An applicant who applies for a certificate of need under these rules may simultaneously submit an application for a most preferred alternative.

(b) Procedure. Prior to filing the original application, the applicant who intends to apply in the alternative must notify and must receive the permission of the director. Upon approval to file in the alternative, the director shall specify the additional information which the applicant must file to enable the director to assess need.

(c) Processing. Each application in the alternative shall be processed in a manner similar to and in conjunction with the original certificate of need application.

(d) Decision of the Director. The director may grant a certificate of need for the applicant's most preferred alternative if the director denies a certificate of need for the facility proposed in the original application.

RECEIVED

MAY 26 1976

OFFICE OF HEARING EXAMINERS

Received 4:30 p.m. 5/26/76

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

for Wm Seltzer

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE MINNESOTA ENERGY AGENCY)
GOVERNING CONTENTS OF APPLICATIONS FOR)
CERTIFICATE OF NEED AND CRITERIA FOR)
ASSESSMENT OF NEED FOR LARGE OIL STOR-)
AGE FACILITIES AND LARGE COAL STORAGE)
FACILITIES FOR ENERGY USERS.)

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above captioned rules be held in the Veterans Service Building, Room D, 5th Floor, St. Paul, Minnesota on June 28, 1976 commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

John P. Millhone, Director

Date: May 26, 1976

EA Ex. 3
M.A.K. DATE 6/28/76

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE MINNESOTA ENERGY AGENCY)
GOVERNING CONTENTS OF APPLICATIONS FOR)
CERTIFICATE OF NEED AND CRITERIA FOR) NOTICE OF HEARING
ASSESSMENT OF NEED FOR LARGE OIL STOR-)
AGE FACILITIES AND LARGE COAL STORAGE)
FACILITIES FOR ENERGY USERS.)

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in Room D, 5th Floor of the Veterans Service Building, Saint Paul, Minnesota 55155 on June 28, 1976 commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to State of Minnesota, Office of Hearing Examiners, William Seltzer, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, either before the hearing or within 20 days after the close of the hearing.

The proposed rules, if adopted, would establish the contents of applications for a Certificate of Need and criteria for the assessment of need for Large Oil Storage Facilities and Large Coal Storage Facilities for energy users. After the assessment of need criteria have been promulgated, no large energy facility covered by these rules, shall be sited or constructed in Minnesota without the issuance of a Certificate of Need by the Director of the Minnesota Energy Agency. Copies of the proposed rules are now available and one free copy may be obtained by writing to the Minnesota Energy Agency, 740 American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing. The agency's authority to promulgate the proposed rules is contained in Minn. Stat. § 116H.08. A "statement of need" explaining why the agency feels the proposed rules are necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that pursuant to 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.

John P. Millhone, Director

Date: May 26, 1976

MINNESOTA ENERGY AGENCY PROPOSED RULES

GOVERNING CONTENTS OF APPLICATIONS

FOR CERTIFICATE OF NEED AND CRITERIA

FOR ASSESSMENT OF NEED FOR LARGE

OIL STORAGE FACILITIES AND

LARGE COAL STORAGE FACILITIES

FOR ENERGY USERS

Chapter 8
EA 801-891

Rule Number	Title of Rule
EA 801	Purpose of Rules
EA 802	Applicability of Rules
EA 803	Application Procedures and Timing
EA 804	Definitions
EA 805	Filing Fees and Payment Schedule
EA 811	Criteria for Assessment of Need
EA 821	Contents of Application
EA 831	General Information
EA 832	Need Summary
EA 833	Summary of Additional Considerations
EA 834	Conservation Programs
EA 841	Historical Energy Data
EA 842	Forecast Data
EA 843	Description of Proposed Facility
EA 844	Alternatives
EA 845*	Environmental Data
EA 846*	Environmental Data
EA 871	Other Data Filed with the Application
EA 881	Certificate of Need Modifications
EA 891	Application in the Alternative

* These two sections are alternatives proposed by the Agency for Environmental Data. The Agency has no preference.

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

CERTIFICATE

In the Matter of the Proposed Adoption by the Minnesota Energy Agency of Rules Governing Contents of Applications for Certificate of Need and Criteria for Assessment of Need for: (1) Liquefied Natural Gas Storage Facilities, Large Propane Storage Facilities, Underground Natural Gas Facilities, Large Gas Pipeline Facilities, and Large Coal Gasification Facilities (EA 700); (2) Large Oil Storage Facilities and Large Coal Storage Facilities - Users (EA 800); (3) Large Coal Storage Facilities - Suppliers, Large Coal Transshipment Facilities and Solid Fuel Refinery Facilities (EA 900); and (4) Large Oil Storage Facilities - Suppliers, Large Oil Pipeline Facilities, Oil Refinery Facilities, and Large Coal Liquefaction Facilities (EA 1000)

I hereby certify that the attached 482 labels & one sheet constitute the complete list of persons, associations, and other interested groups who as of 8:00 o'clock A.M., this 25th day of May, 1976, have requested pursuant to M. S. 1974, Stat. 15.0421, 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

JOAN GROWE
Secretary of State
State of Minnesota

BY Neil Drow

Ashrae Energy Conservation Comm.,Att:E.H.Bartels, 733 Marquette Ave.,Mpls.55402

Drawz, John E., 1100 First Nat'l Bk Bldg., Mpls. 55402

Miller, Alvin, %Hussmann North Central, 6100 Wayzata Blvd,Mpls. 55416

Pooler, Albert L., Minn. Gas Co., 733 Marq.Ave., Mpls.,MN. 55402

Sievert, Sandra J., Industrial Coatings, Inc., RT. 2 Box 63C Rogers,Mn. 55374

Simonson Cashway Co., Att: Glenn Lahm, 535 First St., N.E., St. Cloud 56301

Tegan, James, Brin Glass Co., 600 Washington Ave. N., Mpls. 55401

ALLENDORF MARSHALL
220 GRAIN EX 400 S 4TH
MPLS MN
55415

AMER CAMPING ASSN
3639-21/2 ST N.E.
MPLS MN
55418

ANDERSON GRAHAM
951 E HENN
MPLS MN
55414

ANDERSON HERBERT
418 8TH ST. SO.
VIRGINIA MN
55792

ANDERSON MARY
4425 RUTLEDGE AVE
EDINA MN
55436

ANDERSON STANFORD P
14600 MINNETONKA BLVD
MINNETONKA MN
55343

ARNOLD ROBERT MESPA
41 SHERBURNE
ST PAUL MN
55103

ARROWHEAD REGIONAL DEV CO
200 ARROWHEAD PLACE
DULUTH MN
55802

ASSOCIATED GEN CONTROF MN
48 E 8TH STREET
ST PAUL MN
55101

ASSOCIATED INDUST OF MPLS
NATIONAL BLDG
MPLS MN
55402

AUTOMOBILE MFRS ASSN INC
55 SHERBURNE AVE
ST PAUL MN
55103

ALBERT,AA CALDER CORP
366 JACKSON ST
ST PAUL MN
55101

AM INST PROF GEOLOGISTS
2201 PRINCETON AVE
ST PAUL MN
55105

ANCHOR BLOCK COMPANY
PO BOX 3360
ST PAUL MN
55165

ANDERSON HAROLD
BOX 3047
MANKATO MN
56001

ANDERSON JAMES
7703 NORMANDALE RD
MPLS MN
55435

ANTHONY DICK WDSM RADIO
230 E SUPR ST
DULUTH MN
55102

ANTI-TRUST DIV.ATTY GEN.
160 STATE OFF BLDG
ST PAUL MN
55155

ARVER JOHN A
2467 COHANCY
ST PAUL MN
55113

ASMUSSEN,DENNIS,MPIRG
3036 UNIV AVE SE
MPLS MN
55414

ASSN OF MINN COUNTIES
55 SHERBURNE AVE #203
ST PAUL MN
55103

ASSN RESIDENCES FOR RETARDED
459 RICE SUITE 301
ST PAUL MN
55103

BABCOCK LOCHER NELSON ET AL
118 E MAIN ST
ANOKA MN
55303

BADALICH JOHN P
2025 THOMPSON AVE
SO ST PAUL MN
55075

BATES DENNIS
446 STATE OFF BLDG
ST PAUL MN
55155

BECK PAT
953 HYACINTH AVE
ST PAUL MN
55106

BEMIDJI STATE COLLEGE
PLACEMENT BUR.J.C.BRADY
BEMIDJI MN
56601

BENSONI PETER USW OF AM.
609 PROVIDENCE BLDG.
DULUTH MN

BERGUSON & LOFGREN
MN GAS 700 LINDEN W
MPLS MN
55403

BEST FLANAGAN ET AL
4040 IDS CENTER
MPLS MN
55402

BLOOMINGTON CITY CLERK
2215 W OLD SHAKOPEE RD
BLOOMINGTON MN
55431

BOLTON MALCOLM
422 ALDRICH AVE NO
MPLS MN
55405

BRIGGS & MORGAN - B F FRIEL
2200 W 1ST NATL BK BLDG
ST PAUL MN
55101

BRIGHAM E M III
RR4
RED WING MN
55066

BROWN D M GOODRIDGE PUE SCH
IND DIST #561
GOODRIDGE MN
56725

BROWN H D
4961 KINGSBERRY LANE
MINNETONKA MN
55343

BUCHHOLTZ CHARLES
5044 BRENT AVE E
INV GRV HTS MN
55075

BURGER ALBERT
600 DEGREE OF HONOR BLD
ST PAUL MN
55101

BUSCH NOEL
3131 FERNBROOK LANE N
MPLS MN
55441

CAIRNS JOHN A
47TH FLR IDS CENTER
MPLS MN
55402

CAPITOL NEWS SERVICE
BOX 17035
ST PAUL MN
55117

CARRISON DALE K
MANKATO STATE COLLEGE
MANKATO MN
56001

CENTRAL BUSINESS DATA
BENSON RADIO ARCADE BLD
BENSON MN
56215

CHAMBERLAIN JOHN L
PO BOX 241
MPLS MN
55440

CHERCHES CHRIS CITY MGR
5005 MTKA BLVD
ST LOUIS PARK MN
55416

BARRETT FRED
ST LOUIS CO COURT HOUSE
DULUTH MN

BARTHOLOW HAROLD E FIRE C
2600 109 AVE N W
CCON RAPIDS MN
55433

BEECHER EVERETT
10 10 1ST ST SO
HOPKINS MN

BEGALKA D REV
212 N ELK ST
BELLE PLAINE MN
56011

BERGERUD ALF
300 ROANOKE BLDG
MPLS MN
55402

BERGSETH THOMAS
1011 NICOLLET MALL
MPLS MN
55403

BEUTEL ROBERT
2200 SILVER LAKE RD
NEW BRIGHTON MN
55112

BLOMQUIST BARRY L

NORTH BRANCH MN
55056

BREHL JAMES W
332 HAMM BLDG
ST PAUL MN
55102

BRICK PHILIP D
807 SELLWOOD BLDG
DULUTH MN
55802

BROEKER JOHN
2850METRO DR. SUITE 504
BLOOMINGTON MN
55420

BROOKS WILLIAM F JR
854 MIDLAND BK BLDG
MPLS MN
55401

BRUBACHER RICHARD COMM ADM
208 ADM BLDG
ST PAUL MN
55101

BRUNING C.R.DEPT.CLINIC.E
BURTON HALL
MPLS. MN
55455

BUR.ENGR.IND.DIV. MR.KIBIGER
219 N. 2ND ST.
MPLS. MN

BUR NATL AFFAIRS INC
1231 25TH ST NW
WASHINGTON DC
20037

CABLE COMM SYST-H SARRAZIN
BOX 777
HECTOR MN
55342

CAIN RUTH
730 E 38TH ST
MPLS MN
55407

CARLSON CARL L
7516 80TH ST S
COTTAGE GROVE MN
55016

CARLSON VERNE E
BOX 755 CITY HALL
WILLMAR MN
56201

CENTRAL MN REGIONAL DEV COMM
1139 FRANKLIN AVE
SAUK RAPIDS MN
56379

CHAMBER OF COMMERCE
30 SO 1ST AVE EAST
ELY MN
55731

CHRISTIAN SCI COMM ON PUB
1821 UNIV AVE SUITE 271
ST PAUL MN
55104

CHRISTIANSEN FREDRIK
RM 505 CAPITOL SQ BLDG
ST PAUL MN
55155

CHRYSALIS CENTER FOR WOMEN
2104 STEVENS AVE S
MPLS MN
55404

CITY CLERK
386 CITY HALL
ST PAUL MN
55102

CLARKSON J.B.
2350 I.D.S. CENTER
MINNEAPOLIS MN
55402

CLAUSEN PHILLIP
2307 STANDISH ST
ST PAUL MN
55108

COLLIN LAURENCE
RT 2
ISANTI MN
55040

COMMUNITY DESIGN CENTER
118 E 26TH ST
MPLS MN
55404

COUNTY ATTYS COUNCIL
55 SHERBURNE AVE S203
ST PAUL MN
55103

CRAVEN NORMAN
10637 THOMAS AVE S
BLOOMINGTON MN
55431

DAHLKE LOIS M
118 S EAGLE ST
BELLE PLAINE MN
56011

DANIELSON RODNEY L
416 AUDITORIUM
ST PAUL MN
55102

DAYTON CHAS SIERRA CLUB
800 MIDLAND BANK BLDG
MPLS MN
55401

DIEHL JOHN
26 KENWOOD PKWY
ST PAUL MN
55105

DISPATCH PIONEER PRESS
PRESS RM STATE CAPITOL
ST PAUL MN
55101

DOW CHEMICAL
47 BLDG
MIDLAND MI
48640

DOYTON MAURICE, MET SEWER BD
350 METRO SQ BLDG
ST PAUL MN
55101

DZUGAN KEN ST PAUL PLANNING
421 WABASHA ST
ST PAUL MN
55102

ELDRED R W ARMOUR & CO
UNION STOCK YARDS
SO ST PAUL MN
55075

ELMER EDWIN W
2901 PLEASANT AVE
MPLS MN
55408

ENNIS A F BOISE CASCADE
PO BOX 713
INTL FALLS MN
56649

ENV SERV-GEN RESOURCE CORP
6340 INDUSTRIAL DR
HOPKINS MN
55343

ESSE KENNETH
4801 W 50TH ST
EDINA MN
55424

ETHICS COMM
RM 410 STATE OFF BLDG
ST PAUL MN
55155

CITIZENS LEAGUE
530 SYNDICATE BLDG
MPLS MN
55402

CITY OF ROBBINSDALE
C LARSON 4221 LAKE RD
ROBBINSDALE MN
55422

CLAWSON CONNIE
HELP CT 317-17TH AV SE
MPLS MN

COLEMAN NICHOLAS D
700 LINWOOD AVE
ST PAUL MN
55105

CONCORDIA COLLEGE
DEAN
MOORHEAD MN
56560

CONSUMER SERVICES DEPT CO
5TH FLR METRO SQ BLDG
ST PAUL MN
55101

CROW WING CO PLANNING & ADV
COURT HOUSE
BRAINERD MN
56401

CUSHMAN J S DAYTON HUDSON
700 NICOLLET MALL
MPLS MN
55402

DAILEY THOMAS ECONOMICS LAB
370 WABASHA ST
ST PAUL MN
55102

DANKERS,KENNETH
1200 WEST FOURTH STREET
RED WING MN
55066

DEVELOP DISABILITIES PROGRAM
STATE PLAN 101 CAP SQ
ST PAUL MN
55155

DICKINSON MRS JOANNE
BOX 1065
MARSHALL MN
56258

DORSEY MARQUART
2400 1ST NATL BANK BLDG
MPLS MN
55402

DOUGLAS BELL ET AL
2212 AM. NATL BK BLDG
ST PAUL MN
55102

DUDLEY E H
RT 7 BOX 122
EXCELSIOR MN
55331

DUNN OLIVER PLUMBERS LOC
708 SO 10TH ST
MPLS MN
55404

EBELING EDWARD H.
161 W. MAIN
PERHAM MN
56573

ELDER DR JAMES B
11140 WASHBURN AVE SO
BLOOMINGTON MN
55431

EMERICK RICHARD A
1908 IDS CENTER
MPLS MN
55402

ENGELBRECHT DOUGLAS
809 RANGE ST
NO MANKATO MN
56001

ERDMAN ROGER TENNANT CO
701 N LILAC DR
MPLS MN
55441

ERNEST K LEHMANN & ASSOC.
1409 WILLOW ST.
MPLS MN
55403

EVANS CHAS.L. PRENTICE-HALL
ENGELWOOD CLIFFS
NEW JERSEY

EVERETT JERRY NW PETRO AS
512 NICOLLET MALL RM917
MPLS MN
55402

EWALD DOUGLAS MINN HOSP ASSN
2333 UNIV AVE SE
MPLS MN
55414

EWING MRS WM
42 ASTAR RD
BABBITT MN
55706

FARMERS ELEVATOR ASSN
852 GRAIN EXCH BLDG
MPLS MN
55415

FARRELL FRANK BUR NOR
RM 1180 176 E 5TH ST
ST PAUL MN
55101

FINLEY JAMES F
520 MINN BLDG
ST PAUL MN
55101

FINNEGAN J.R.
55 E. 4TH
ST. PAUL MN
55101

FLEMING FREDERICK A
1860 HIGHLAND PARKWAY
ST PAUL MN
55116

FLADLAND CLINT MN L&P BUR
795 RAYMOND AVE
ST PAUL MN
55114

FOX W.E. LINDQUIST & VENNUM
4200 IDSCTR 80 S.8TH ST
MINNEAPOLIS MN
55402

FRANKLIN ROBERT B MPLS TRIB
426 PORTLAND
MPLS MN
55415

F W WOOLWORTH CO
3316 W 66TH ST
EDINA MN
55424

GEBERT K L
220 GRAIN EXCH
MPLS MN
55415

GEO A HORMEL & CO LAW DEPT
PO BOX 800
AUSTIN MN
55912

GLEN. HILLS HOSP.R.VAN HAUER
3901 GOLDEN VALLEY RD.
MPLS. MN
55422

GODIN RALPH J
3824 47TH AVE SO
MPLS MN
55406

GRANATH MARVIN -HONEYWELL
2701 4TH AVE SO
MPLS MN
55408

GREATER MET AREA HOSPITALITY
5152 CEDAR AVE S
MPLS MN
55417

GREEN JANET
9773 N SHORE DR
DULUTH MN
55804

GRUMMERT REV DONALD
1435 ADAMS ST
MPLS MN
55413

H B FULLER CO
2400 KASOTA AVE
ST PAUL MN
55108

HAROLD J WESTIN CONSTRUCTORS
45 E 8TH ST
ST PAUL MN
55101

FAEGRE & BENSON ATTN LIBR
1300 NW BANK BLDG
MPLS MN
55402

FELHABER R S
W 1ST NATL BANK BLDG
ST PAUL MN
55101

FILTER LOREN
BOX 36
BRITT MN
55701

FITZGERALD DR BOB
3007 LYNDALE AVE SO
MPLS MN
55408

FLADLAND CLINTON MN L&P B
796 RAYMOND AVE
ST PAUL MN
55114

FORBES GORDON MINN RRS ASSN
203 HANOVER 480 CEDAR
ST PAUL MN
55101

FORSBERG AGR SERV
518 SUMMIT AVE
NEW ULM MN
56073

FREDIN CONRAD M
811 FIRST NATL BK BLDG
DULUTH MN
55802

FREDRIKSON BYRON ET AL
47TH FLR IDS CENTER M
PLS MN
55402

GALVIN M J JR
W2162 1ST NATL BK BLDG
ST PAUL MN
55101

GARDNER HDW - R A JOHNSON
515 WASHINGTON AVE N
MPLS MN
55401

GIEL DAVID
RM B-28 STATE CAPITOL
ST PAUL MN
55155

GLEESON MICHAEL
909 SOC SC BLDG U OF M
MPLS MN
55455

GOODMAN DF TEL CABLE TV
302 E SUPERIOR
DULUTH MN
55802

GRAHAM THOS H
854 MIDLAND BK BLDG
MPLS MN
55401

GREEN DEL CITY MGR
BLOOMINGTON CITY HALL
BLOOMINGTON MN
55431

GREEN GARY J
41 SHERBURNE AVE
ST PAUL MN
55102

GUSTAFSON DAN-LABOR TEMPLE
312 CENTRAL
MPLS MN
55414

GUSTAFSON WALLACE
BOX 567
WILLMAR MN
56201

HANFT PHILIP M
1200 ALWORTH BLDG
DULUTH MN
55802

HANSON ETHEL
2813 85TH AVE N
MPLS MN
55444

HALLBERG LEE & MCCABE
4927 34TH AVE S
MPLS MN
55417

HAUN DR J W GEN MILLS
PO BOX 1113
MPLS MN
55440

HAYES,THOMAS W
700 SELLWOOD BLG
DULUTH MN
55812

HEALTH MANPOWER C LARSON
717 DELAWARE ST SE
MPLS MN
55440

HARTFELDT WILL
434 HAMM BLDG
ST PAUL MN
55102

HAVEN ROBT TWIN TN TREATMENT
1706 UNIV AVE
ST PAUL MN
55104

HEARING EX.OFF. M GREENBERG
1745 UNIV AVE
ST PAUL MN
55104

HEIM PAUL
1320 SOO LINE BLDG
MPLS MN
55402

HENDRICKSON A WM
100 FREEMAN DRIVE
ST PETER MN
56082

HOLDAHL SCOTT
380 N BLDG GRAIN EXCH
MPLS MN
55415

HOLEY GEO . AERONAUTICS
DOWNTOWN AIRPORT
ST PAUL MN
55107

HORNER WALDORF - KAZIUKEWICZ
PO BOX 3203
ST PAUL MN
55165

HOULE MELVIN
881 W HWY 96
SHOREVIEW MN
55112

HOUSE RESEARCH
RM 17 STATE CAPITOL
ST PAUL MN
55155

HULSTRAND ANDERSON & LARSON
PO BOX 130
WILLMAR MN
56201

HUMAN SERVICES
414 LAFFAYETTE RD 5THFL
ST PAUL MN
55101

HUSEBYE, CRAIG J.
5036 FRANCE S.
EDINA MN
55410

HYDROLOGIST
CHIPPEWA NATL FOREST
CASS LAKE MN
56633

HYLAND DEAN
1501 W 50TH ST
MPLS MN
55419

INGEBRIGTSEN DR K H
23 SE 4TH ST
MPLS MN
55414

INGVALSON VERN MN.FARM BUR.
3110 WOODDALE DR PO 337
CST PAUL MN
55165

IUCE LOC 49 CHAS SWENSON
2580 UNIV AVE
ST PAUL MN
55101

IVERSON DR JOS DEPT ED
ST OLAF COLLEGE
NORTHFIELD MN
55057

JACKMAN DONALD G
4023 E LAKE ST
MPLS MN
55406

JAIN NIRMAL ENIV PROCESS
1220 GLENWOOD AVE
MPLS MN
55405

HENTHORN GARY WOODSTOCK
7365 LANDAU DR
BLOOMINGTON MN
55438

HART PATRICK V
112 E LIBERTY BOX 3271
MANKATO MN
56001

HEAD & TRUHN
1007 SOO LINE BLDG
MPLS MN
55402

HEANEY BILL
30 W SUPERIOR ST
DULUTH MN
55802

HEINTZ MARY ELLEN
PO BOX 595
CINCINNATI OH
45201

HEISENFELT WM
BOX 516
BEMIDJI MN
56601

HILL JIM ASSOC.MILK PROD.
7850 METRO PARKWAY
MINNEAPOLIS MN
55420

HINRICHSEN PATRICK
MANKATO FREE PRESS
MANKATO MN
56001

HOLMES EUSTIS ET AL
4610 IDS CENTER
MPLS MN
55402

HOPKINS WM.B. DIR.MISCCA
3915 GOLDEN VALLEY ROAD
GOLDEN VALLEY MN
55422

HOUSE APPROPRIATIONS COMM
RM 109 STATE CAPITOL
ST PAUL MN
55101

HOUSE ED STANDING SUB COM
RM 109 STATE CAPITOL
ST PAUL MN
55101

HULTMAN WARREN R
C/O BARBAROSSA R3
OSSEO MN
55369

HUMAN RIGHTS
200 CAPITOL SQ BLDG
ST PAUL MN
55101

HUNT JAMES P JR
11473 GALTIER DR
BURNSVILLE MN
55378

HUTCHISON R.M. ANOKA CO.C
COURT HOUSE
ANOKA MN
55303

ILLINGWORTH ROBERT C
6750 FRANCE AVE S RM290
MPLS MN

INS FED OF MINN
902 SOO LINE BLDG
MPLS MN
55402

INTERSTATE POWER RW STEEL
1000 MAIN ST
DUBUQUE IA
52001

IZAAK WALTON MN DIV
111 E FRANKLIN RM-210
MPLS MN
55404

JENGS INC
525 LAKE AVE SO
DULUTH MN
55801

JENSEN ARTHUR,CITY CLK
2215 W OLD SHAKOPEE RD
BLOOMINGTON MN
55431

JENSEN CARL A
127 E MAIN ST
SLEEPY EYE MN
56085

JENSEN MRS GAYNOLD
111 WEST 107TH ST
MPLS MN
55420

JOHNSON CLARENCE IBEW LU 292
3615 37TH AVE S
MPLS MN
55406

JOHNSON LEROY
9939 BLUEBIRD ST NW
COON RAPIDS MN
55433

KABLE RICHARD W

BETHEL MN
55006

KEENAN RICHARD J
4444 IDS BLDG
MPLS MN
55402

KEILY DANILE
3549 V2 PLEASANT AVE
MPLS MN
55408

KLOSTER MARION PEAVEY CO
730 2ND AVE S
MPLS MN
55402

KLUZ STEVEN J
1910 1ST NATL BK BLDG
MPLS MN
55402

KNUTSON DR KEITH,BIOLOGY DPT
ST CLOUD STATE
ST CLOUD MN
56301

KNUTSON R N GRANNIS ETAL
F J SCHULT BLDG
ST ST PAUL MN
55075

KOPP MRS VERNON
2050 65TH ST E
INVER GR HGHT MN
55075

KRAMER ERNEST W
717 DELAWARE ST SE
MPLS MN
55440

KROON H CLIFTON
210 E WALNUT
MANKATO MN
56001

KUHL CARL
4421 4TH ST NE
COL HEIGHTS MN
55421

LABELLE JUANITA MRS
5816 AQUILA AVE NO
NEW HOPE MN
55428

LAKE SUPERIOR INDUSTRIAL BUR
828 FIRST AM. BK. BLDG.
DULUTH MN
55802

LANSING & OAKES
400 SIBLEY ST
ST PAUL MN
55101

LAPP LAZAR LAURIE ET AL
1200 BUILDERS EXCHANGE
MINNEAPOLIS MN
55402

LEAGUE MN MUNIC
300 HANOVER 480 CEDAR
ST PAUL MN
55101

LEAGUE WOMEN VOTERS OF MINN
555 WABASHA
ST PAUL MN
55102

LINDALL & JONATHAN DEVELOP.
VILLAGE ONE CENTER
CHASKA MN
55318

LOCKNER GARY
R R 1 BOX 23
BAUDETTE MN
56623

JOHANSEN BUS SERV INC
19 DAYTON RD
CHAMPLIN MN
55316

JOHNSON & SANDERSON
ST MARYS HOSPITAL
ROCHESTER MN
55901

JOHNSON M.D. FRUNDT & FRUNDT

BLUE EARTH MN
56013

JOHNSON LANCE J
265 S LAFAYETTE RD
ST PAUL MN
55107

KAVANEY RICHARD
1220 NORTHERN FED BLDG
ST PAUL MN
55102

KEABLE MIKE
909 6TH AVE N
ST CLOUD MN
56301

KIMBALL ROBERT
647 CAPITOL SQ BLDG
ST PAUL MN
55101

KJERVIK DIANE
4302 POWEL HALL U OF M
MPLS MN

KNAPP J A
RM 3 CAPITOL
ST PAUL MN
5515

KNOPP TIMOTHY
COLLEGE FORESTRY U OF M
ST PAUL MN
55108

KNUDSON ROBT
4375 BROWNDALE AVE
MPLS MN
55424

KOLLER MR & MRS ERWIN A
1568 DULUTH ST
ST PAUL MN
55108

KROEGER CHARLES
122 NW 7TH STREET
FARIBAULT MN
55021

KRONLOKKEN J E
10048 NORD RD
BLOOMINGTON MN
55437

KVB ENGINEERING INC
600 S CO RD 18
MPLS MN
55426

LANAHAN E F - SIBLEY CO
184 E 6TH ST
ST PAUL MN
55101

LANGVIN DAVID
7500 80TH ST S
COTTAGE GROVE MN
55016

LARSON C L
3800 MINNEHAHA AVE SO
MPLS MN
55406

LARSON HANS P DIV HOSP SE
717 DELAWARE ST SE
MPLS MN
55440

LEG.REF.LIB-Z. DEWITT
RM 111 STATE CAPITOL
ST PAUL MN
55155

LIBBEY LEONARD
BOX 17011 NOKOMIS STA
MPLS MN
55417

LOOS CALVIN J
6809 LYNDALE AVE SO
MPLS MN
55423

LOWE DOUG
2701 N LEXINGTON AVE
ROSEVILLE MN
55113

LYNCH DONALD SIBLEY CO
184 E 6TH ST
ST PAUL MN
55102

MCFADDEN G F DISPATCH-PRESS
55 E 4TH ST
ST PAUL MN
55101

MALONE E I COMM LABOR & INDU
444 LAFAYETTE RD 5TH FL
ST PAUL MN
55101

MARRINAN MARGARET M
1117 COMMERCE BLDG
ST PAUL MN
55101

MECCA
867 GRAND AVE
ST PAUL MN
55105

METROPOLITAN COUNCIL LIBRARY
300 METRO SQUARE
ST PAUL MN
55105

MILLER TOM
2311 PILLSBURY AVE S
MPLS MN
55404

MPLS STAR PRESS ROOM
STATE CAPITOL
ST PAUL MN
55101

MINN APT ASSN
GRIGGS-MIDWAY BLDG
ST PAUL MN
55104

MN SOC SERV ASS J HOOD
614 PORTLAND
ST PAUL MN
55102

MINN ASSN ELEC COOPERATIVES
4901 W 77TH ST
MPLS MN
55435

MINN COMM FOR HANDICAPPED
METRO SQ 492 7TH & ROBT
ST PAUL MN
55101

MCKIBBON MRS SHIRLEY
11 EVERGREEN LN
BABBITT MN
55706

MANKATO STAT STUDENT SENATE
CENTENNIAL STUDENT UN
MANKATO MN
56001

MASTOR & MATTSON LTD
315 PEAVEY BLDG
MPLS MN
55402

MEIEROTTO, JOAN
1794 SC LEXINGTON
ST PAUL MN
55118

MEYER HERBERT
10824 ZENITH AVE S
BLOOMINGTON MN
55431

MINN RETAIL FED INS
131 METRO SP
ST PAUL MN
55101

MPLS TRIBUNE CITY DESK
425 PORTLAND AVE
MPLS MN
55415

MN. ASN.C&IND H.D.PETERSON
480 CEDAR ST.
ST.PAUL MN
55101

MN STATE SER BLIND-K NATARDY
1745 UNIVERSITY AVE
ST PAUL MN
55104

MINN. ASSN. PET RETAILERS
1115 2ND AVE. SO.
MINNEAPOLIS MN
55403

MINN COMMUNITY DEVELOP SERV
512 ROSSMOR BLDG
ST PAUL MN
55101

MANSFIELD LARRY
HCARC 22 27TH AVE SE
MPLS MN
55414

MCDONALD PHILIP M
2077 SELBY AVE
ST PAUL MN
55104

MCLELLAN LARKIN
215 ADM BLDG ST CAPITOL
ST PAUL MN
55101

MANKATO STATE STUDENT ASSN
BOX 58 MANKATO COLLEGE
MANKATO MN
56001

MANTHEY T J PICKANDS MATH
1100 SUPERIOR AVE
CLEVELAND OH
44114

MAUL WARREN E
320 S 4TH ST
MPLS MN
55415

MAYO FOUNDATION G ORWOLL
200 FIRST AVE NW
ROCHESTER MN
55901

MERRITT GRANT POLLUTION CONT
1935 W CO RD 32
ROSEVILLE MN
55113

MET TFR MEN ASSN A ROSENT
1821 UNIV AVE
ST PAUL MN
55104

MIDLAND GLASS- HD SPURLING
PO BOX 69
SHAKOPEE MN
55379

MILLER RICHARD A
1020 PLYMOUTH BLDG
MPLS MN
55402

MPLS CHAMBER COMM TRANSP DPT
15 S 5TH ST
MPLS MN
55402

MPLS CITY ATTORNEY
325M CITY HALL
MPLS MN
55415

MIDLAND GLASS-HD SPURLING
PO BOX 69
SHAKOPEE MN
55379

MILLER PAUL J PHARMACY SE
ST MARYS HOSP
ROCHESTER MN
55901

MN AFL-CIO L.O. LASHOMB
175 AURORA
ST PAUL MN
55103

MN.BD OF NURSING
717 DELAWARE ST SE
MPLS MN
55414

MINN ASPHALT PAVEMENT ASSN
555 WABASHA RM 209
ST PAUL MN
55102

MINN ASSN COOPERATIVES
55 SHERBURNE AVE
ST PAUL MN
55103

MINN ASSN WATERSHED DIST'S

ADA MN
56510

MINN AUTOMOBILE DEALERS A
GRIGGS MIDWAY BLDG
ST PAUL MN
55104

MINN COUNCIL STATE EMP NO 6
475 RICE ST
ST PAUL MN
55103

MINN DEPT HEALTH J C MCKA
717 DELAWARE S E
MPLS MN
55440

MINN ENV LAW INST INC
PO BOX 15076 COMM STA
MPLS MN
55415

MINN HEREFORD-LJ SCHAFER

BUFFALO LAKE MN
55314

MINNo HOTEL & MTRo ASSN
2001 UNIVERSITY AVE
ST PAUL MN

MINN LAND USE COMMITTEE
4344 IDS CENTER
MPLS MN
55402

MINN LP GAS ASSN
7515 WAYZATA BLVD 106
MPLS MN
55426

MINN PETROLEUM COUNCIL
1020 NORTHERN FED BLDG
ST PAUL MN
55102

MINN POULTRY & HATCHERY ASSN
BOX 158
MADELIA MN
56062

MINN RETAIL HARDWARE ASSN
3033 EXCELSIOR BLVD 313
MPLS MN
55416

MINN SOCIETY ARCHITECTS AIA
NW NATL BK BLDG
ST PAUL MN
55101

MINN STATE BD PHARMACY
717 DELAWARE ST SE #351
MPLS MN
55414

MINN STATE CAPITOL EMP UNION
PO BOX 3215
ST PAUL MN
55165

MINN TEAMSTERS CREDIT UNION
2021 HENN AVE E
MPLS MN
55413

MINN TBR PRODUCERS ASSN
200 CHRISTIE BLDG
DULUTH MN
55802

MINN WATER RESOURCES BD
RM 206 555 WABASHA ST
ST PAUL MN
55102

MINN-WISC BOUNDARY AREA COMM
600 2ND ST
HUDSON WI
54016

MOFFITT R C
RM 301 M MPLS CITYHALL
MPLS MN
55415

MOOD R BLOOMINGTON HLTH DEPT
10200 PENN SO
BLOOMINGTON MN
55431

MURPHY DIANA E
4200 IDS-LINDQUIST VENN
MPLS MN
55402

NATL COUNCIL JEWISH WOMEN
4330 CEDAR LK RD
MPLS MN
55416

NATL FAMILY INS CO
2147 UNIV AVE
ST PAUL MN
55114

NEDELL HAROLD - MEINEKE
6300 W LOOP S SUITE 200
BELLAIRE TX
77401

NEREN MADONNA
376 NEAL AVE S
AFTON MN
55001

MINN FARMERS UNION PRES OFF
1275 UNIV AVE
ST PAUL MN
55104

MINN FOOD RETAILERS ASSN
555 WABASHA
ST PAUL MN
55101

MINN HOUSING INST N T CARTER
7801 METRO PKWY
MPLS MN
55420

MINN HWYS MANAGEMENT SERV
407 HWY BLDG
ST PAUL MN
55101

MINNE MINE CREDIT UNION
3000 HUDSON PK S 100
ST PAUL MN
55119

MINN.MTR.TRANSP. .J.N.D
1821 UNIV.
ST.PAUL MN
55104

MN REP STATE CENTRAL COMM
555 WABASHA AVE
ST PAUL MN
55102

MINN RESTAURANT ASSN
2001 UNIVERSITY AVE.
ST PAUL MN 55
104

MINN SOC CERTIFIED PUB ACCTS
1102 WESLEY TEMPLE BLDG
MPLS MN
55403

MINN STATE BAR ASSN
100 MINN FED BLDG
MPLS MN
55402

MINN STATE MED ASSN
375 JACKSON ST
ST PAUL MN
55101

MINN STATE RETIREMENT SYS
529 JACKSON ST
ST PAUL MN
55101

MINN.TURKEY GROWERS ASSN
2383 UNIV AVE
ST PAUL MN
55114

MINN VETERANS MED ASSN
2175 W HWY 36
ROSEVILLE MN
55113

MN ELECTRICAL ASSN
3100 HUMBOLT SO
MPLS MN
55408

MN PUB INT RESEARCH GROUP
3036 UNIV AVE SE
MPLS MN
55414

MORTON BUILDINGS INC
R #1
FOLEY MN
56329

MPIRG
BOX 45 ST MARYS COLLEGE
WINONA MN
55987

NASS GEO V HENN CO GEN HOSP
5TH AND PORTLAND AVE
MPLS MN
55415

NATL CAR RENTAL ATT O MIT
5501 GREEN VALLEY DR
MPLS MN
55437

NAT'L SOLID WASTES-R. GRASSO
1730 RHODE ISLAND AV.NW
WASHINGTON DC
20036

NCEC INC C/O DR DAHLBERG
CONCORDIA COLLEGE
MOORHEAD MN
56560

NEUMAN RALPH W
RT 2 BOX 125
EMBARRASS MN
55732

NIELSEN STOCK & BLACKBURN
415 730 BLDG
MPLS MN

NO SUB MONTESSORI-S SADDLER
2487 HELEN COURT
NO ST PAUL MN
55109

NORTH CENTRAL ELEC ASSN
PO BOX 202
BATTLE LAKE MN
56515

NUTTER JULIA
743 W MONTANA
ST PAUL MN
55117

NW BELL TEL CO LEGAL DEPT
224 S 5TH ST RM 2000
MPLS MN
55402

OFFICE OF THE GOVERNOR
130 STATE CAPITOL
ST PAUL MN
55101

OLD COLONY GAS & OIL COMPANY
17TH AVE N AT 2ND ST
MPLS MN
55411

OTTER TAIL POWER CO.
215 So CASCADE STo
FERGUS FALLS MN
56537

PAYNE WM B
2400 FIRST NATL BK BLDG
MPLS MN
55402

PETERSON JOHN W
510 NW BK BLDG
ST PAUL MN
55101

PHAR MFGRS ASSN WM C PATTON
1155 15TH ST NW
WASHINGTON DC DC
20005

PHILLIPS LEGISLATIVE SERVICE
459 RICE ST
ST PAUL MN
55103

PORTER LYLE O

TRACY MN
56175

PORT AUTH CITY OF ST PAUL
330 MINNESOTA BLDG
ST PAUL MN
55101

POYZER ROBT
BOX 675
FERGUS FALLS MN
56357

PRAUSE JOS.C.
2220 105TH AVE.N.W.
COON RAPIDS MN
55433

RAMSEY CO MEDICAL SOCIETY
1500 LOWRY MEDICAL BLDG
ST PAUL MN
55102

RAUENHORST CORP-C ANDERSON
7900 XERXES S. S-2200
MPLS MN
55431

RED OWL STORES INC
215 E EXCELSIOR AVE
HOPKINS MN
55343

REID DAVID H
5633 WASHBURN AVE S
MPLS MN
55410

RENQUIST ARTHUR NSP CO
414 NICOLLET MALL
MPLS MN
55401

RICHARDSON THOS
7851 METRO PKWY S 103
MPLS MN
55420

NW COUNTRY ELEVATOR ASSN
802 GRAIN EXCH BLDG
MPLS MN
55415

NURSING HOME ADMRS BD EXA
RM 340 717 DELAWARE SE
MPLS MN
55414

NYQUIST DEAN A
3707 53RD PL N
BROOKLYN CTR MN
55429

O'BRIEN J.DENNIS
1100 1ST NATL.BANK BLDG
MINNEAPOLIS MN
55402

OLOFSON ARTHUR MBO & MAINC
927 SOO LINE BLDG
MPLS MN
55402

OSTRUM DONALD E
PO BOX 33163
COON RAPIDS MN
55433

PATTISON ORVIS
BOX 645
WILLMAR MN
56201

PAYNE COL ALVIN

DEGRAFF MN
56233

PETERSON GARY
854 MIDLAND BK BLDG
MPLS MN
55401

PFEIFER AND SHULTZ, INC
1433 UTICA AVE S
MPLS MN
55416

PINNETTI NICK M HALEY & ASS.
40 CENTRAL PARK S
NEW YORK NY
10019

POPOVICH PETER S
314 MINN BLDG
ST PAUL MN
55101

PORTER DAVID
3212 LONGFELLOW AVE S
MPLS MN
55407

POSS DONALD G
6301 SHINGLE CREEK PKWY
BROOKLYN CTR MN
55430

PROCTOR&GAMBLE L THEOHAROUS
IVORYDALE TECH CENTER
CINCINNATI OH
45217

PULSCHER RBT SPRINGSTED I
813 OSBORN BLDG
ST PAUL MN
55102

RADMAN RICHARD-LABOR TEMPLE
418 AUDITORIUM
ST PAUL MN
55102

RANALLO CLARENCE
800 CENTRAL AVE N E
MPLS MN
55413

REAGAN MICHAEL
% MINN LEARNING CTR
BRAINERD MN
56401

REARDON MRS HELEN
1125 S E 6TH ST
WILLMAR MN
56201

REINO O LAINE 3M COMPANY
3M CENTER
ST PAUL MN
55101

RENNER R.H. ST PAUL AREA
300 OSBORN BLDG.
ST PAUL MN
55102

RICHARDS MONTGOMERY ET AL
1430 RAND TOWER
MPLS MN
55402

RIEKE DAVID R
P O BX 509
THIEF RIV FLS MN
56701

RCE DAVID
175 AURORA
ST PAUL MN
55103

ROSS ROY J
CLK TREAS
LITCHFIELD MN
55355

SANFORD S M
7000 PORTLAND AVE
RICHFIELD MN
55423

ST PAUL BUS HLTH DR P COX
555 CEDAR ST
ST PAUL MN
55101

SCHMIDT D R MN ASSN REALTORS
6101 WAYZATA BLVD
MPLS MN
55416

SCHUTZ LINDA
RM 328 CAPITOL BLDG
ST PAUL MN
55155

SCHNEIDER & NEESER
706 1ST ST SC PO BX 876
WILLMAR MN
56201

SENATE FINANCE COMMITTEE
113 STATE CAPITOL
ST PAUL MN
55101

SHAW ROBERT M
616 MOBIL OIL BLDG
MPLS MN
55402

SMERIKA WM.
BOISE CASCADE PAPERS
INTL FALLS MN
56649

SODERBERG HAROLD J
1500 MIDWEST PLAZA BLDG
MPLS MN
55402

STATE BD VETERINARY EXAMINER
C/O DR A C SPANNAUS DVM
WACONIA MN

FOBBIE JOSEPH
904 CARGILL BLDG NO CTR
MPLS MN
55402

FUDY FLOYD
118 AVE C
CLOQUET MN
55720

SATHRE, HARVEY
375 MARION STREET
ST PAUL MN
55103

ST PAUL FOOD RETAILERS ASSN
1220 ARCADE
ST PAUL MN
55106

SCHMIDT H W TCHRS RETIREMENT
302 CAPITOL SQ BLDG
ST PAUL MN
55101

SCHWARTAU NEAL METH HOSP
201 W CENTER ST
ROCHESTER MN
55901

SCHROEDER ALFRED H
2172 CARROLL AVE
ST PAUL MN
55104

SENATE GOV OP COMM
RM 303 STATE CAPITOL
ST PAUL MN
55155

SHELL OIL CO. W.A. ROQUET
ONE SHELL PLAZA BX 2463
HOUSTON TX
77001

SMITH MICHAEL
1423 NEWTON AVE N
MPLS MN
55411

SODERMAN ANTHONY
152 S PLAZA BLDG
MPLS MN
55416

STATE&FED ASSOC
1101 15TH ST NW_S.309
WASHINGTON DC
20005

ROBERTS DAVID E
1260 NW NATL BK BLDG
ST PAUL MN
55101

ROSS ALFRED
6356 WARE RD
LINO LAKES MN
55014

SAN SIMEON DEVELOP CORP
OLD 1ST STATE BK BLDG
PAYNESVILLE MN

SAX DOVE & STENSON
310 ENDICOTT BLDG
ST PAUL MN
55101

ST PAUL ASSN PLBG HTG MEC
614 AM NATL BK
ST PAUL MN

SCARBOROUGH WILLIAM
DIV.ED. U.M.
MORRIS MN
56267

SCHLICHT REV ROBT
611 W MAIN ST
BELLE PLAINE MN
56011

SCHMIDT LARRY WCCO-TV NEWS
50 S 9TH ST
MPLS MN
55402

SCHNEIDER MAHLON,
GREEN GIANT
LESUEUR MN
56058

SCHWERMAN EARL JR
1535 8TH AVE SE
ROCHESTER MN
55901

SCHWINN ROBT.P.
1400 SOO LINE BLDG.
MPLS. MN
55402

SELECTVISION INC FR VALENTIN
245 PARK AVE
NEW YORK NY
10017

SENATE COUN OFF ROOM 24
STATE CAPITOL
ST PAUL MN
55101

SHABATURA EUGENE H
2833 LAKE AVE SO
DULUTH MN
55811

SHARP BOB
4125 HIGHWOOD RD
ST LOUIS PK MN
55416

SITE ENGINEERS INC
900 REDWELL LANE
APPLE VALLEY MN
55124

SLOCUM CHARLES A
1203 IDS TOWER
MPLS MN
55402

SNELL LYN
BOX 314
EDEN VALLEY MN
55329

SNYDER ROBERT W
248 CO B U OF M
ST PAUL MN
55101

STANSFIELD ARLENE LAND OLKS
PO BOX 116
MPLS MN
55440

STATE BD.BARBER EXAMINERS
555 WABASHA
ST PAUL MN
55102

STATE & FED ASSOCIATES
1101 15TH ST NW S 309
WASHINGTON DC
20005

STATE REGISTER,MORROW So.
203,95 SHERBURNE
ST PAUL MN
55103

STD AM LIFE & ANNUI[redacted] CO
3801 W 50TH ST
MPLS MN
55410

SULLIVAN J KIRK
PO BOX 2[illegible]
BOISE ID
83701

SWANSON DALE
P O BOX 359
FOREST LAKE MN
55025

TIMESAVERS INC ATT R S VOLD
5270 HANSON COURT
MPLS MN
55422

UNION STOCK YARDS
ATTN PRES
SO ST PAUL MN
55075

VAN DRAKE STEPHEN R
BOX 353
PELICAN RAPID MN
56572

VILLAGE OF WOODBURY
2100 RADIO DRIVE
WOODBURY MN
55042

WATERS, DONNA M.
110506 WINDMILL COURT
CHASKA MN
55318

WHITING RALPH
555 WABASHA SUITE 204
ST PAUL MN
55102

WILEY ENTERPRISES
101 5TH AVE SE
OSSEO MN
55369

WOLKERSTORFER THEODORE
676 17TH AVE NW
NEW BRIGHTON MN
55112

STEELWORKER[redacted] CREDIT UNION
BOX 250
BABBITT MN
55706

SUMMIT NATL BANK D L MORRILL
205 AURORA AVE
ST PAUL MN
55103

SWANSON GERALD F
212 CITY HALL
ROCHESTER MN
55901

TATE VERN 3M CO
3M CENTER 220/6W
ST PAUL MN
55101

TOUCHE ROSS & CO K H STOCKE
780 NORTHSTAR CNTR
MPLS MN
55402

VAN EVERA MUNDT ET AL
700 TORREY BLDG
DULUTH MN
55802

VOLDNESS PERRY
IDS 8TH & MARQUETTE
MPLS MN
55402

WALD JEAN
5746 SANDER DR
MPLS MN
55417

WELK G V NORTHERN STATES
414 NICOLLET MALL
MPLS MN
55401

WHITLOCK A G
ECON LAB OSBORN BLDG
ST PAUL MN
55102

WILLIAMS THOS W
4915 W 35TH ST
MPLS MN
55416

WOZNIAK D D
401 FIRST FED BLDG
ST PAUL MN
55101

YOUNG TODD P
555 WABASHA STE 215

STOLPESTAD BROWN & SMITH
1550 NW BK BLDG
ST PAUL MN
55101

STUPKA & MOREM
MIDTOWN BLDG
AUSTIN MN
55912

SUSSEL CO.ATTN:TED SCHWENKER
1850 COMO AVE.
ST PAUL MN
55108

SWANSON BURT E
W-2162 1ST NATL BK BLDG
ST PAUL MN
55101

SWANSON MORTIMER C
5824 FRANCE AVE S
EDINA MN
55410

SWEITZER R L HONEYWELL IN
2701 4TH AVE S
MPLS MN
55408

THOMPSON CONRAD
1107 23RD ST NW
ROCHESTER MN
55901

THOMPSON HESSIAN ET AL
1500 MIDWEST PLAZA BLDG
MPLS MN
55402

TWIN CITY RETAIL DRUGGIST AS
2388 UNIV AVE
ST PAUL MN
55104

VANDERVOORT T J MET WASTE
350 METRO SQUARE BLDG
ST PAUL MN
55101

VAN CLEVE JOHN H
2101 HENN AVE
MPLS MN
55405

VERRILL JOHN E
DEPT SECONDARY ED UOF M
DULUTH MN
55812

VIITALA, W.C. HONEYWELL
HONEYWELL PLAZA
MPLS MN
55408

VOSS REV GORDON O
11120 NE 7TH ST
BLAINE MN
55434

VOS LEROY
2137 BURNS AVE
ST PAUL MN
55119

WALTERS THOS H
4510 W 77TH ST STE 235
MPLS MN
55435

WANQUIST ALLEN
RM 252 FEDERAL BLDG
ST PAUL MN
55101

WELLINGTON R R SKELLY OIL
PO BOX 1650
TULSA OK
75102

WESTIN CHAS W
220 MEDICAL ARTS BLDG
DULUTH MN
55802

WILCOX J PATRICK
1220 NORTHERN FED BLDG
ST PAUL MN
55102

WM.MITCHEL COLLEGE LAW LI
2100 SUMMIT AVE.
ST.PAUL MN
55105

WILSON R GARY PPG INDUSTR
1 GATEWAY CENTER
PITTSBURGH PA
15222

WIS FEEDER PIG MARKET CO-

FRANCIS CREEK WI

WYANT CLINTON W ATTY

ATKIN MN
56431

STATE OF MINNESOTA)
) SS
COUNTY OF RAMSEY)

RECEIVED
JUN 3 1976
OFFICE OF HEARING EXAMINERS
5:00 P.M

In the Matter of the Proposed Adoption by the Minnesota Energy Agency of Rules Governing Contents of Applications for Certificate of Need and Criteria for Assessment of Need for: (1) Liquefied Natural Gas Storage Facilities, Large Propane Storage Facilities, Underground Natural Gas Facilities, Large Gas Pipeline Facilities, and Large Coal Gasification Facilities (EA 700); (2) Large Oil Storage Facilities and Large Coal Storage Facilities - Users (EA 800); (3) Large Coal Storage Facilities - Suppliers, Large Coal Transshipment Facilities and Solid Fuel Refinery Facilities (EA 900); and (4) Large Oil Storage Facilities - Suppliers, Large Oil Pipeline Facilities, Oil Refinery Facilities, and Large Coal Liquefaction Facilities (EA 1000)

PAUL STEINBACK, being first duly sworn upon oath, deposes and says:

1. That he is an Energy Facility Analyst in the Minnesota Energy Agency for the State of Minnesota.

2. That on the 25th day of May, 1976, he went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to Minnesota Statute 15.0412.

3. That on the 25th day of May, 1976, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Paul M. Steinback

PAUL STEINBACK

Subscribed and sworn to before me

This 25th day of May, 1976.

Susan K. Riedinger

Notary Public

SUSAN K. RIEDINGER
Notary Public, Ramsey Co., Minn.
My Commission Expires
Dec. 7, 1982

In the Matter of the Proposed)
Adoption of Rules of the)
Minnesota Energy Agency)
Governing Contents of Applications)
for Certificates of Need and Criteria)
for Assessment of Need for Large Oil)
Storage Facilities and Large Coal)
Storage Facilities for Energy Users,)
EA 801 - 891.)

CLAFIRICATION OF
IDENTIFICATION OF
MAILING LIST AFFADIVITS

RECEIVED
JUN 3 1976
OFFICE OF HEARING
EXAMINERS

At the time the Secretary of State's mailing list labels were obtained, May 25, 1976, two copies of the mailing list labels were required for the mailing of the Notice of Hearing for four rules hearings. The first mailing was intended to notify its recipients of the hearings for the EA 800 series of rules, the EA 1000 series of rules and the EA 900 series of rules. The second mailing, soon thereafter, was intended to notify its recipients of the hearing for the EA 700 series of rules. Therefore, there was a consolidation of rules captions into a single caption for the mailing list affadavits. The above captioned rules are seen to be contained in the consolidated caption for the mailing list affadivits.

The consolidated caption also contains Coal Liquefaction Facilities and Solid Fuel Refinery Facilities. Rules for these possible future facility types shall not be promulgated in this series of four hearings.

Paul Steinback

Paul Steinback

Subscribed and sworn to before me
This 3rd Day of June, 1976

Susan K. Riedinger
Notary Public

SUSAN K. RIEDINGER
Notary Public, Ramsey Co., Minn.
My Commission Expires
Dec. 7, 1982

STATE OF MINNESOTA)
)
COUNTY OF RAMSEY)

RECEIVED
JUN 3 1976
OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed Adoption by the Minnesota Energy Agency of Rules Governing Contents of Applications for Certificate of Need and Criteria for Assessment of Need for Large Oil Storage Facilities and Large Coal Storage Facilities for Energy Users
EA 801-87

AFFIDAVIT

OF MAILING

Richard A Wilk, BEING FIRST DULY SWORN, deposes and says:

That on the 28th day of May, 1976, at the City of Saint Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of Saint Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Richard A Wilk

Subscribed and sworn to before me this 28th day of May, 1976.

Susan K. Riedinger
Notary Public

SUSAN K. RIEDINGER
Notary Public, Ramsey Co., Minn.
My Commission Expires
Dec. 7, 1982

EA EXHIBIT 1
K. A. K. DATE 6/28/76

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed)
Adoption of Rules of the)
Minnesota Energy Agency)
Governing Contents of)
Applications for Certificates)
of Need and Criteria for)
Assessment of Need for Large)
Oil Storage Facilities and)
Large Coal Storage Facilities)
for Energy Users, EA 801-891.)

Docket No. EA-76-002-WS

STATEMENT OF NEED

The above-captioned rules are not amendments to existing rules of the Minnesota Energy Agency. They are being proposed for initial adoption at this time.

The need to adopt rules specifying criteria for assessment of need and governing the contents of applications for certificates of need arises from legislative mandate.

> Subdivision 1. The director shall, pursuant to chapter 15 and sections 116H.01 to 116H.15, promulgate assessment of need criteria to be used in the determination of need for large energy facilities pursuant to this section. The assessment of need criteria for electric generation facilities and electric transmission lines shall be promulgated no later than September 15, 1975. The assessment of need criteria for all other large energy facilities shall be promulgated no later than July 1, 1976.
>
> Subd. 2. On and after the effective date of the assessment of need criteria adopted pursuant to subdivision 1, no large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the director pursuant to sections 116H.01 to 116H.15 and consistent with the criteria for assessment of need.

Minn. Stat. § 116H.13 subds. 1-2 (Supp. 1975). (Emphasis added.) It is further provided that "(t)he application shall be on forms and in a manner established by the director." Minn. Stat. § 116H.13 subd. 4 (1974).

It is further provided in the Rules of Procedure Governing Certificate of Need Program that

> any person desiring to construct a new large energy facility in Minnesota shall submit an application for a certificate of need for said facility to the director prior to commencing construction of said facility . . . . The application shall contain the information required in the applicable substantive rules . . . .

Minn. Reg. EA 502(a). "Large energy facility" is defined to include

> . . . any facility on a single site designed for or capable of storing more than one million gallons of crude petroleum or petroleum fuels or oil or derivatives thereof, (and) . . . any facility designed or capable of serving as a depot for coal transported into this state for use within the state . . . .

Minn. Stat. § 116H.02 subd. 5 (Supp. 1975).

The need to adopt rules establishing fees which shall accompany applications for certificates of need arises from a further legislative mandate in the Energy Agency Act.

> Any application for a certificate of need shall be accompanied by a fee not to exceed $50,000. The director shall establish by regulation pursuant to chapter 15 and sections 116H.01 to 116H.15, a schedule of fees based on the output or capacity of the facility and the difficulty of assessment of need. Funds collected in this manner shall be credited to the general fund of the state treasury.

Minn. Stat. § 116H.13 subd. 6 (1974).

The need to adopt a rule providing for inclusion of environmental data in applications for certificates of need arises from legislative mandate in the Energy Agency Act, Minnesota Statutes chapter 116H, and the Minnesota Environmental Policy Act, Minnesota Statutes chapter 116D, which read, in part, as follows:

> FINDINGS AND PURPOSE. The legislature finds and declares that the present rapid growth in demand for energy is in part due to unnecessary energy use; that a continuation of this trend will result in serious depletion of finite quantities of fuels, land and water resources, and threats to the state's environmental quality; that the state must insure consideration of urban expansion, transit systems; economic development, energy conservation and environmental protection in planning for large energy facilities; that there is a need to carry out energy conservation measures; and that energy planning, protection of environmental values, development of Minnesota energy sources, and conservation of energy require expanded authority and technical capability and a unified, coordinated response within state government.
>
> The legislature seeks to encourage thrift in the use of energy, and to maximize use of energy-efficient systems, thereby reducing the rate of growth of energy consumption, prudently conserving energy resources, and assuring statewide environmental protection consistent with an adequate, reliable supply of energy.

Minn. Stat. § 116H.01 (1974).

No proposed large energy facility shall be certified for construction unless the applicant has justified its need. In assessing need, the director shall evaluate:

. . . .

(5) Socially beneficial uses of the output of this facility, including its uses to protect or enhance environmental quality;
(6) The effects of the facility in inducing future development;
(7) Possible alternatives for satisfying the energy demand including but not limited to potential for increased efficiency of existing energy generation facilities;
(8) The policies, rules and regulations of other state and federal agencies and local governments.

Minn. Stat. § 116H.13 subd. 3 (1974).

ACTION BY STATE AGENCIES. Subdivision 1. The legislature authorizes and directs that, to the fullest extent practicable the policies, regulations and public laws of the state shall be interpreted and administered in accordance with the policies set forth in sections 116D.01 to 116D.06.

Subd. 2. All departments and agencies of the state government shall:

. . . .

(c) Identify and develop methods and procedures that will ensure that environmental amenities and values, whether quantified or not, will be given at least equal consideration in decision making along with economic and technical considerations;
(d) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;
(e) Recognize the worldwide and long range character of environmental problems and, where consistent with the policy of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize interstate, national and international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;
(f) Make available to the federal government, counties, municipalities, institutions and individuals, information useful in restoring, maintaining, and enhancing the quality of the environment, and in meeting the policies of the state as set forth in Laws 1973, Chapter 412;
(g) Initiate the gathering and utilization of ecological information in the planning and development of resource oriented projects . . . .

Minn. Stat. § 116D.03 (1974).

The rules are needed to inform each energy user applicant for a certificate of need for a large oil storage facility or a large coal storage facility of the application procedures, the filing fee which must accompany the application, the criteria by which the need for the proposed facility shall

be assessed, and the data elements which must appear in the application.

The need for each proposed rule is as follows:

EA 801: This rule is needed to clarify the applicability of these rules to the contents of applications for certificates of need submitted by energy users for large oil storage facilities and large coal storage facilities to be constructed in Minnesota. Further, this rule indicates that the proposed rules specify the criteria by which the director will assess the need for the proposed facility.

EA 802: This rule is needed to identify the certificate of need applicants who must comply with the proposed rules and which persons are exempt for having begun or completed construction prior to the effective date of these rules.

EA 803: This rule is needed to prescribe the form, size, and number of copies required, correction of application procedures, cover letter requirements, public hearings scheduling requirements, maximum processing duration, procedures for applications which are not substantially complete, and other procedural requirements imposed upon applicants.

EA 804: This rule is needed to define certain terms of specific application in the proposed rules.

EA 805: This rule is needed to establish the fee schedule based upon the two general criteria provided in Minn. Stat. § 116H.13 subd. 6 (1974): 1) the capacity of the facility, and 2) the difficulty of the assessment of need. The fee schedule is set so as to assure a reasonable probability that the expenses attributable to processing applications are covered by the fees collected.

EA 811: This rule is needed to establish criteria to be used by the director in assessing the need for new large energy facilities. The rule establishes four criteria upon each of which the director must make an affirmative determination before a certificate of need may be granted. The rule is further needed to incorporate into the criteria the eight factors listed in Minn. Stat. § 116H.13 subd. 3 (1974).

EA 821: This rule is needed to direct each applicant to the rules which specify information required, and optional, in his application. In addition, the rule is needed to provide for joint applications and for facilities owned and used by two or more persons.

EA 831: This rule is needed to provide for a section in the application which includes basic factual data concerning the applicant, the applicant's business, the proposed facility, the total fee, and those individuals who will respond to inquiries directed to the applicant. This rule is also needed to require a listing of all other known permits required for the proposed facility, to enable the director to perform his overall coordination function.

EA 832: This rule is needed to insure that each application shall contain a section which states briefly the justification for the need for the proposed facility. A reader of the summary should quickly gain a broad understanding of the factors favoring certification of need.

EA 833: This rule is needed to insure that each applicant provides information responding to the three statutory factors (Minn. Stat. § 116H.13 subd. 3 (4), (5), (6) (1974)) concerning which no other rule requires specific information.

EA 834: This rule is needed to determine whether each applicant has studied or implemented a conservation program which might affect his energy needs.

EA 841: This rule is needed to provide the director with historical data on the applicant's energy use, which data, in conjunction with information on conservation and energy efficiency, will assist the director in analyzing the applicant's forecast of future energy requirements.

EA 842: This rule is needed to require the applicant to produce information concerning his future energy needs, the primary basis to justify a new large energy facility and an aid in evaluating the relationship of the proposed facility to overall state energy needs.

EA 843: This rule is needed to provide the director with a detailed description of the proposed facility. In addition, the information required by this rule is needed to aid the director in determining if the applicant has a source of supply for the fuel to be stored in the proposed facility in analyzing alternatives to the proposed facility, and in determining the relationship of the proposed facility to overall state energy needs.

EA 844: This rule is needed to insure that each applicant has considered alternatives to the proposed facility and to provide the director with specific information about the alternatives considered. The required information is needed to aid the director in determining whether the proposed facility is the most reasonable and prudent alternative available to the applicant, its customers, and the citizens of Minnesota and neighboring states.

EA 845 or 846: One of these two rules is needed to provide data regarding the environmental impact of the proposed facility, to determine whether the output of the facility may be used to protect or enhance environmental quality, and to determine whether the proposed facility is the most reasonable and prudent alternative available.

EA 871: This rule is needed to provide each applicant with the opportunity to present additional data relevant to the determination of the need for the facility.

EA 881: This rule is needed to require that the director justify each denial of a certificate of need application. The rule is further needed to specify those situations when recertification is required by a change in a facility previously certified by the director.

EA 891: This rule is needed to enable an applicant to file a single application for a certain proposed facility and for a most preferred alternative to that facility, thus enabling the applicant to save at least six months if need for the proposed facility is not certifiable.

Dated: June 3, 1976

Richard A. Wallen

RICHARD A. WALLEN
Director, Certificate
of Need Program

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Governing Contents of Applications for Certificates of Need and Criteria for Assessment of Need for Large Oil Storage Facilities and Large Coal Storage Facilities for Energy Users, EA 801-891.	Docket No. EA-76-002-WS DIRECTOR'S FINDINGS OF FACT, CONCLUSIONS AND DECISION

The hearing in the above-captioned matter was ordered on May 26, 1976, and was convened for the Minnesota Energy Agency (hereinafter "Agency") by Hearing Examiner William E. Seltzer of the Minnesota Office of Hearing Examiners at 10:00 a.m. on June 28, 1976, in Conference Room D of the Veterans Service Building, Saint Paul, Minnesota.

The hearing examiner made and issued his Findings of Fact, Conclusions and Recommendations to the Agency on January 18, 1977. The hearing examiner recommended to the Agency that it adopt the Agency's revised proposed rules incorporating the deletions, language changes and amendments suggested by the hearing examiner. The hearing examiner specifically recommended to the Agency that it not adopt the proposed rules as they pertain to large coal storage facilities for energy users.

The director of the Agency, upon the record certified to him by the hearing examiner and the Findings, Conclusions and Recommendations made by the hearing examiner, hereby makes and issues the following Findings of Fact, Conclusions and Decision.

FINDINGS OF FACT

1. In general, the hearing examiner did a reasonable, thorough and excellent job of presenting his Findings in the above-captioned matter. The hearing examiner's Findings 1-7, 11, 14-17, 19-24, 26 and 27 are hereby adopted as the Findings of the director.

2. The director agrees with the substance of the hearing examiner's Finding 8 with respect to the applicability of the rules. However, since the adopted rules will be applicable to only oil storage facilities, the director believes that the word "oil" should be inserted between "large" and "storage" in the three places those words appear in proposed rule EA 802 B. This addition is in accordance with the specificity recommended by the hearing examiner in his Finding 8. With this minor revision, hearing examiner's Finding 8 is adopted as a finding of the director.

3. The director agrees with the substance of the hearing examiner's Finding 9 with respect to rule EA 803 H. However, the director believes the following language better expresses the intent of the findings than that proposed by the hearing examiner:

> H. Prior to the submission of an application, a person may be exempted from any data requirement of these rules upon a written request to the director for exemption from specified rules and a showing by that person in ~~a written statement to the director~~ the request that the data requirement 1) is unnecessary to determine the need for the proposed facility or 2) may be satisfied by submission of another document. A request for exemption must be filed at least 20 days prior to submission of an application. The director shall respond in writing to each such request within 15 days of receipt including reasons for his decision. The director shall file a statement of exemptions granted and reasons therefore prior to commencement of the hearing.

With this minor revision, hearing examiner's Finding 9 is adopted as a finding of the director.

4. Regarding hearing examiner's Finding 10, the director agrees with the hearing examiner that the definition of large

coal storage facility should be dropped from the rules. However, the director believes that all of the other definitions are appropriate and should be adopted. Even though the word "ton" clearly refers to coal, the use of the term is necessary, as explained by director's Finding No. 6 below. With the exception of the last sentence, hearing examiner's Finding 10 is adopted as a finding of the director.

5. The director agrees with the substance of the argument in hearing examiner's Finding 12. However, in the next to the last paragraph of that finding, the hearing examiner refers to "statutory criteria." The director does not believe it is accurate to designate those factors listed in Minn. Stat. § 116H.13 subd. 3 as criteria. If the Legislature had intended that those factors be used as the criteria by which to make the decision, it would not have directed in subdivision 1 of that section that the director "promulgate assessment of need criteria to be used in the determination of need for large energy facilities . . . ." Therefore, the director believes that in the last paragraph of Finding 12, the work "criteria" should be replaced by the word "factor" in all instances where the reference is to the statutory list. With this revision, hearing examiner's Finding 12 is adopted as a finding of the director.

6. The director agrees with the hearing examiner's Finding 13, except for the reference to proposed rule EA 891. For the reason given in director's Finding 7 below, proposed rule EA 891 should not be adopted. Therefore, rule EA 821 B should read:

> B. An application for a certificate of need, if desired by the applicant, may contain information in response to rule EA 871.

With the minor change of deleting reference to proposed rule EA 891, hearing examiner's Finding 13 is adopted as a finding of the director.

7. Contrary to hearing examiner's Finding 18, the director

believes that rules EA 841 A and EA 841 F should not be amended by deleting reference to coal facilities. The references to coal facilities in rule EA 841 do not pertain to certificates of need for those facilities but instead to historical energy usage and storage capability. In evaluating the need for an oil storage facility, the director must consider the applicant's entire energy picture, and the lack of information with regard to coal could seriously distort that picture.

Proposed rule EA 841 (Historical Energy Data) is reasonable and necessary to supply information and data pertaining to historical experiences. Such data is necessary to aid the director in his determination of need. Without such data, the director would have no basis to analyze the accuracy of an applicant's forecast of demand for energy, as required by Minn. Stat. § 116H.13 subd. 3 (1976).

8. Contrary to hearing examiner's Finding 25, the director believes that proposed rule EA 891 (Application in the Alternative) should be deleted. The main purpose of the proposed rule was to allow the director to certify either a large oil storage facility or a large coal storage facility, regardless of which storage facility was the primary subject of the application. Since the adopted rules concern large oil storage facilities only, proposed rule EA 891 no longer has any meaning, and is therefore not adopted.

9. Certain other very minor changes have been made to the revised proposed rules. The bulk of those changes consist of the renumbering of rules to conform to the outline form suggested in Minn. Reg. RGSTR 6 D. Also, the references in rules to other portions of the rules have been clarified. The few other changes are typographical, spelling, grammatical, word usage, or order changes made solely for clarification.

CONCLUSIONS

The director concurs with the Conclusions made by the hearing examiner and hereby adopts them. The director's minor changes and additions to the hearing examiner's Findings, as described above, fall within the sense of the hearing examiner's Conclusion E.

DECISION

The director accepts the recommendation of the hearing examiner to adopt the revised proposed rules and in a separate Order adopts rules EA 801-881, incorporating the hearing examiner's changes as modified by the changes indicated in the director's Findings. A copy of rules EA 801-881, as adopted, is attached.

Dated: March 24, 1977

John P. Millhone
Director

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Governing Contents of Applications for Certificates of Need and Criteria for Assessment of Need for Large Oil Storage Facilities and Large Coal Storage Facilities for Energy Users, EA 801-891.	Docket No. EA-76-002-WS ORDER ADOPTING RULES

The above-entitled matter came on for hearing before William E. Seltzer of the Minnesota Office of Hearing Examiners for the Director of the Minnesota Energy Agency at 10:00 a.m. on June 28, 1976, in Conference Room D of the Veterans Service Building, Saint Paul, Minnesota, after proper notice required by Minn. Stat. § 15.0412 (Supp. 1975) was served on 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 considered all of the evidence adduced, and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above-captioned rules and the reasonableness thereof,

NOW, THEREFORE, IT IS ORDERED that these rules identified as Minn. Regs. EA 801-881 are adopted this 24th day of March, 1977, pursuant to authority vested in me by Minn. Stat. § 116H.08(a) (1976).

STATE OF MINNESOTA
MINNESOTA ENERGY AGENCY

John P. Millhone
Director

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STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Governing Contents of Applications for Certificate of Need and Criteria for Assessment of Need for Large Oil Storage Facilities and Large Coal Storage Facilities for Energy Users, EA 801-891.

Docket No. EA-76-002-WS

STATEMENT OF EVIDENCE

In addition to the "Statement of Need" which is available for inspection or purchase at the Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, and in support thereof, the Minnesota Energy Agency will introduce the following evidence: Minnesota Energy Agency Rules and Regulations Governing Prime Petroleum Suppliers and Petroleum Pipeline Companies Information Reporting, Minn. Regs. EA 400-411; Minnesota Energy Agency Rules of Procedure Governing Certificate of Need Program, Minn. Regs. EA 500-520; Minnesota Energy Agency Rules Governing Contents of Applications for Certificate of Need and Criteria for Assessment of Need for Large Electric Generating Facilities and Large High Voltage Transmission Lines, Minn. Regs. EA 601-638; a rule by rule statement of justification for the rules; and the expert opinion of Dr. Richard A. Wallen, Director of the Certificate of Need Program, Minnesota Energy Agency, and Dwight S. Wagenius, Special Assistant Attorney General assigned to the Minnesota Energy Agency.

We may call one or more of the following expert witnesses to testify: David L. Jacobson, Chief Energy Facility Analyst, Minnesota Energy Agency; and Thomas E. Oland, Touche Ross & Co., consultant to the Certificate of Need Program. The named individuals played a substantial role in developing the proposed rules and will be available to testify in support of the need for each proposed rule.

We will be citing the following statutes: Minn. Stat. chapter 116H (especially, but not exclusively, section 116H.13);

Minn. Stat. chapter 116D; and Minn. Stat. § 16A.128 (1974).

Dated: June 3, 1976

Richard A Wallen

RICHARD A. WALLEN
Director, Certificate
of Need Program
Minnesota Energy Agency

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Governing Contents of Applications for Certificates of Need and Criteria for Assessment of Need for Large Oil Storage Facilities and Large Coal Storage Facilities for Energy Users, EA 801-891

Docket No. EA-76-002-WS

JUSTIFICATION OF RULES

EA 801 PURPOSE OF RULES:

This rule states the purpose of rules EA 801-891. Incorporated by the reference to Minn. Stat. § 116H.13 are the following provisions all of which further justify rules EA 801-891: the director has the duty to determine whether proposed large energy facilities are needed; the director must promulgate the assessment of need criteria which he will use in making the need determination; the proposers of large energy facilities must justify the need for the facilities "on forms and in a manner established by the director"; and, in reviewing the application the director must hold a public hearing pursuant to the Minnesota Administrative Procedure Act (the "A.P.A.") and the Hearing Examiner's rules promulgated pursuant to the A.P.A.

EA 802 APPLICABILITY OF RULES:

This rule identifies the persons who must apply for certificates of need in compliance with these rules. Subdivision (a) identifies the persons subject to the rules as those who plan to use a large storage facility in conjunction with manufacturing, mining, heating, cooling, processing, generation of electricity, or fuel storage for vehicles, locomotives or aircraft. The purpose of this language is to differentiate those who plan to use a proposed large storage facility as a source of energy for their own use from energy suppliers who would use a large storage facility in conjunction with the distribution of an energy product to end users. Distinguishing users and suppliers in this way is

necessary because the information required from the two types of applicants is significantly different. The data required from an energy user concern the applicant's facilities which will use the product in the proposed storage facility as its energy source, whereas the data required from an energy supplier concern the general market usage and the demand for the energy product to be stored in the proposed facility. Since the data required of applicants who are energy suppliers is different from the data required of applicants who are energy users, separate sets of rules have been proposed. Rules governing applications for large storage facilities for coal and oil suppliers are contained in proposed rules EA 901-981 and EA 1001-1091, respectively.

Subdivision 802(b) exempts persons who have begun or completed construction of a large oil or coal storage facility prior to the effective date of these rules, pursuant to Minn. Stat. § 116H.13 subd. 2 (Supp. 1975).

EA 803 APPLICATION PROCEDURES AND TIMING:

This rule responds to the statutory mandate that applications for certificates of need "shall be on forms and in a manner established by the director." Minn. Stat. § 116H.13 subd. 4 (1974). This rule provides the basic procedure, i.e., the number of copies of an application which are required, the form and size of documents filed, cover letter and index requirements, correction procedures, maximum processing duration, and procedures for applications which are not substantially complete.

Since the Agency has only six months to review and approve or deny an application for a certificate of need, it is important that the form and content of the application are clearly defined, that an adequate number of copies are filed, and that the application as filed is substantially complete. These requirements will help to avoid untimely delays due to a lack of understanding of what is expected from the applicant. Further, it will standardize the applications, thereby reducing the time required by the Agency to review and become familiar with the applicant's request.

EA 804 DEFINITIONS:

This rule defines certain terms which are used within the rules. Many of the definitions have been taken from Minn. Stat. § 116H.02 or from previously promulgated rules.

The key definitions are "Large oil storage facility," proposed rule EA 804(m), and "Large coal storage facility," proposed rule EA 804(l). The origin of these definitions is Minn. Stat. § 116H.02 subd. 5 (Supp. 1975).

> Subd. 5. "Large energy facility" means . . . any facility on a single site designed for or capable of storing more than one million gallons of crude petroleum or petroleum fuels or oil or derivatives thereof . . . (and) any facility designed or capable of serving as a depot for coal transported into this state for use within the state or transhipment from the state . . . .

That statute does not directly specify nor define a "large coal storage facility." Also, the definition of "coal depot" is not quantitative.

Agency staff researched the term "coal depot" and were unable to find a definition in other statutes, in rules of other agencies, or in literature published by other state energy agencies or by the coal industry. In the opinion of the Agency, the quantitative definition of a large coal storage facility should be comparable to those for oil storage and electric generation facilities. Therefore, the Agency has selected the term "large coal storage facility" as synonymous with "coal depot" and has defined "large coal storage facility" in quantitative terms to be "a facility designed for or capable of storing 7,500 tons of coal, or a facility which is designed for an annual coal throughput in excess of 125,000 tons and used to provide fuel for a coal-burning facility." In the definition 7,500 tons of coal storage capacity is used because it approximates the BTU content of one million gallons of heavy oil, and the annual throughput of 125,000 tons of coal is used because it approximates the amount of coal a 50,000 kilowatt electric generating plant would use in one year at a fifty percent capacity factor, which are the minimum sizes of those types of facilities which fall within the definition of "large energy facility."

EA 805 FILING FEES AND PAYMENT SCHEDULE:

The authority to assess fees for processing applications is given to the director of the Agency in Minn. Stat. § 116H.13 subd. 6 (1974). Subdivision 6 provides two general factors to be considered in establishing a fee schedule: (1) the size or output of the facility and (2) the difficulty of assessment of need. In addition, Minn. Stat. § 16A.128 (1974) requires that the fee schedule be set so that the total fees received approximate the amount appropriated by the legislature, which implies that the Certificate of Need program must be self-supporting. Therefore, the cost of processing certificate of need applications must be estimated in order to determine the fee schedule.

The cost of processing a particular certificate of need application will be a function of: (1) the direct staff time required to process each application, (2) direct and indirect expenses that must be allocated on some equitable basis, plus (3) the cost of the public hearing that must be held on each application.

Based on experience to date and on discussions with hearing examiners for the state, the minimum cost of a public hearing in the future is expected to be approximately $500. This assumes that the application is not contested and that the hearing examiner is thoroughly familiar with the applicable statutes, rules, and regulations. The probability that an application will be contested depends to a large extent on the perceived impact of the proposed facility, which, to a large extent, is a function of the size of the proposed facility.

The most equitable basis for determination of Agency fees and for allocating expenses is in proportion to the number of direct staff-hours required to process each application. The fee per direct staff-hour can be calculated by dividing the total expense attributable to the Certificate of Need program by the number of staff-hours required to process applications. Based on conversations with energy suppliers and other potential applicants, the Agency has estimated that it will receive 18

certificate of need applications in fiscal year ("FY") 77. These 18 applications are expected to take approximately 4,420 hours to process. Allowing an additional 442 hours to process unanticipated applications, the total number of direct staff hours required to process certificate of need applications in FY 77 is estimated to be 4,862 hours. Therefore, the hourly direct staff charge rate is $194,395 (see table 1) divided by 4,862 hours which equals $39.98, or approximately $40 per hour.

TABLE 1

TOTAL ESTIMATED CERTIFICATE

OF NEED PROGRAM EXPENSES

JULY 1, 1976 TO JUNE 30, 1977

CERTIFICATE OF NEED SALARIES (INCLUDING FRINGE)		$ 95,195[a]
OTHER DIRECT COSTS:		
SUPPLIES, COPYING, PRINTING LEGAL NOTICES, MISC.	$13,200	
TRAVEL (OUT-OF-STATE)	2,000	
TRAVEL (IN-STATE)	4,500	
NON-STATE EMPLOYMENT	20,000	
PHONE, POSTAGE	3,500	
		$ 43,200
INDIRECT COSTS[b]		56,000
TOTAL (Not including hearing costs)		$194,395
HEARING COSTS:		
HEARING OFFICER	$40/hr	
COURT REPORTER	$15/hr + $2.70/page	

[a] Includes salaries of program director, three facility analysts, one secretary, and one half the salary of a Special Assistant Attorney General.

[b] Indirect cost rate (24.4%) times the total Certificate of Need program budget ($228,570) designed to recover the programs share/portion of total Agency's administrative expenses.

Estimates for the time it will take to process oil storage and coal storage applications are listed below:

	Prehearing-ing (person-hours)	Hearing (person-hours)	Post-hearing (person-hours)	Total (person-hours)
Oil Storage	25-50	4-48	15-25	44-123
Coal Storage	40-100	4-80	15-40	59-220

If these estimates are correct, the minimum cost of processing an oil storage application will be $2,260 (44 hours x $40/hour + $500 minimum public hearing cost) and the minimum cost of processing a coal storage application will be $2,860. The corresponding minimum fee under proposed rule EA 805 is $2,000 for a one million gallon oil storage facility and $2,750 for a coal storage facility with an annual throughput of 125,000 tons of coal.

The proposed fee schedule is set so that: (1) the set fee approximates the minimum expected cost; (2) the set fee is based on the size of the facility; and (3) the set fee is based on the difficulty of assessing need because the size of the facility tends to be an indicator of the difficulty of assessing the need.

EA 811 CRITERIA FOR ASSESSMENT OF NEED:

The need to adopt a rule specifying criteria for assessment of need for proposed large energy facilities arises from legislative mandate.

> Subdivision 1. The director shall, pursuant to chapter 15 and sections 116H.01 to 116H.15, promulgate assessment of need criteria to be used in the determination of need for large energy facilities pursuant to this section. The assessment of need criteria for electric generation facilities and electric transmission lines shall be promulgated no later than September 15, 1975. The assessment of need criteria for all other large energy facilities shall be promulgated no later than July 1, 1976.
>
> Subd. 2. On and after the effective date of the assessment of need criteria adopted pursuant to subdivision 1, no large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the director pursuant to sections 116H.01 to 116H.15 and consistent with the criteria for assessment of need.

Minn. Stat. § 116H.13 subds. 1-2 (Supp. 1975). (Emphasis added.) Criteria is generally defined to mean standards on which a judgment or decision may be based or standards by which to judge

the correctness of a judgment or conclusion. The listing in Minn. Stat. § 116H.13 subd. 3 (1974) of eight items which the director shall evaluate in assessing need is not a listing of criteria. Rather, it is a nonexclusive list of factors which can be, and have been, incorporated into all aspects of the certificate of need process.

The need to include environmental considerations in the criteria arises from legislative mandate in the Energy Agency Act, Minnesota Statutes chapter 116H, and the Minnesota Environmental Policy Act, Minnesota Statutes chapter 116D, which read, in part, as follows:

> FINDINGS AND PURPOSE. The legislature finds and declares that the present rapid growth in demand for energy is in part due to unnecessary energy use; that a continuation of this trend will result in serious depletion of finite quantities of fuels, land and water resources, and threats to the state's environmental quality; that the state must insure consideration of urban expansion, transit systems, economic development, energy conservation and environmental protection in planning for large energy facilities; that there is a need to carry out energy conservation measures; and that energy planning, protection of environmental values, development of Minnesota energy sources, and conservation of energy require expanded authority and technical capability and a unified, coordinated response within state government.
>
> The legislature seeks to encourage thrift in the use of energy, and to maximize use of energy-efficient systems, thereby reducing the rate of growth of energy consumption, prudently conserving energy resources, and assuring statewide environmental protection consistent with an adequate, reliable supply of energy.

Minn. Stat. § 116H.01 (1974). (Emphasis added.) See Minn. Stat. § 116H.13 subd. 3(5)-(8) (1974).

> ACTION BY STATE AGENCIES. Subdivision 1. The legislature authorizes and directs that, to the fullest extent practicable the policies, regulations and public laws of the state shall be interpreted and administered in accordance with the policies set forth in sections 116D.01 to 116D.06.
>
> Subd. 2. All departments and agencies of the state government shall:
>
> . . . .
>
> (c) Identify and develop methods and procedures that will ensure that environmental amenities and values, whether quantified or not, will be given at least equal consideration in decision making along with economic and technical considerations;

> (d) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;
> (e) Recognize the worldwide and long range character of environmental problems and, where consistent with the policy of the state, lend appropriate support to initiatives, resolution, and programs designed to maximize interstate, national and international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;
> (f) Make available to the federal government, counties, municipalities, institutions and individuals, information useful in restoring, maintaining, and enhancing the quality of the environment, and in meeting the policies of the state as set forth in Laws 1973, Chapter 412;
> (g) Initiate the gathering and utilization of ecological information in the planning and development of resource oriented projects . . . .

Minn. Stat. § 116D.03 (1974).

Proposed rule EA 811 establishes four criteria or standards upon all of which the director must make an affirmative determination before a certificate of need may be granted. The standards expressed in the criteria were developed after numerous discussions between the certificate of need staff and the director, after reflecting upon the experience gained in the prior certificate of need hearings, and after a careful examination of the statutes cited above. They include and reflect the eight statutory factors, listed in Minn. Stat. § 116H.13 subd. 3 (1974), that the director must evaluate in determining the need for the proposed facility and other factors the director considers relevant to the determination of need for a proposed facility.

The first criterion provides the standard which the director will use to measure the validity of the applicant's asserted need for a new energy facility. Part of the Minnesota Energy Agency's charge from the legislature is to " . . . maximize use of energy-efficient systems . . . " thereby " . . . assuring statewide environmental protection consistent with an adequate reliable supply of energy." Minn. Stat. § 116H.01 (1974). (Emphasis added.) In determining the applicant's need for a new energy facility, the director considers it important to consider two factors in addition to subdivision 3, items (1), (2), and (4), of section 116H.13. The ability of current facilities and planned facilities not requiring a certificate of need to meet

future demand has been, and, in the opinion of Agency staff, will continue to be, a major factor considered in determining the need for proposed large energy facilities. The fifth factor follows from a close reading of sections 116H.01 and 116D.03. In addition, it allows the director to consider arguments for the granting of a certificate not related to adequacy of supply. The Agency foresees, for example, applications for facilities needed to meet pollution control requirements and for facilities to replace outmoded, less efficient ones.

The director is required to evaluate "(p)ossible alternatives for satisfying the energy demand . . . ." Minn. Stat. § 116H.13 subd. 3(7) (1974). If an alternative more reasonable or prudent than the proposed facility can be shown, that showing must be made on the record by parties other than the applicant. The director could deny a certificate of need to the applicant based upon such a showing.

In examining whether or not a more reasonable and prudent alternative has been demonstrated, the proposed rule requires the director to consider four factors. Each of these factors deals with the reasonableness of alternatives compared to the proposed facility. All four have been points of contention in previous certificate of need proceedings and are foreseen to be objects of contention in proceedings pursuant to these rules.

The third criterion is met if the director determines that the consequences of granting the certificate of need outweigh the consequences of denying the certificate. This is a reasonable standard because no large energy facility should be built in Minnesota if it can be demonstrated that it is not in the best interests of the people of Minnesota. In making this determination, the director is required to consider four factors. The first, third and fourth factors correspond respectively to items (3), (6), and (5) of Minn. Stat. § 116H.13 subd. 3 (1974). The second factor requires that the impact of the proposed facility on the natural and socioeconomic environments be compared to the impact of not building the facility. This

factor is based, to a large extent, upon a close reading of sections 116H.01 and 116D.03. Specifically, subdivision 2 of section 116D.03 states, "All departments and agencies of the state government shall: . . . (c) identify and develop methods and procedures that will ensure that environmental amenities and values, whether quantified or not, will be given at least equal consideration in decision making along with economic and technical considerations . . . ."

The fourth criterion requires that the director find that granting the certificate is consistent with policies, rules, and regulations of other state and federal agencies and local governments which have been considered during the hearing process. Obviously, the director will not grant a certificate of need if it is known to be inconsistent with applicable rules and regulations. However, all necessary information to make this determination may not be available at the certificate of need stage. In addition, the director has no authority to grant certificates subject to unknown or later-developed requirements. Therefore, the director can only ascertain whether the granting of the certificate is consistent with the applicable rules and regulations considered during the certificate of need process.

EA 821 CONTENTS OF APPLICATION:

Subdivisions (a) and (b) direct the applicant to the rules which require responses and to the rules to which responses are optional. Subdivision (c) requires each person in a joint application to submit individual responses when directed to do so. Subdivision (d) requires each person who owns and uses a facility with other persons to comply with the requirements for joint applicants.

The requirement for specific responses from persons in joint applications or multi-party ownership and use of facilities is necessary, because combined data may obscure information that would be apparent from separate responses. This is particularly true of the data required on historical energy use and forecasted energy use. To accurately evaluate this data the director must

obtain information from each of the individual persons involved in ownership and use of the facility.

EA 831 GENERAL INFORMATION:

Subdivision (a) requires the applicant to provide general information about itself and its business. It also requires the applicant to provide summary information about the proposed facility, including a brief description, its cost, and how it would fit into the applicant's business. This information is needed to provide a reader with a quick summary of who is applying and what the application is for. The applicant is also required to provide the name of the contact person to whom questions concerning the application may be directed, which will facilitate and expedite communication between the Agency and the applicant. Finally, paragraph (a) requires the applicant to specify the application fee, which will allow the Agency to quickly determine whether the applicant has correctly computed the fee.

Paragraph (b) requests a list of the other agencies or authorities with which the applicant must file and the present status of those filings. This will provide the Agency with a better understanding of the applicant's timetable for the proposed facility. It may also identify required applications or permits which have been overlooked by the applicant.

EA 832 NEED SUMMARY:

This rule will provide the applicant with an opportunity to summarize in one place the key factors favoring certification of need for the proposed facility. It will also enable a reader of the application to quickly gain a general understanding of those factors without reading the entire application.

EA 833 SUMMARY OF ADDITIONAL CONSIDERATIONS:

The director in his assessment of need is required by Minn. Stat. § 116H.13 subd. 3 (1974) to consider "promotional activities" leading to demand for the proposed facility, "socially beneficial uses of the output of this facility", and "effects of the facility

in inducing future development." This rule requires the applicant to provide information on those three points, since specific information on them would not necessarily be provided in response to any other of the proposed rules.

EA 834 CONSERVATION PROGRAMS:

The director in his assessment of need is also required by Minn. Stat. § 116H.13 subd. 3 (1974) to consider the effect of existing or possible energy conservation programs. Data submitted in response to this rule will provide the director with an understanding of those specific conservation or energy efficiency programs which have been studied or implemented by the applicant. This information is needed by the director to help determine whether reasonable additional conservation measures by the applicant would affect the applicant's need for the proposed facility.

EA 841 HISTORICAL ENERGY DATA:

Data submitted in response to this rule will provide the director with historical information on energy use by the applicant. Such data is necessary for the director to analyze the accuracy of the applicant's forecasted energy demand, as is required by Minn. Stat. § 116H.13 subd. 3 (1974). Separate answers to each subdivision of this rule are required from each person submitting a joint application, because combined data may obscure information that would be apparent from separate responses.

Paragraph (a) requests the annual and peak day amounts of each of the various energy products used by the applicant within the past five years. Peak day data will point out whether the applicant has used an energy product at a constant or a fluctuating rate. This information will enable the director to understand the applicant's historical energy use, as well as provide an historical framework within which to analyze the forecast data requested by proposed rule EA 842.

Paragraph (b) requests a five year history of expenses for each of the energy products mentioned in paragraph (a). Total annual costs and average costs per appropriate unit of measure are to be provided. As a result, the director will have data on the applicant's historical energy economics, which is related to the economic feasibility of the proposed facility.

Paragraph (c) requests five years of history with regard to the percentage of total energy that is provided by each of the energy products used by the applicant. The information will provide the director with an understanding of the applicant's ability to substitute one energy product for another. In view of the impending shortages of some energy products, this information will be directly related to the applicant's need for the proposed facility.

Paragraph (d) requests five years of data with regard to five specified categories for which each energy product may have been used. The end use categories data are important, because they will enable the director to investigate areas where conservation, improvement in the efficiency of energy utilization, and use of alternative energy sources might be possible or desirable.

Paragraph (e) requests an explanation of any significant changes over time in the quantities of the various energy products used by the applicant. The director needs this information to properly weigh and evaluate the historical energy data provided by the applicant and the effect on need of plant decisions made by applicant in the recent past.

Paragraphs (f) and (g) request information in regard to the applicant's existing storage facilities for energy products, seasonality of the use of these facilities, and the manner in which the energy product stored in these facilities is physically handled. The director needs this information in conjunction with his evaluations of alternatives, conservation, energy efficiency, and economic considerations.

EA 842 FORECAST DATA:

The director in his assessment of need is required by Minn. Stat. § 116H.13 subd. 3 (1974) to evaluate the accuracy of the applicant's long range energy demand forecasts. This rule requires the applicant to provide data on its projected future energy requirements, which data would be a major consideration in the need for any proposed energy storage facility. Separate answers are required from each person submitting a joint application because combined data may tend to obscure relevant information that would be apparent from separate responses. In answering each of the questions the applicant must provide the assumptions upon which the forecast is based. These background assumptions are essential for the director to assess the reasonableness and probable accuracy of the applicant's forecast.

Paragraph (a) requests data on total energy usage by the applicant for selected future years. Paragraph (b) requests a breakdown of total energy usage into the same end use categories that were used for historical energy data. Paragraph (c) requests information on the various energy products the applicant plans to use to satisfy these anticipated energy requirements. The responses from these three paragraphs, in conjunction with the historical energy use data and the background assumptions, will enable the director to assess the probable accuracy of the applicant's forecast of demand, an assessment which is at the essence of need determination.

Paragraph (d) will allow the applicant to explain any difficulties it foresees in obtaining various energy products. The applicant's perception of possible energy supply problems may well have influenced its decision to construct the proposed facility. It is important that the director be aware of all major factors which may have contributed to that decision.

Paragraph (e) requests information on the applicant's expected future conservation programs or improvements in equipment efficiencies. A quantitative measure of the likely

success of these programs is directly related to the applicant's need for the proposed facility.

EA 843 DESCRIPTION OF PROPOSED FACILITY:

This rule is needed in order that the director may fully understand the facility for which the applicant is applying, as well as the circumstances surrounding its being proposed. Separate answers are required for subdivisions (g) through (k) from each person submitting a joint application, because the information for those subdivisions may differ substantially from person to person.

Information submitted in response to paragraph (a) and its subdivisions will provide the director with a fairly complete description of the proposed facility, including its capacity, the dimensions, the cost, the expected economic life, what is to be stored, and appropriate drawings. This information will assist the director in assessing whether the size, the type and the economics of the proposed facility are appropriate to the asserted need therefor.

Subdivisions (b) and (c) request the names and addresses of the engineer and the construction contractor. This data is germane to obtaining a complete description of the proposed facility and provides a reference to possible sources of additional information regarding the facility. Subdivision (d) requests the planned date of starting construction and the planned in-service date, which will enable the director to assess whether the construction timetable and the timeliness of the proposed facility are reasonable in light of the asserted level of need.

Subdivision (e) requires the applicant to provide proof that an adequate supply of the energy product to be stored in the proposed facility can be obtained. The separate items listed in this subdivision will provide information relative to the reliability of that energy supply. Subdivision (f) requires the applicant to explain where the energy product to be stored in the proposed facility will come from to ascertain

whether there are contracts guaranteeing a supply. Reliability of the supply of energy product to be stored in the proposed facility is an important factor to be considered by the director in conjunction with possible alternatives to the proposed facility.

Subdivisions (g) through (j) request information relating to the planned use of the proposed facility, its importance in providing energy to the applicant's business, the number of days of fuel requirements to be stored in the proposed facility, and its effect on the applicant's ability to supply its customers. These items are needed to help the director understand the significance of the proposed facility in the applicant's future operations and the relationship between the storage facility and the applicant's energy-consuming facility or facilities. Dependence of the applicant on the proposed facility is an important factor in the director's assessment of need.

Information submitted in response to subdivision (k) will assist the director in assessing the impact of the proposed facility upon the energy efficiency of applicant's operation. It will also allow the applicant to explain an additional benefit of the proposed facility, if the facility will in fact improve the efficiency of energy utilization.

EA 844 ALTERNATIVES:

The director is required by Minn. Stat. § 116H.13 subd. 3 (1974) to consider possible alternatives to the proposed facility in his assessment of need.

Paragraph (a) asks whether the applicant has considered the alternative of conservation or improvement in energy utilization. Paragraph (b) requests the applicant to cite any known limitations on the types of alternatives available. Paragraph (c) requests specific information about each alternative considered by the applicant.

The director needs to know specifically what alternatives have been considered, whether there are any known restrictions as to the types of alternatives available to the applicant, and

why alternatives were rejected. This information, in conjunction with data on conservation, historical energy use, future demand for energy, economics, environmental matters, and availability of supply, will be considered by the director in determining whether the proposed facility is the most reasonable and prudent alternative available. The interests of the state of Minnesota do not lie in the construction of unreasonable or imprudent alternatives.

EA 845 and 846 ENVIRONMENTAL DATA:

As indicated in the Statement of Need, environmental aspects of a proposal to construct a large energy facility must be considered by the director in his assessment of need. The extent of the data required is not entirely clear. That is the primary reason for the submission of two environmental sections for consideration during the hearing. Some of the advantages of each of the sections are given below.

Proposed rule EA 845 requires quite detailed and specific information. As a result, other state agencies might be able to determine from the application whether there would be a substantial environmental problem associated with construction or operation of the proposed facility. If so, it would be to the benefit of both the applicant and the state as a whole if this were determined early in the certification processes. Such information could be an important factor in the director's weighing of possible alternatives.

Subdivision (a) of proposed rule EA 845 requests information on the specific location of the proposed facility. It pinpoints the location of the site or sites which might be used for the proposed facility by the applicant.

Subdivision (b) requests information on the possible effects of the proposed facility with regard to state water resources, land, minerals, vegetation, wildlife and historical sites. It also requests information on the possible effects of the proposed facility on the human population at or near the chosen site(s) and the extent to which the facility would induce other developments. This information would be useful

to other state agencies in making a meaningful contribution to the certificate of need process.

Subdivision (c) would require the applicant to make available specific information on the types and quantities of the wastes and emissions likely to result from the proposed facility. Again, this information would be of great importance to the other state agencies actively participating in the certificate of need process.

Subdivisions (d) and (e) would allow the applicant to explain the actions that would be taken to mitigate the possible adverse effects of the proposed facility. This would provide other state agencies with information enabling them to determine the extent of environmental degradation, if any, that would occur as a result of construction or operation of the proposed facility.

The list of errata indicates that subdivision EA 845(d)(2) has been changed from the circulated draft proposed rules. The new wording requires that an applicant for a certificate of need for a coal storage facility shall provide specific information regarding the equipment and procedures that would be used to control emissions into the ambient air or water. This change was made to parallel the informational requirements regarding environmental safeguards for a coal storage facility to those for an oil storage facility. Emissions are generally of more serious concern for a coal storage facility than for an oil storage facility; as a result, it would be inappropriate to have a more stringent informational requirement for oil storage than for coal storage.

Proposed rule EA 846 does not ask for as much specific information. The rule is more open-ended and leaves to the applicant some discretion as to what should be included. It requires comparing the relative environmental impacts of each of the considered alternatives and the impacts of the proposed facility to those of the no construction alternative.

EA 871 OTHER DATA FILED WITH THE APPLICATION:

This rule provides for a section within an application where the applicant may present additional data which has not been specifically requested by these rules.

Any data filed in this section will be considered by the Agency. The advantage of having this section is that it will allow the applicant to bring such additional data to the attention of the Agency.

EA 881 CERTIFICATE OF NEED MODIFICATIONS:

This rule is needed to require that the director justify each denial of a certificate of need application in accordance with subdivision 5 of section 116H.13. The rule is further needed to specify those situations when recertification is required by a change in a facility previously certified by the director.

EA 891 APPLICATION IN THE ALTERNATIVE:

This rule will enable an applicant to simultaneously submit an application for a certificate of need for an oil or coal storage facility and for a most preferred alternative to that facility.

The advantages of the rule are that it may promote the examination of alternatives and that it could save the applicant six or more months if its proposed facility were not certified.

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
ROOM 300 - 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

January 18, 1977

Mr. John P. Millhone
Director
Minnesota Energy Agency
740 American Center Building
160 East Kellogg Boulevard
Saint Paul, Minnesota 55101

Re: IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA ENERGY AGENCY GOVERNING CONTENTS OF APPLICATIONS FOR CERTIFICATES OF NEED AND CRITERIA FOR ASSESSMENT OF NEED FOR LARGE OIL STORAGE FACILITIES AND LARGE COAL STORAGE FACILITIES FOR ENERGY USERS, EA 801-891. EA-76-002-WS

Dear Mr. Millhone:

Enclosed and served upon you by mail, please find my Report in the above-entitled matter. I am also returning to you the agency file including exhibits and transcripts of proceedings.

Sincerely,

William Seltzer

WILLIAM SELTZER
Hearing Examiner

WS:sw
Enclosures

cc: Mr. Dick Wallen

AN EQUAL OPPORTUNITY EMPLOYER

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA ENERGY AGENCY

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA ENERGY AGENCY GOVERNING CONTENTS OF APPLICATIONS FOR CERTIFICATES OF NEED AND CRITERIA FOR ASSESSMENT OF NEED FOR LARGE OIL STORAGE FACILITIES AND LARGE COAL STORAGE FACILITIES FOR ENERGY USERS, EA 801-891	FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATIONS

A public hearing in the above-entitled matter was convened by Hearing Examiner William Seltzer of the Minnesota Office of Hearing Examiners at 10:00 a.m. on June 28, 1976 in the Veterans Service Building, Saint Paul, Minnesota. All interested persons, representatives of individuals or associations, and other interested groups present at the hearing had an opportunity to present evidence and question witnesses.

The Hearing Examiner, upon all records, files, evidence, arguments of counsel, and written comments filed before the close of the record, hereby makes and issues the following Findings of Fact, Conclusions and Recommendations.

FINDINGS OF FACT

1. That the Order for Hearing issued May 26, 1976, was in all respects proper in form, content, execution and filing.

2. That due timely and adequate Notice of Hearing as ordered by the Minnesota Energy Agency (hereinafter sometimes referred to as "Agency") was properly served and filed on May 26, 1976. All other relevant substantive and procedural requirements of statute or rule have been complied with for the purposes of establishing jurisdiction of the subject matter to proceed to public hearing pursuant to statute.

3. That the Agency submitted a proposed draft of the subject regulations prior to public hearings. [Energy Agency Exhibit No. 3]. After the public hearings, but before the close of the record, the Agency submitted a document entitled Energy Agency Staff Post-Hearing Statement which was received by the Office of the Hearing Examiner on July 19, 1976. That document included a final draft of

proposed rules EA 801-891 which incorporated: (1) the changes indicated on the Errata Sheet filed with the Hearing Examiner and accepted into evidence as part of Energy Agency Group Exhibit No. 1; and (2) changes suggested by the Agency Staff, and changes suggested by other interested parties which were agreed to by Agency staff. All proposed rules considered herein shall be the rules as appear in the above-mentioned revised regulations as submitted July 19, 1976, unless otherwise specifically noted.

4. That authority of the Director of the Energy Agency to promulgate rules is generally contained in Minn. Stat. § 116H.08(a) (1974) and specific statutory directive to promulgate assessment of need criteria to be used in the determination of need for large energy facilities is found in Minn. Stat. § 116H.13 (1974). The Energy Agency adequately demonstrated its statutory rulemaking authority in its Notice of Hearing.

5. That no proposed facility defined by statute as a "Large Energy Facility" may be sited or constructed in Minnesota without the issuance of a certificate of need issued by the Agency Director. Minn. Stat. § 116H.13, subds. 2 (Supp. 1975), 3 (1974).

These proposed rules would bring within the certificate of need process both large oil storage facilities and large coal storage facilities for energy users.

Minn. Stat. § 116H.02, subd. 5 (1976) defines "[L]arge Energy Facility" to include "any facility on a single site designed for or capable of storing more than one million gallons of crude petroleum or petroleum fuels or oil or derivatives thereof." Thus, large oil storage facilities of the type which are subject to these proposed rules are clearly within the statutory definition of "large energy facilities" which are subject to the certificate of need process of Minn. Stat. § 116H.13, subd. 1 (1976).

However, there is a basic threshold question as to whether "large coal storage facilities for energy users" are subject to the assessment of need criteria in Minn. Stat. § 116H.13, subd. 1 (1976). Industry raised the meritorious issue that "large coal storage facilities for energy users" are not "[L]arge energy facilities" as defined in Minn. Stat. § 116H.02, subd. 5 (1976). Subdivision 5

(which defines those "[L]arge energy facilities" which are subject to the certificate of need process) does not refer to coal storage facilities but uses the following language:

> any facility designed or capable of serving as a depot for coal transported into this state for use within the state or transshipment from the state. (Emphasis added.)

The Agency acknowledges in its Statement of Justification that it was "unable to find a definition [of "depot"] in other statutes, in rules of other agencies or in literature published by other state agencies or by the coal industry." The Agency simply assumes that, whatever the meaning of the statutory phrase "depot for coal transported into this state...or transshipment from the state" a coal storage facility of an energy user is one. In Page 2 of its MEMORANDUM OF LAW received July 19, 1976 the Agency states its position that the statutory language means that "any coal storage facility of sufficient size" requires a certificate of need.... (Emphasis added.) At the same time, the Agency admits that the term "depot" is not defined in the statute itself and that the language of the statute is not clear and free of ambiguity.

Thus, the Agency does not dispute the fact that nowhere in c. 116H is the term "depot" defined. Rather, the Agency infers that the subject statutory language includes "any coal storage facility" of sufficient size as a "[L]arge energy facility". Had the legislature intended the subject statutory language to have the meaning suggested by the Agency, it would have clearly stated such intent since it did so in other respects. When the legislature intended Minn. Stat. § 116H.02, subd. 5 to be all inclusive of storage facilities, it specifically stated so. For example, the definition of large energy facilities includes "any facility on a single site designated for or capable of storing more than one million gallons of crude petroleum or petroleum fuels or oil or derivatives thereof" and "any facility designed for or capable of storing on a single site more than 100,000 gallons of liquified natural gas or synthetic gas." (Emphasis added.) It would be hard to imagine that the legislature intended the term "depot" to mean any coal storage facility without specifically stating such meaning while, at the same time,

using the word "storage" in defining other large energy facilities.

Both the Agency and industry went to great lengths respectively in trying to persuade the Hearing Examiner that the term "depot" either included or excluded coal storage facilities for energy users. In supporting their respective positions, they turned to non-legal dictionary definitions and each party found support for its case. However, the Agency's position that the term "depot" is equatable with any coal storage facility is inconsistent with the applicable statutory section read as a whole.

It is specifically found that Minn. Stat. § 116H.02, subd. 5 (1976) uses the term "storage" when all storage facilities for a particular energy source are intended to be subject to the certificate of need process, but refrains from using that term with respect to coal facilities and instead uses the term "depot". Such distinction cannot be ignored. Simply put, if the legislature intended to include all coal storage facilities under the definition of "large energy facility", it would have used the term "storage" rather than the term "depot".

It should be noted that this Hearing Examiner's Report issued November 17, 1976 regarding Minn. Reg. EA 900 series rules approved therein the Agency's interpretation of "depot" as applicable to storage facilities for coal suppliers and coal transshipment facilities. Although no statutory definition of "depot" could be found for purposes of the E. A. 900 series rules; the interpretation given by the Agency therein was reasonable with no obvious conflict with statutory intent. The same cannot be said with regard to the Agency's interpretation of "depot" for proposed EA Chapter 800 rules being considered herein. The statutory language which uses the term "depot" denotes movement of coal rather than final storage by the end user (i.e. "coal transported into this state" and "or transshipment from the state"). Therefore, it is specifically found that the proposed rules exceed the statutory authority of the Agency to the extent that they pertain to large coal storage facilities for energy users.

6. That the remainder of this Report shall consider the

proposed rules in the context of their application to "Large Oil Storage Facilities" only and shall disregard their applicability to "large coal storage facilities for energy users".

7. That proposed EA 801 (Purpose of Rules) is reasonable and necessary to delineate the general purpose of the proposed rules and is a short statement of introduction to the rules.

8. That with the exception noted hereinabove in Paragraph No. 6 regarding large coal storage facilities for energy users, proposed EA 802 (Applicability of Rules) is reasonable and necessary to specify those large energy facilities to which the proposed regulation is applicable.

It should be noted here that a distinction is made between marketing energy and using it in connection with an end product. The terminology "for energy users" was utilized by the Agency to distinguish between applicants for certificates of need who would apply under proposed rules EA 801-891 and petroleum suppliers and coal suppliers who will apply under proposed/adopted rules EA 1001-1091 and EA 901-981, respectively. The Chapter 800 series is designed to appropriately differentiate between those who plan to use a proposed large storage facility as a source of energy for their own use from energy suppliers who would use a large storage facility in conjunction with the distribution of an energy product to end users. The latter (energy suppliers) would apply for a certificate of need under another chapter of energy agency regulations.

Finally, proposed rule EA 802 has been changed in response to comments of parties to the rulemaking proceeding to more clearly state the Agency's position that a certificate of need is not required for an oil storage facility to be used in conjunction with an electric generating plant which itself requires a certificate of need prior to construction.

Proposed rule EA 802 has also been changed to more clearly indicate that expansion of an existing facility by an amount equivalent to the definition of a large oil facility would necessitate application for a certificate of need. This is clearly the intent of of Minn. Stat. § 116H which defines "construction" as "significant physical alteration of a site to install or enlarge a large energy

facility..." and requires that "(a)fter promulgation of the assessment of need criteria, no large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the Director...." Minn. Stat. §§ 116H.02, subd. 9 (1974) and 116H.13, subd. 3 (1974).

In view of the determination herein concerning the term "depot" it is found that the term "oil" should be inserted in the first line of EA 802(a) after the term "large" and the term "oil" should appear before the term "storage" in line six of EA 802. Furthermore, the Hearing Examiner cannot recommend adoption of EA 802(3) and EA 802(4).

9. That proposed EA 803 (Application Procedures and Timing) is reasonable and necessary to establish application procedures and in order to establish time frames appropriate to the procedural aspects and decision-making responsibilities of the parties involved.

Since the Agency has only six months to review and approve or deny an application for a certificate of need, proposed Rule EA 803 is important for the purposes of specifying the form and content of applications, ensuring that an adequate number of copies are filed, and that the application as filed is substantially complete.

Additionally, it is found that an additional inclusion should be added to EA 803 as a reasonable and necessary acknowledgment of industry's request that, in certain situations, applicants be exempt from, or allowed to substitute submissions in satisfaction of various data requirements. Thus, it is found that a new subparagraph EA 903(h) should be included with the following language:

> (h) prior to the submission of an application, a person may be exempted from any data requirement of these rules upon a written request for exemption from specified rules and a showing by that person in a written statement to the director that the data requirement (1) is unnecessary to determine the need for the proposed facility or (2) may be satisfied by submission of another document. A request for exemption must be filed at least 20 days prior to submission of an application. The director shall respond in writing to each request within 15 days of receipt including reasons for his decision. The director shall file a statement of exemption granted and reasons therefor prior to commencement of the hearing.

10. That with the exceptions noted hereinabove in Paragraph No. 6 regarding large coal storage facilities for energy users, proposed definitional rule EA 804 is reasonable and necessary for the purpose of defining those words and key terms which must necessarily have specific meaning for clear understanding of the proposed regulations. The definitions in EA 804 are sufficiently precise so as to avoid ambiguity and do not attribute definitions to the defined words that conflict with applicable statutory definitions.

The Hearing Examiner cannot recommend adoption of EA 804(1) in accordance with his Findings concerning the certificate of need process as regards coal storage facilities. Similarly, any other definition which is not applicable to large oil storage facilities as regulated by these proposed rules is not recommended for adoption.

11. That with the exception noted hereinabove in Paragraph No. 6 regarding large coal storage facilities for energy users, proposed Rule 805 is reasonable and necessary to specify certificate of need filing fees and payment schedules pursuant to Minn. Stat. § 116H.13, subd. 6 (1974).

The Hearing Examiner cannot recommend adoption of EA 805(1) pursuant to his determination concerning coal storage facilities.

The authority to assess fees for processing applications is set forth in Minn. Stat. § 116H.13, subd. 6 (1974). Subdivision 6 provides two general factors which are to be considered in establishing a fee schedule: (1) the size or output of the facility; and (2) the difficulty of assessment of need. The Agency's proposed filing fee and payment schedule is specifically and directly correlated with either output or capacity of the facilities regulated by the proposed regulations. Therefore, the first statutory criteria for assessing fees is specifically followed by the Agency's proposal. The second statutory criteria, that the fees be based on difficulty of assessment of need, is also met by the Agency's proposal. The Agency, in large part, established its fee schedule so as to collect fees which approximate the Agency's costs of processing. In turn, such basis was originally calculated on the Agency's costs per man hour devoted to processing an application. It is specifically found that there is

a direct correlation between man hours devoted to processing an application for a certificate of need and the statutory criteria of "difficulty of assessment of need".

In response to the issue that the proposedRule does not provide for refund procedures, it is specifically found that the fees established in the proposed rules are such that refunds should not be necessary.

The Minnesota Association of Commerce and Industry raised the valid issue that it would not be reasonable for the Agency to assess "such additional fees as are reasonably necessary" without adequate safeguards against abuse. Therefore, the following language is suggested by the Hearing Examiner to be included in place of the sentence beginning at line six of finally-proposed EA 805(2):

> In no event shall the total fee required of any applicant exceed the lessor of $50,000 or 200 percent of the fee set according to the above schedule.

12. That proposed Rule EA 811 (Criteria for Assessment of Need) is reasonable and necessary to establish by regulation criteria to be bused by the Agency Director in his determination of the need for a proposed large energy facility. The Director of the Agency is mandated by statute to promulgate regulations which put forth criteria upon which he is to make an assessment of need. [Minn. Stat. § 116H.13, subd. 1 (Supp. 1975)]. Proposed EA 811 satisfies the statutory dictate to promulgate such regulations.

It is specifically found that certain minor changes to proposed EA 811 will better effectuate the thrust of this Rule. The suggested changes are as follows:

> A. An additional sentence should be added at the end of EA 811(a) as follows: The factors listed under each of the criteria below will be evaluated to the extent that the director deems them applicable and pertinent to each facility proposed pursuant to these rules.
>
> B. EA 811(b)(1)(iii) should reads as follows: The effects of promotional practices of the applicant which may have given rise to the increase in the energy demand, particularly promotional practices which have occurred since 1974.
>
> C. EA 811(b)(4) should be changed to read as follows: ~~The granting of the certificate of need for the proposed facility is consistent~~ it has not been demonstrated on the record that the design, construction or operation of the proposed facility will fail to comply with those relevant policies, rules and regulations of other state and federal agencies and local governments which have been considered during the hearing process.

The above suggested change to EA 811(a) is suggested because the factors listed under each criterion may vary in their applicability from one large energy facility to another. The suggested language makes it clear to an applicant that in particular cases some of the factors will be more pertinent to assessment of need than other factors. Thus, if it is clear that a factor should be given very little weight, or if the applicant can establish the fact that a particular factor bears little relationship to his particular application, the applicant would know that the absence of an affirmative case satisfying that factor would not be weighed negatively by the Director.

The above suggested change to EA 811(b)(1)(iii) is made in order to clearly specify that an applicant is responsible for reporting only its own promotional activities and not the promotional activities of other entities which are not controlled by the applicant.

The above suggested change to EA 811(b)(4) is a reasonable and proper reaction to the comments of industry to the effect that industry should not have the burden of proving that the granting of a certificate of need is consistent with relevant rules and regulations of other federal, state and local agencies. Instead, any inconsistency with such other rules and regulations will have to be demonstrated on the record.

Other rules in the chapter 800 series specify the specific data that an applicant must supply in order for the Director to have a sufficient data and informational basis upon which to apply the criteria specified in EA 811. The Energy Agency Act also specifies criteria to be used by the Director in making his determination of need. It is specifically found that the Agency has authority to promulgate <u>regulations</u> establishing criteria in addition to the statutory criteria to be used by the Director for his assessment of need. It is specifically found that those statutory areas in the Energy Agency Act which must be evaluated by the Director are binding on the Director. However, since the legislature also provided for the Agency to promulgate (by regulation) assessment of need criteria to be used in the determination of need, it is clear that the Agency can promulgate regulations which supplement and expand upon the statutory criteria.

Proposed Rule EA 811 establishes four general areas for consideration upon which the Director must make an affirmative determination before a certificate of need may be granted. The first criterion in the proposed regulation provides the standard which the Director will use to measure the validity of an applicant's asserted need for a new facility when considering the probable result of a denial of the application. The second criterion requires the Director to evaluate possible alternatives for satisfying the goal stated by an applicant. The third criterion requires the Director to determine if the consequences of granting a certificate of need outweigh the consequences of denying such certificate. The fourth criterion requires the Director to find that granting the certificate of need is not inconsistent with the policies, rules and regulations of other state and federal agencies and local governments.

13. That with the exception noted hereinabove in Paragraph No. 6 regarding large coal storage facilities for energy users, proposed EA 821 (Contents of Application) is reasonable and necessary for the purposes of delineating the contents of an application for a certificate of need.

This Rule is designed to accomplish the following: (1) directs an applicant to other rules in the chapter 800 series which requires specific responses; (2) gives an applicant the option of supplying information in response to proposed Rules EA 871 and 891; (3) specifies that <u>each</u> joint applicant must, when required by rule, submit the information required by the appropriate rule; and (4) that each application for a certificate of need for a facility which is owned and used by two or more persons shall be considered as a joint application.

EA 821 should be amended so as to delete reference to "a large coal storage facility" in accordance with the Hearing Examiner's Findings hereinabove.

14. That with the exception noted hereinabove in Paragraph No. 6 regarding large coal storage facilities for energy users, proposed EA 831 (General Information) is reasonable and necessary for the purpose of informing an applicant of the general type of information

required in an application for a certificate of need. In accordance with this Rule, an applicant is required to supply basic information including the applicant's name, title, a brief description of nature of applicant's business, etc.

It was suggested that EA 831(b) is duplicative and unnecessary. It is true that some of the information required therein is available from other agencies. However, it would require much more time for the Agency to compile this information than for an applicant. Therefore, it is advantageous and administratively sound for the applicant to provide the required information. The information supplied is necessary for the Agency to obtain a better understanding of an applicant's timetable for the proposed facility. The Agency will not necessarily process applications in the order they are received if circumstances justify expediting consideration of a particular application. In addition, a list of requried applications and permits may identify some that were overlooked by the applicant. T. 20-21, 70-71.

EA 831(a)(4) should be amended so as to delete any reference to "tons of annual throughput (coal storage)" in accordance with the Hearing Examiner's Findings hereinabove.

15. That proposed Rule EA 832 (Need Summary) is reasonable and necessary for the purposes of allowing an applicant to summarize the major factors which, in applicant's opinion, justify the need for the proposed facility. Such written summary will also enable a reader of the application to quickly gain a general understanding of those factors regarded as most cogent by an applicant without the reader having to review an entire application.

16. That proposed Rule EA 833 (summary of Additional Considerations) is reasonable and necessary to implement by regulation Minn. Stat. § 116H.13, subd. 3 (1974). Subdivision 3 requires the Director to consider and evaluate certain factors: (1) the promotional activities leading to the demand for the proposed facility; (2) socially beneficial uses of the output of the facility; (3) the effects of the facility in inducing future development. The Director cannot adequately evaluate these factors unelss industry supplies the data and information required in EA 833. Such information is not required elsewhere in the proposed rules.

Some adverse comment was made concerning the requirement to supply information about promotional activities and socially beneficial uses of the output of a proposed facility. However, the Rule is designed to elicit responses regarding factors which must be considered by the Director in accordance with statute. The Agency has stated that such factors will not necessarily weight against granting a certificate of need. Indeed, the Agency states that it could strengthen an applicant's case if socially beneficial uses of the output of a proposed facility were mentioned. With regard to promotional practices, the Agency asserts that it would not reflect negatively on an applicant if it were properly asserted that such applicant had not considered promotional practices. Furthermore, such promotional practices could even be constructive to the state's energy future if it meant less reliance on facilities with less efficient energy utilization. Finally, "inducing future development" is not necessarily a negative concept. For example, granting a certificate of need for a large energy facility might have very desirable economic implications. T. 21, 47, 51-52, 64-66, 73-74.

17. That proposed Rule EA 834 (Conservation Programs) is reasonable and necessary to implement and evaluate, by regulation, a system of determining the effects of existing or possible energy conservation programs prior to issuing a certificate of need. Minn. Stat. § 116H.13, subd. 3 (1974). The required data supplied by an applicant under EA 834 will enable the Director to make the appropriate evaluation.

18. That with the exception noted hereinabove in Paragraph No. 6 regarding large coal storage facilites for energy users, proposed Rule EA 841 (Historical Energy Data) is reasonable and necessary in order to require an applicant to supply information and data pertaining to historical experiences. Such data is necessary to aid the Director in his determination of need. Without such data, the Director would have no basis to analyze the accuracy of an applicant's forecast of demand for the product, as required by Minn. Stat. § 116H.13, subd. 3 (1974).

EA 841(a) and 841(f) should be amended so as to delete references to coal facilities in accordance with the Hearing Examiner's Findings hereinabove.

19. That proposed Rule EA 842 (Forecast Data) is reasonable and necessary in order for applicants to supply the Director with information needed in order to make a determination of need. Whereas the rules pertaining to Historical Energy Data require supplying the Director with information pertaining to an applicant's past business experience, the rules pertaining to Forecast Data require information pertaining to expected future business experiences. Minn. Stat. § 116H.13, subd. 3 (1974) requires the Director to evaluate the accuracy of an applicant's long range energy demand forecast. It was suggested that a shorter time limit on the longest term forecast required by EA 842 would be appropriate. The Agency admits that the short term forecasts would be most accurate, but the Agency is required to make 15-year projections which, because of the extent of that time period, are more tenuous and require more assumptions. It is found to be desirable and consonant with the Agency's responsibilities to require a "best guess" of 11 and 16-year forecasts in addition to those of the first five years.

20. That with the exception noted hereinabove in Paragraph No. 6 regarding large coal storage facilities for energy users, proposed Rule EA 843 (Description of Proposed Facility) is reasonable and necessary to describe the purpose, planned use and description of a proposed facility. Such data must be supplied by an applicant as a necessary element for the Director to make an adequate assessment of need.

The Rule is designed to supply the Director with information pertaining to such general categories as the following: Description of the planned facility; its design; estimated cost and life; names of contractors who will construct the facility; a list of sources or anticipated fuel suppliers and any contractual agreements which assure the applicant a source of supply of the fuel; etc.

It was suggested that proposed Rule EA 843(a)(6) and (7) require engineering drawings, blueprints, specifications, and other drawings that would not necessarily be available at the certificate of need stage. The rule, as originally proposed, could therefore have required the hiring of an engineer in the absence of any indi-

cation as to whether the proposed facility would be certified as to need. Therefore, the Agency appropriately amended EA 843(a)(6) and (7) so as to only require an appropriate drawing which shows interconnections with other facilities at the site.

EA 843(a)(1) should be amended so as to delete reference to coal storage facilities in accordance with the Hearing Examiner's Findings hereinabove.

21. That with the exception of EA 844(c)(7), proposed Rule EA 844 (Alternatives) is reasonable and necessary to enable the Director to meet the statutory requirement that he consider possible alternatives to the proposed facility in his assessment of need. Minn. Stat. § 116H.13, subd. 3 (1974).

However, EA 844(c)(7) may be misinterpreted as requiring an applicant to supply information concerning competitors when such information is not available to an applicant and when an applicant should not be held responsible for a competitor's activities or practices. Therefore, it is specifically found that proposed Rule EA 844(c)(7) should not be adopted.

In all other respects, the proposed Rule requires pertinent information on the subject of "Alternatives" which must be considered by the Director.

22. That proposed Rule EA 845 (Environmental Data) is reasonable and necessary to provide the Director with a sufficient data base to meet the statutory directive which requires him to evaluate environmental considerations when making his determination of need.

Proposed EA 845 is neither too burdensome upon industry nor does it exceed the amount of information which is reasonably necessary for the Director to make his appropriate determinations. However, it is specifically found that two minor changes to EA 845 will enhance its acceptance by industry and improve the general tenor of its thrust. The changes are as follows:

> (A.) EA 845 should be changed to read as follows: Each applicant shall provide environmental data for the proposed facility and for each alternative large energy facility described in response to rule EA 844, <u>to the extent that such data is reasonably available.</u> The information relating to construction and operation of these facilities shall be provided as indicated below.

(B.) EA 845(a)(2)(i) should be deleted in its entirety.

The suggested language change to the introductory paragraph of EA 845 acknowledges that there will be instances where an applicant would have very little environmental data on an alternative that had been rejected almost immediately as economically infeasible. Such language must not be viewed as an "out" for an applicant who simply does not want to supply environmental data. In that instance, the Agency would not accept an application as "substantially complete" if the applicant made no attempt to gather data that is reasonably available and applicable.

The suggested deletion of EA 845(a)(2)(i) is suggested since the location of a facility is already requested in the rules. It would be a simple matter for anyone to draw a circle on a map and determine the population centers within specific distance. Thus, if the Agency desires such information, it can obtain such knowledge through its own efforts.

Unquestionably, proposed EA 845 was the subject of more criticism than any other proposed rule in the 800 series. The same objections were raised in another proceeding pertaining to the Energy Agency's proposed chapter 900 rules and regulations. Although the actual wording of herein considered EA 845 and previously considered EA 945 are somewhat different, the issues raised are the same. Thus, the Findings of Fact are and would be the same and the Conclusions are and would be the same. Therefore, the Hearing Examiner specifically refers the reader to Paragraph 21 at Pages 13 through and including 18 of his Report in the matter docketed by the Office of Hearing Examiners as EA-76-004-WS, IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA ENERGY AGENCY GOVERNING CONTENTS OF APPLICATIONS FOR CERTIFICATE OF NEED AND CRITERIA FOR ASSESSMENT OF NEED FOR LARGE COAL STORAGE FACILITIES FOR COAL SUPPLIERS AND COAL TRANSSHIPMENT FACILITIES, filed by this Hearing Examiner with the Energy Agency on November 17, 1976. All issues raised in opposition to EA 845 were similarly raised against EA 945 and responded to and considered at that time. Accordingly, and after having reviewed the record, it is specifically found that EA 845 does not exceed the statutory intent of the certificate of need program.

23. That proposed Rule EA 871 (Other Data Filed With The Application) is reasonable and necessary to enable an applicant to present any additional data which has not been specifically requested. This Rule gives an applicant an option to assert additional explanatory or persuasive information on its own behalf.

24. That with the exception noted hereinabove in Paragraph No. 6 regarding large coal storage facilities for energy users, proposed Rule EA 881 (Certificate of Need Modifications) is reasonable and necessary to allow the Director to exercise the options which may result from his consideration of statutory and regulator criteria. The Director may issue a certificate of need contingent upon modifications.

Further, the rule is needed to require that the Director justify each denial of a certificate of need application and further specifies criteria with regard to whether or not recertification is necessary in certain instances.

EA 881(b)(2) should be deleted and cannot be recommended for adoption as this provision refers to coal storage facilities and which are discussed hereinabove.

25. That proposed Rule 891 (Application In The Alternative) is reasonable and necessary to enable an applicant to simultaneously submit an application for a certificate of need and for a most preferred alternative. This procedure will promote the examination of alternatives and could be a substantial time-saving device if a particular proposed facility were not certified.

26. That industry raised substantial objection to proposed chapter 800 rules based on the premise that the Energy Agency failed to meet the jurisdictional requirements for rule adoption and failed to make timely or affirmative showing as to the reasonableness of the proposed rules. Such argument is without merit. There has been no demonstration of any prejudice or harm suffered by industry because the Agency introduced its Statement of Evidence at the time of the public hearing rather than prior thereto. The Statement of Evidence was introduced at the time of the public hearing. Thereafter, the record of proceedings remained open for twenty days. Industry had adequate time to review the Agency's Statement of Evidence, and to

prepare its response thereto. Furthermore, the participating parties were aware of the Agency's intent to promulgate regulations prior to the time such regulations were originally filed with the Office of Hearing Examiners. There has been a working relationship between the Agency and regulated industries. Accordingly, there was an interchange of ideas concerning the proposed rules prior to the public hearing process.

Additionally, the Energy Agency's Statement of Need is found to be sufficient and adequate. No prejudice can be shown in this case and the rule should not be rejected on such basis.

27. That some of the changes suggested by industry during the public hearing process and prior to the close of the record have been adopted by the Agency Staff and by this Hearing Examiner and are embodied in the proposed Rules as finally submitted before the close of the record. Such action represents the true intent of a give-and-take process whereby proposed rules and regulations are subject to public scrutiny, suggestion and comment. The proposed chapter 800 rules as finally proposed by the Agency and submitted to the Hearing Examiner on July 19, 1976, are found to be substantially the same as the Agency's original proposal as Noticed for Hearing.

CONCLUSIONS

A. That the Minneosta Energy Agency duly acquired and now has jurisdiction over the subject proceeding.

B. That all relevant legal and procedural requirements of statute and regulations have been properly complied with.

C. That with the exception noted hereinabove in the FINDINGS OF FACT at Pargraph No. 6, the Minnesota Energy Agency has statutory authority to promulgate and adopt the subject rules and regulations. That the Minnesota Energy Agency does not have statutory authority to promulgate rules requiring a certificate of need for large coal storage facilities for energy users because large coal storage facilities for energy users are not the types of facilities defined by statute as "Large Energy Faciliites" in accordance with Minn. Stat. § 116H.02, subd. 5 (1976).

D. That with the exception of the applicability of the proposed rules to large coal storage facilities for energy users, the

proposed rules and regulations are reasonable and necessary for the purposes of establishing the necessary data base and assessment of need criteria to be used by the Director of the Minnesota Energy Agency in making his determination of whether to issue a certificate of need. Furthermore, the proposed rules and regulations are reasonable and necessary to supply the requisite data base for other state agencies which are required by statute to participate in the certificate of need process.

E. That in proposing the language changes suggested by this Hearing Examiner in the Findings of Fact and reviewing the finally proposed rules and regulations as compared to the originally proposed rules and regulations which were noticed for public hearing, consideration was given to Minn. Reg. HE 108 which sets forth the criteria necessary to determine whether a rule, as finally adopted, is substantially different from the rule as originally proposed. In the event that it is determined that a substantial change has been made, the proposing agency must either withdraw the proposed final rule or reconvene the rule hearing. This Hearing Examiner concludes that the amendments, additions and language changes suggested by the Hearing Examiner and those made by the Minnesota Energy Agency will not result in a substantial change from the originally proposed rules and regulations.

RECOMMENDATIONS

IT IS HEREBY RESPECTFULLY RECOMMENDED: That the Minnesota Energy Agency adopt the proposed chapter 800 rules as finally revised and submitted by the Minnesota Energy Agency with the deletions, language changes and amendments suggested by the Hearing Examiner in the Findings of Fact. It is specifically recommended that the Minnesota Energy Agency not adopt the proposed chapter 800 rules as they pertain to large coal storage facilities for energy users.

Dated: January 18, 1977.

William Seltzer

WILLIAM SELTZER
Hearing Examiner