

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File #526

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 6/27/79 Temporary Rule _____

Resubmitted and Received _____

DUE DATE 7/17/79

a. Returned to Agency w/o filing w/Secy of State _____
b. Approved 7/16 Date Sent Back to Agency 7/16

- -

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable n/a
4. Order for Hearing ✓
5. Notice of Hearing ✓
   (i) Sufficiency _____
6. Secretary of State's List ✓
7. Certificate of Acquisition of Secretary of State's List _____
8. Affidavit of Mailing ✓
   (i) At least 30 days prior to hearing ✓
9. Statement of Need and Evidence ✓
10. Hearing Examiner's Report ✓
11. Agency's Findings of Fact ✓
12. Certificate of Board's Resolution Adopting Rules, where applicable n/a
13. Order Adopting ✓
14. Report of Chief Hearing Examiner ✓
    (i) Finding of No Substantial Change ✓
    (ii) Permission to Incorporate by Reference, where applicable n/a
15. Certificate of Compliance with Rulemaking Procedures ✓
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable n/a
17. Petition by Public, where applicable n/a

Our File # 526

Dwight S. Wagenius
Special Assistant
Attorney General

July 16, 1979

Joanne E. Hinderaker

In the Matter of the Proposed Amendment of the Rule of the Minnesota Energy Agency Governing Filing Fees for Applications for Certificates of Need for Large Electric Generating Facilities and Large High Voltage Transmission Lines, 6 MCAR § 2.0605.

Adopted - June 12, 1979

MINNESOTA ENERGY AGENCY

RULE GOVERNING FILING FEES FOR APPLICATIONS

FOR CERTIFICATES OF NEED

FOR LARGE ELECTRIC

GENERATING FACILITIES AND LARGE HIGH

VOLTAGE TRANSMISSION LINES

6 MCAR § 2.0605

§ 2.0605 Filing fees and payment schedule.

A. The fee for processing an application shall be:

1. $10,000 plus $50 for each megawatt of plant capacity for LEGF's; or

2. $10,000 plus $40 per kilovolt of design voltage for LHVTL's;

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.~~

B. Twenty-five percent of the fee set according to either item A.1. or A.2. of 6 MCAR § 2.0605 shall accompany the application, and the balance shall be paid in three equal installments within 45, 90, and 135 days after submission of the application. The applicant shall be notified prior to the time its application is acted upon by the director of any additional fees, which fees shall be paid within 30 days of notification. The billing of such additional fees shall be accompanied by an itemized document showing the necessity for the additional assessment.

C. No certificate of need shall be issued until all fees are paid in full.

APPROVED AS TO FORM AND LEGALITY

JUL 16 1979 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY Joanne Hinderaker

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUL 16 1979
Joan Anderson Growe
Secretary of State
1:25 PM

S.F. No. 2
SPECIAL SESSION
CHAPTER No.
002

AN ACT

Distributed By
Secretary of the SENATE
Room 231, State Capitol
St. Paul, 296-2343

relating to energy; clarifying the procedures for declaring an energy emergency; prescribing the powers of the governor and executive council in an emergency; providing for the issuance of temporary rules by the director of the energy agency; prescribing additional elements of the energy emergency conservation and allocation plan; providing for earth sheltered construction zoning variances; prohibiting local governments from banning earth sheltered construction; requiring certain building energy reports and audits; requiring the energy agency to disseminate information on the potential hazards of energy conservation techniques; providing for an adult and post-secondary energy education plan; changing energy conservation standards for existing residential buildings; limiting the time for application for certain variances; providing a method for determining certain efficiencies for air conditioners; providing partial funding to the University of Minnesota, school districts, municipalities and counties for energy audits and energy conservation measures; requiring notice to the Minnesota energy agency of the proposed discontinuance of certain municipal steam heat systems; authorizing a weatherization program for low-income persons; appropriating money; prescribing a penalty; amending Minnesota Statutes 1978, Sections 12.02, Subdivision 1; 12.03, Subdivision 4, and by adding a subdivision; 12.21, Subdivisions 1 and 3, and by adding a subdivision; 12.28; 12.32; 16.32, by adding a subdivision; 116H.02, Subdivisions 3 and 5, and by adding subdivisions; 116H.08; 116H.085; 116H.09, Subdivisions 1, 4, and 5; 116H.11; 116H.12, Subdivisions 1a, 1b, 3a, 3b, and 10; 116H.122; 116H.123; 116H.124; 116H.126; 116H.129, Subdivisions 1, 6 and 7; 116H.13; 116H.15; 120.78, Subdivision 1; 325.989, by adding a subdivision;

394.25, Subdivision 3; 394.27, Subdivision 7; 451.09; 462.357, Subdivisions 1 and 6; 462A.02, by adding a subdivision; Chapter 116H, by adding sections; and Chapter 268, by adding a section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1978, Section 12.02, Subdivision 1, is amended to read:

12.02 [POLICY DECLARATION.] Subdivision 1. Because of the existing and increasing possibility of the occurrence of disasters of ~~unprecedented~~ major size and destructiveness, ~~resulting from enemy attack, sabotage, or other hostile action, or from fire, flood, earthquake or other natural causes,~~ and in order to insure that preparations of this state will be adequate to deal with such disasters, and generally to provide for the common defense and to protect the public peace, health, and safety, and to preserve the lives and property of the people of the state, it is hereby found and declared to be necessary:

(1) To create a state division of emergency services, and to require the creation of local organizations for civil defense in the political subdivisions of the state;

(2) To confer upon the governor and upon governing bodies of the political subdivisions of the state the emergency and disaster powers provided herein; and

(3) To provide for the rendering of mutual aid among the political subdivisions of the state and with other states, and to cooperate with the federal government with respect to the carrying out of civil defense functions.

Sec. 2. Minnesota Statutes 1978, Section 12.03, Subdivision 4, is amended to read:

Subd. 4. "Emergency services" means the preparation for and the carrying out of all emergency functions, other

than functions for which military forces are primarily responsible, to prevent, minimize and repair injury and damage resulting from disasters, or from acute shortages of energy. These functions include, without limitation, fire-fighting services, police services, medical and health services, rescue, engineering, warning services, communications, radiological, chemical and other special weapons defense, evacuation of persons from stricken areas, emergency welfare services, emergency transportation, existing or properly assigned functions of plant protection, temporary restoration of public utility services, implementation of energy supply emergency conservation and allocation measures, and other functions related to civilian protection, together with all other activities necessary or incidental to preparation for and carrying out of the foregoing functions.

Sec. 3. Minnesota Statutes 1978, Section 12.03, is amended by adding a subdivision to read:

Subd. 11. "Energy supply emergency" means a state of emergency declared by the executive council or the legislature pursuant to section 116H.09.

Sec. 4. Minnesota Statutes 1978, Section 12.21, Subdivision 1, is amended to read:

12.21 [GOVERNOR.] Subdivision 1. The governor has general direction and control of ~~civil defense~~ emergency services and has the power and duty to carry out the provisions of this chapter and, during a civil defense emergency declared as existing under section 12.31, or during the existence of an energy supply emergency as declared under section 116H.09, may assume direct operational control over all or any part of the ~~civil defense~~ emergency services functions within this state.

Sec. 5. Minnesota Statutes 1978, Section 12.21,

Subdivision 3, is amended to read:

Subd. 3. In performing his duties under this chapter and to effect its policy and purpose, the governor is further authorized and empowered:

(1) To make, amend, and rescind the necessary orders, rules, and regulations to carry out the provisions of this chapter and section 116H.09 within the limits of the authority conferred upon him herein, with due consideration of the plans of the federal government and without complying with sections 15.0411 to ~~15.049~~ 15.052, inclusive, but no order, rule or regulation shall have the force and effect of law except as provided by section 12.32;

(2) To prepare a comprehensive plan and program for the civil defense of this state, such plan and program to be integrated into and coordinated with the civil defense plans of the federal government and of other states to the fullest possible extent, and to coordinate the preparation of plans and programs for civil defense by the political subdivisions of this state, such plans to be integrated into and coordinated with the civil defense plan and program of this state to the fullest possible extent;

(3) In accordance with such plan and program for the civil defense of this state, to procure supplies and equipment, to institute training programs and public information programs, and to take all other preparatory steps, including the partial or full mobilization of civil defense organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces of civil defense personnel in time of need;

(4) To make such studies and surveys of the industries, resources, and facilities in this state as may be necessary to ascertain the capabilities of the state for civil defense, and to plan for the most efficient emergency

use thereof;

(5) On behalf of this state, to enter into mutual aid arrangements with other states and to coordinate mutual aid plans between political subdivisions of this state;

(6) To delegate any administrative authority vested in him under this chapter, except the power to make rules and regulations, to provide for the subdelegation of any such authority;

(7) To appoint, in cooperation with local authorities, metropolitan area directors when practicable;

(8) To cooperate with the president and the heads of the armed forces, the civil defense agency of the United States and other appropriate federal officers and agencies, and with the officers and agencies of other states in matters pertaining to the civil defense of the state and nation, including the direction or control of

(a) blackouts and practice blackouts, air raid drills, mobilization of civil defense forces, and other tests and exercises;

(b) warnings and signals for drills or attacks and the mechanical devices to be used in connection therewith;

(c) the effective screening or extinguishing of all lights and lighting devices and appliances;

(d) shutting off water mains, gas mains, electric power connections and the suspension of all other utility services;

(e) the conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic during, prior, and subsequent to drills or attack;

(f) public meetings or gatherings; and

(g) the evacuation, reception, and sheltering of the civilian population;

(9) To contribute to a political subdivision, within

the limits of the appropriation therefor, not more than 25 percent of the cost of acquiring organizational equipment which meets standards established by him;

(10) To formulate and execute, with the approval of the executive council, plans and regulations for the control of traffic in order to provide for the rapid and safe movement over public highways and streets of troops, vehicles of a military nature, materials for national defense and war or for use in any war industry, for the conservation of critical materials or for civil defense purposes, and to coordinate the activities of the departments or agencies of the state and of the political subdivisions thereof concerned directly or indirectly with public highways and streets, in a manner which will best effectuate such plans;

(11) To alter or adjust by executive order, without complying with sections 15.0411 to 15.052, the working hours, work days and work week of, and annual and sick leave provisions and payroll laws regarding all state employees in the executive branch as he deems necessary to minimize the impact of the disaster or emergency, conforming any alterations or adjustments to existing state laws, rules and collective bargaining agreements to the extent practicable;

(12) To authorize the commissioner of education to alter school schedules, curtail school activities or order schools closed without affecting state aid to schools.

Sec. 6. Minnesota Statutes 1978, Section 12.21, is amended by adding a subdivision to read:

Subd. 4. The governor shall propose procedures for annual review by state and local officials of the evacuation plans specified in the licensing of each nuclear fission electrical generating plant. The review shall

include, but not be limited to such factors as changes in traffic patterns, population densities, and new construction. Opportunity for full public participation in the annual review shall be provided. Copies of an evacuation plan shall be published, publicized, and distributed to the news media and to the appropriate officials of affected communities, and shall be made available to the general public upon request, at no more than the cost of reproduction.

Sec. 7. Minnesota Statutes 1978, Section 12.28, is amended to read:

12.28 [ORDERS, RULES; ENFORCEMENT.] It shall be the duty of every organization for civil defense established pursuant to this chapter and of the officers thereof to execute and enforce such orders, rules and regulations as may be made by the governor under authority of this chapter or section 116H.09. Each such organization shall have available for inspection at its office all orders, rules and regulations made by the governor, or under his authority.

Sec. 8. Minnesota Statutes 1978, Section 12.32, is amended to read:

12.32 [GOVERNOR'S ORDERS AND RULES, EFFECT.] All orders, rules and regulations promulgated by the governor under authority of section 12.21, subdivision 3, paragraph (1), when approved by the executive council and a copy thereof has been filed in the office of the secretary of state, shall have, during a civil defense or energy supply emergency, the full force and effect of law. All rules, regulations, and ordinances of any agency or political subdivision of the state inconsistent with the provisions of this chapter, or with any order, rule, or regulation having the force and effect of law issued under the

authority of this chapter, shall be suspended during the period of time and to the extent that such conflict exists.

Sec. 9. Minnesota Statutes 1978, Section 16.32, is amended by adding a subdivision to read:

Subd. 4. Plans prepared by the commissioner for a new building or for a renovation of 50 percent or more of an existing building or its energy systems shall include designs which utilize active and passive solar energy systems, earth-sheltered construction, and other alternative energy sources where feasible.

Sec. 10. Minnesota Statutes 1978, Section 116H.02, Subdivision 3, is amended to read:

Subd. 3. ~~"Commission"~~ "Earth sheltered" means ~~the legislative commission on energy.~~ constructed so that more than 50 percent of the exterior surface area of the building, excluding garages or other accessory buildings, is covered with earth and the building code standards promulgated pursuant to section 16.85 are satisfied. Partially completed buildings shall not be considered earth sheltered.

Sec. 11. Minnesota Statutes 1978, Section 116H.02, Subdivision 5, is amended to read:

Subd. 5. "Large energy facility" means:

(a) Any electric power generating plant or combination of plants at a single site with a combined capacity of 50,000 kilowatts or more, or any facility of 5,000 kilowatts or more which requires oil, natural gas, or natural gas liquids as a fuel and for which an installation permit has not been applied for by May 19, 1977 pursuant to Minn. Reg. APC 3(a);

(b) Any high voltage transmission line with a capacity of 200 kilovolts or more and with more than 50 miles of its length in Minnesota; or, any high voltage transmission line

with a capacity of 300 kilovolts or more with more than 25 miles of its length in Minnesota;

(c) 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 their derivatives, unless the facility would be at an existing petroleum storage site and would constitute an increase of less than 20 percent in the storage capacity at that site;

(d) Any pipeline greater than six inches in diameter and having more than 50 miles of its length in Minnesota used for the transportation of coal, crude petroleum or petroleum fuels or oil or their derivatives;

(e) Any pipeline for transporting natural or synthetic gas at pressures in excess of 200 pounds per square inch with more than 50 miles of its length in Minnesota;

(f) Any facility designed for or capable of storing on a single site more than 100,000 gallons of liquified natural gas or synthetic gas;

(g) Any underground gas storage facility requiring a permit pursuant to section 84.57;

(h) 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~~ transferring more than 300 tons of coal per hour or with an annual throughput of more than 500,000 tons of coal from one mode of transportation to a similar or different mode of transportation;

(i) Any facility designed for or capable of storing more than 7,500 tons of coal or with an annual throughput of more than 125,000 tons of coal;

~~(i)~~ (j) Any petroleum refinery;

~~(j)~~ (k) Any nuclear fuel processing or nuclear waste storage or disposal facility; and

~~(k)~~ (l) Any facility intended to convert any material into any other combustible fuel and having the capacity to process in excess of 25 tons of the material per hour.

Sec. 12. Minnesota Statutes 1978, Section 116H.02, is amended by adding subdivisions to read:

Subd. 12. "Building energy report" means a questionnaire designed to collect information on a building concerning its energy use and other basic factors that relate to energy use.

Subd. 13. "Mini-audit" means a brief, on site, inspection designed to observe and record building energy use systems and related factors. The primary objective is to identify energy saving measures that can be implemented quickly and at low cost.

Subd. 14. "Maxi-audit" means a detailed engineering analysis of energy saving building improvements, including modifications to building structure; heating, ventilating and air conditioning systems; operation practices; lighting; and other factors that relate to energy use. The primary objective is to quantify the economic and engineering feasibility of energy saving improvements which require capital expenditures or major operational modifications.

Sec. 13. Minnesota Statutes 1978, Section 116H.08, is amended to read:

116H.08 [POWERS.] The director may:

(a) Adopt rules pursuant to chapter 15 as necessary to carry out the purposes of sections 116H.01 to 116H.15 and, when necessary for the purposes of section 116H.09, adopt temporary rules pursuant to section 15.0412, subdivision 5;

(b) Make all contracts pursuant to sections 116H.01 to 116H.15 and do all things necessary to cooperate with the United States government, and to qualify for, accept and

disburse any grant intended for the administration of sections 116H.01 to 116H.15. Notwithstanding any other law the agency is designated the state agency to apply for, receive and accept federal or other funds made available to the state for the purposes of sections 116H.01 to 116H.15.

(c) Contract for professional services if such work or services cannot be satisfactorily performed by employees of the agency or by any other state agency;

(d) Enter into interstate compacts to jointly carry out such research and planning with other states or the federal government where appropriate;

(e) Distribute informational material at no cost to the public upon reasonable request.

Sec. 14. Minnesota Statutes 1978, Section 116H.085, is amended to read:

116H.085 [ENERGY CONSERVATION INFORMATION CENTER.] The director shall establish an energy conservation information center in the agency's offices in St. Paul. The information center shall maintain a toll-free telephone information service and disseminate printed materials on energy conservation topics, including but not limited to, availability of loans and other public and private financing methods for energy conservation physical improvements, the techniques and materials used to conserve energy in buildings, including retrofitting or upgrading insulation and installing weatherstripping, the projected prices and availability of different sources of energy, and the alternative sources of energy. The information center shall include information on the potential hazards of energy conservation techniques and improvements in the printed materials disseminated. The agency shall not be liable for damages arising from the installation or operation of equipment or materials recommended by the

information center.

Sec. 15. Minnesota Statutes 1978, Chapter 116H, is amended by adding a section to read:

[116H.088] [POST-SECONDARY ENERGY EDUCATION.] Subdivision 1. The director, in consultation with the state board of education, the higher education coordinating board, the state board for community colleges, the state university board, and the board of regents of the University of Minnesota, shall develop a plan for adult and post-secondary energy education.

Subd. 2. The plan shall include:

(a) An identification of adult and post-secondary energy education needs;

(b) The development of adult and post-secondary energy education priorities;

(c) A format for the delivery of adult and post-secondary energy education programs that minimizes duplication of effort by the agencies listed in subdivision 1;

(d) A process for coordination of the acquisition, development, and dissemination of instructional materials and curricula that minimizes duplication of effort by the agencies listed in subdivision 1;

(e) A review of the existing uses of state and federal money to address adult and post-secondary energy education, and a recommendation of future needs for money; and

(f) A recommendation for a process to determine the effectiveness of the adult and post-secondary energy education efforts.

Sec. 16. Minnesota Statutes 1978, Section 116H.09, Subdivision 1, is amended to read:

116H.09 [ENERGY SUPPLY EMERGENCY CONSERVATION AND ALLOCATION PLAN.] Subdivision 1. Within nine months after

March 29, 1974, the director shall prepare and issue an emergency conservation and allocation plan in the manner set forth in subdivision 2. Such plan shall provide a variety of strategies and staged conservation measures to reduce energy use and in the event of an energy supply emergency, shall establish guidelines and criteria for allocation of fuels to priority users. The plan shall contain alternative conservation actions and allocation plans to reasonably meet various foreseeable shortage circumstances and allow a choice of appropriate responses. The plan shall be consistent with requirements of federal emergency energy conservation and allocation laws and regulations, shall be based on reasonable energy savings or transfers from scarce energy resources and shall:

(a) Give priority to individuals, institutions, agriculture and businesses which demonstrate they have engaged in energy-saving measures and shall include provisions to insure that:

(1) Immediate allocations to individuals, institutions, agriculture and businesses be based on needs at energy conservation levels;

(2) Successive allocations to individuals, institutions, agriculture and businesses be based on needs after implementation of required action to increase energy conservation;

(3) Needs of individuals and institutions are adjusted to insure the health and welfare of the young, old and infirm;

(b) Insure maintenance of reasonable job safety conditions and avoid environmental sacrifices;

(c) Establish programs, controls, standards, priorities or quotas for the allocation, conservation and consumption of energy resources; and for the suspension and

modification of existing standards and the establishment of new standards affecting or affected by the use of energy resources, including those related to the type and composition of energy sources, and to the hours and days during which public buildings, commercial and industrial establishments, and other energy consuming facilities may or are required to remain open;

(d) Establish programs to control the use, sale or distribution of commodities, materials, goods or services;

(e) Establish regional programs and agreements for the purpose of coordinating the energy resources, programs and actions of the state with those of the federal government, of local governments, and of other states and localities; and

(f) Determine at what level of an energy supply emergency situation the pollution control agency shall be requested to ask the governor to petition the president for a temporary emergency suspension of air quality standards as required by the Clean Air Act, 42 U.S.C., Section 7410f;

~~(e)~~ (g) Establish procedures for fair and equitable review of complaints and requests for special exemptions regarding emergency conservation measures or allocations.

Sec. 17. Minnesota Statutes 1978, Section 116H.09, Subdivision 4, is amended to read:

Subd. 4. At least once every five years and whenever construction of a new large energy facility is completed which affects the supply of energy in Minnesota, the director shall review and if necessary revise the emergency conservation and allocation plan. Revisions of the emergency conservation and allocation plan shall be promulgated pursuant to the rulemaking procedures in chapter 15 and reviewed by the appropriate standing committees of the legislature. The director may also make

revisions to the plan pursuant to section 15.0412, subdivision 5, and the temporary rules powers of section 116H.08, clause (a), when a declared or impending energy supply emergency requires.

Sec. 18. Minnesota Statutes 1978, Section 116H.09, Subdivision 5, is amended to read:

Subd. 5. The executive council or the legislature may declare an energy supply emergency when an acute shortage of energy exists by issuing a declaration which indicates the nature of the emergency, the area or areas threatened if less than the whole state is threatened, and the conditions causing the emergency. The declaration shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and shall be promptly filed with the energy agency, the division of emergency services and the secretary of state. Upon a declaration of an energy supply emergency by the executive council or the legislature, ~~the director shall request the division of emergency services to implement and enforce the emergency conservation allocation plan~~ the governor and the division of emergency services, in consultation with the director, shall implement and enforce the emergency conservation and allocation plan or any part thereof. Revisions of the plan shall be made by the director in accordance with subdivision 4. The executive council ~~and the legislative commission~~ or the legislature may terminate an energy supply emergency at any time by issuing a declaration which terminates the energy supply emergency and indicates the conditions which make possible termination of the emergency, but no energy supply emergency may continue for longer than 30 days unless renewed by ~~the executive council and the legislative commission~~ the legislature. Each renewed energy supply

emergency may not continue for longer than 30 days, unless otherwise provided by law. Each person shall carry out the responsibilities specified in the emergency conservation allocation plan, and violation of any provision of such emergency conservation or allocation requirements shall be deemed a violation of sections 116H.01 to 116H.15 and the rules ~~or regulations~~ promulgated thereunder for purposes of enforcement pursuant to section 116H.15.

Sec. 19. Minnesota Statutes 1978, Section 116H.11, is amended to read:

116H.11 [STATE ENERGY POLICY AND CONSERVATION REPORT.] Subdivision 1. Beginning January 1, 1976, and at least every two years thereafter, the director shall transmit to the governor and the legislature a comprehensive report designed to identify emerging trends related to energy supply, demand, conservation, public health and safety factors, and to specify the level of statewide and ~~service~~ geographical area energy need. The report shall include, but not be limited to, all of the following:

(a) A final report on the accuracy and acceptability of the energy forecasts received under section 116H.10 and the alternatives to meeting that demand;

(b) An estimate of statewide and geographical area energy need for the forthcoming five and ten year period which, in the judgment of the director, will reasonably balance requirements of state and ~~service~~ geographical area growth and development, protection of public health and safety, preservation of environmental quality, and conservation of energy resources. ~~Such forecasts established by the director shall serve as the basis for certification of large energy facilities in section 116H.13;~~

(c) The anticipated level of statewide and geographical area energy demand for 20 years, which shall

serve as the basis for long range action;

(d) The identification of potential adverse social, economic, or environmental effects caused by a continuation of the present energy demand trends;

(e) An assessment of the state's energy resources, including examination of the availability of commercially developable and imported fuels;

(f) The estimated reduction in annual energy consumption resulting from various energy conservation measures;

(g) The cost of energy to residential and rental consumers in relation to their socio-economic status;

(h) An assessment of the economic and employment implications of proposed state energy policies;

~~(g)~~ (i) The status of the department's ongoing studies;

~~(h) A description of the emergency allocation plan;~~

~~(i)~~ (j) Recommendations to the governor and the legislature for administrative and legislative actions to accomplish the purposes of sections 116H.01 to 116H.15.

Subd. 2. Prior to the preparation of a final report, the director shall issue a draft report to ~~the legislative commission on energy,~~ the environmental quality board and any person, upon request, and shall hold a public meeting. Notice of the public meeting shall be provided to each regional development commission.

Subd. 3. The director shall distribute the final report to any person upon request.

Sec. 20. Minnesota Statutes 1978, Section 116H.12, Subdivision 1a, is amended to read:

Subd. 1a. Beginning July 1, ~~1978~~ 1980, the use of outdoor display lighting shall be limited as provided in subdivision 1b. For purposes of this section, "outdoor display lighting" shall include building facade lighting,

other decorative lighting, and all billboards and advertising signs except those which identify a commercial establishment which is open for business at that hour.

Sec. 21. Minnesota Statutes 1978, Section 116H.12, Subdivision 1b, is amended to read:

Subd. 1b. The director shall ~~develop proposed~~ promulgate rules, pursuant to chapter 15, by ~~October 1, 1977~~ July 1, 1979, setting standards covering permissible hours of operation, quantity and efficiency of outdoor display lighting and defining "outdoor display lighting".

Sec. 22. Minnesota Statutes 1978, Section 116H.12, Subdivision 3a, is amended to read:

Subd. 3a. Beginning April 20, 1977, no person shall use a decorative gas lamp in Minnesota except as provided in subdivision 3b. ~~All natural gas utilities and LP gas distributors doing business in Minnesota shall notify each of their customers of this prohibition, in writing, at least 120 days prior to the deadline including such information as the agency may require. The agency shall notify all natural gas utilities and LP gas distributors of this requirement and of the entire form and contents of such notice within 30 days of April 20, 1976, including the necessary technological information to adapt gas lights to electricity.~~

Sec. 23. Minnesota Statutes 1978, Section 116H.12, Subdivision 3b, is amended to read:

Subd. 3b. The director may grant a variance where conversion is not possible with reasonable cost. All applications for a variance shall be received by the director before July 1, 1979.

Sec. 24. Minnesota Statutes 1978, Section 116H.12, Subdivision 10, is amended to read:

Subd. 10. Beginning January 1, 1978, no new room air

conditioner shall be sold or installed or transported for resale into Minnesota unless it has an energy efficiency ratio of 7.0 or higher. For purposes of this subdivision, "energy efficiency ratio" means the ratio of the cooling capacity of the air conditioner in British thermal units per hour to the ~~total~~ electrical input in watts ~~under designated operating conditions.~~ To determine the energy efficiency ratio, all room air conditioner models shall be tested in accordance with the methods and conditions specified in American National Standard Z234.1, and American Society of Heating, Refrigerating, and Air Conditioning Engineers Standard 16-69. A new room air conditioner having dual voltage ratings shall conform to the energy efficiency ratio requirements at each rating. This subdivision shall not apply to air conditioners in Minnesota on October 1, 1977. ~~No person may transport non complying units into this state in excess of what he can reasonably anticipate selling prior to January 1, 1978.~~

Sec. 25. Minnesota Statutes 1978, Section 116H.122, is amended to read:

116H.122 [ENERGY CONSERVATION IN STATE OWNED BUILDINGS.] ~~Before January 1, 1980~~ By June 30, 1982, the commissioner of administration, in cooperation with the director, shall ~~survey~~ complete a mini-audit or maxi-audit of all buildings which are heated ~~by city, coal, gas or electric units~~ and ~~which are~~ owned by the state of Minnesota, including buildings and associated facilities of the state university system, the state fairgrounds as defined in section 37.01, the Minnesota historical society building, and all buildings under the administration or supervision of the commissioners of natural resources, corrections, welfare, ~~or~~ and transportation~~, to determine the energy savings that can be accomplished through~~

~~insulation, climate control or illumination modifications.~~ The ~~survey~~ commissioner shall determine~~, based upon a formula specified by the director,~~ the estimated remaining useful life of each building, together with the present degree and estimated cost of compliance with the energy conservation standards promulgated pursuant to section 116H.121. The ~~survey~~ commissioner shall ~~include an estimate, based upon a formula specified by the director,~~ of the annual potential savings in units of fuel and fuel procurement costs ~~for existing heating and cooling systems~~ which would be realized for each state owned building if its operating procedures were modified and it were improved to comply with each of the energy conservation standards promulgated pursuant to section 116H.121. ~~Buildings heated by oil or interruptable gas shall be surveyed first.~~ If funds are inadequate to complete a mini-audit or maxi-audit of all state owned buildings, the commissioner shall give priority to buildings of 25,000 or more square feet. If the commissioner determines that a modification is economically feasible, in that savings in fuel procurement costs will exceed the cost of the modification amortized over the remaining useful life of the building, he shall recommend implementation of the modification to the legislature. The commissioner shall submit to the legislature an ~~interim~~ annual progress report ~~by~~ on January 1, ~~1977~~ of each year and a final progress report by ~~January 1, 1980~~ December 31, 1982, indicating the number and percentage of state owned buildings surveyed, the estimated costs of implementing the economically feasible modifications, the energy savings and costs resulting from implementing such modifications, and his findings, recommendations, and priorities for implementing economically feasible modifications.

Sec. 26. Minnesota Statutes 1978, Section 116H.123, is amended to read:

116H.123 [ENERGY CONSERVATION IN UNIVERSITY BUILDINGS.] ~~Before January 1, 1980~~ By June 30, 1982, the university of Minnesota, after consultation with the director, shall ~~survey~~ complete a mini-audit or a maxi-audit of all buildings and associated facilities of the university of Minnesota which are heated ~~by city, coal, electric, or gas units to determine whether energy savings could be accomplished through insulation, climate control or illumination modifications.~~ The ~~survey~~ university shall ~~determine, based upon a formula specified by the director,~~ the estimated remaining useful life of each building, together with the present degree and estimated cost of compliance with the energy conservation standards promulgated pursuant to section 116H.121. The ~~survey~~ university shall ~~include an estimate, based upon a formula specified by the director, of~~ the annual potential savings in units of fuel and fuel procurement costs for existing heating and cooling systems, which savings would be realized for each university owned building if its operating procedures were modified and it were improved to comply with each of the energy conservation standards promulgated pursuant to section 116H.121. ~~Buildings heated by oil or interruptable gas shall be surveyed first.~~ If funds are inadequate to complete a mini-audit or maxi-audit of all university owned buildings, the university shall give priority to buildings of 25,000 or more square feet. If the university determines, ~~based upon a formula specified by the director,~~ that a modification is economically feasible, in that estimated savings in fuel procurement costs will exceed the cost of the modification amortized over the remaining useful life of the building,

it shall implement the modification in a manner designed to maximize the reduction in costs resulting from the modification. The university shall submit to the legislature an ~~interim~~ annual progress report ~~before~~ on January 1, ~~1977~~ of each year and a final report ~~before January 1, 1980~~ by December 31, 1982, indicating the number and percentage of university owned buildings surveyed, the estimated costs of implementing the economically feasible modifications, the energy savings and costs resulting from implementing such modifications, and its preliminary findings, recommendations, and priorities for implementing economically feasible modifications ~~based upon the continuing survey~~.

Sec. 27. Minnesota Statutes 1978, Section 116H.124, is amended to read:

116H.124 [LOCAL GOVERNMENTAL SURVEYS AND FUEL COST ESTIMATES.] Subdivision 1. ~~Before January 1, 1980,~~ The governing body of each city and county shall complete a ~~survey of~~ building energy report for all existing city owned or county owned buildings within their respective jurisdictions which ~~buildings~~ are heated ~~by city, county electric or gas units. Buildings heated by oil or interruptable gas shall be surveyed first. The survey shall determine based upon a formula specified by the director, the estimated remaining useful life of each building, together with the present degree and estimated cost of compliance with the energy conservation standards promulgated pursuant to section 116H.121. The governing body of a city or county may contract with any municipal building official appointed pursuant to section 16.862, or with the state building inspector to perform the energy conservation survey. Each governing body shall estimate based upon a formula specified by the director, the annual~~

~~potential savings in fuel procurement costs for existing heating and cooling systems, which savings would be realized for each building within its jurisdiction if that building were improved to comply with the energy conservation standards.~~ The building energy report shall be recorded on a form furnished by the director. Each governing body shall file the ~~energy conservation survey and estimated fuel procurement data for at least half the buildings within its jurisdiction~~ building energy report with the director ~~before December 31, 1978, and all remaining buildings~~ by December 31, 1979, for his review and ~~comment~~ analysis.

Subd. 2. [MAXI-AUDITS AND MINI-AUDITS.] On or before June 30, 1980, based upon analysis of the building energy reports, the director shall indicate to the governing body of each city and county those buildings upon which a mini-audit, a maxi-audit, or both, shall be performed. The audit results shall be recorded on a form furnished by the director, and filed with the director by December 31, 1982.

Subd. 3. [APPEAL FROM DECISION OF DIRECTOR.] The governing body of any city or county may appeal the decision of the director pursuant to subdivision 2 by submitting in writing to the director the reasons for the appeal. No appeal may be considered by the director if received later than three months after notification to the city or county that a mini-audit or maxi-audit shall be performed. The director shall review all appeals and respond to the governing body within one month of receipt of the appeal indicating whether the appeal is granted in full, granted in part, or denied.

Subd. 4. [CERTIFICATION OF AUDITORS.] The director may certify persons to perform mini-audits and maxi-audits, and to complete the building energy reports.

Subd. 5. [ACCEPTANCE OF EQUIVALENT ENERGY SURVEY.] The director may accept the results of an equivalent energy survey in place of the building energy report or audits required under this section.

Sec. 28. Minnesota Statutes 1978, Section 116H.126, is amended to read:

116H.126 [PUBLIC SCHOOL BUILDING ENERGY REPORTS AND AUDITS.] Subdivision 1. ~~Before January 1, 1980,~~ Each school district shall complete a ~~survey of~~ building energy report for all existing public school buildings which it owns or operates and which are heated ~~by city gas, coal, or electric units in order to determine the estimated remaining useful life of each building, together with the present degree and estimated cost of compliance with the energy conservation standards promulgated pursuant to section 116H.121. Buildings heated by oil or interruptable gas shall be surveyed first.~~ The ~~results of the energy conservation survey~~ building energy report shall be recorded on a form furnished by the director. ~~A school district may contract with any municipal building official appointed pursuant to section 16.861 or with the state building inspector to perform the energy conservation survey. Each school district shall estimate, based upon a formula specified by the director, the annual savings in fuel procurement costs for existing heating and cooling systems, which savings would be realized for each public school building within the district if it were improved to comply with the energy conservation standards.~~ Each school district shall file the ~~energy conservation survey and estimated fuel procurement data for at least half the public school buildings within the district~~ building energy reports with the director ~~before December 31, 1979, and all remaining buildings~~ by December 31, 1979, for his review

and ~~comment~~ analysis.

Subd. 2. [MAXI-AUDITS AND MINI-AUDITS.] On or before July 1, 1980, based upon the analysis of the building energy reports, the director shall indicate to each school district those buildings upon which a mini-audit, maxi-audit, or both, shall be performed. The audit results shall be recorded on a form furnished by the director and filed with the director by December 31, 1982.

Subd. 3. [APPEAL FROM DECISION OF DIRECTOR.] Any school district may appeal the decision of the director pursuant to subdivision 2 by submitting in writing to the director the reasons for the appeal. No appeal may be considered by the director if received later than three months after notification to the school district that a mini-audit or maxi-audit shall be performed. The director shall review all appeals and respond to the school district within one month of receipt of the appeal indicating whether the appeal is granted in full, granted in part, or denied.

Subd. 4. [CERTIFICATION OF AUDITORS.] The director may certify persons to perform mini-audits and maxi-audits, and to complete the building energy reports.

Subd. 5. [ACCEPTANCE OF EQUIVALENT ENERGY SURVEYS.] The director may accept the results of an equivalent energy survey in place of the building energy report and audits required under this section.

Subd. 6. [SCHOOL DISTRICTS INTENDING TO CLOSE PUBLIC SCHOOL BUILDINGS.] A school district intending to permanently close or otherwise discontinue use of any existing public school building by January 1, 1985, shall not be required to comply with this section as to those buildings, if a certification of intent to close the building is filed with the director.

Subd. 7. [STUDY OF CAPABILITY OF ENERGY MANAGEMENT PERSONNEL.] The director shall conduct a study of the capabilities and level of training of school district energy management personnel. The report shall include recommendations and shall be submitted to the legislature by January 1, 1980.

Sec. 29. Minnesota Statutes 1978, Section 116H.129, Subdivision 1, is amended to read:

116H.129 [ENERGY CONSERVATION STANDARDS FOR EXISTING RESIDENCES.] Subdivision 1. Before January 1, 1979, the commissioner of administration, in consultation with the director and the appropriate standing committees of the legislature, shall promulgate minimum energy efficiency standards for existing residences. The standards shall be economically feasible in that the resultant savings in energy procurement costs, based on current and projected average residential energy costs in Minnesota as certified by the director in the state register, will exceed the cost of the energy conserving requirements amortized over the five-year period subsequent to the incurring of such cost. The costs computed under this section shall include reasonable inflation and interest factors. Not later than January 1, 1981, the commission shall amend the rules to require that energy conserving requirements shall be amortized over a ten year period.

Sec. 30. Minnesota Statutes 1978, Section 116H.129, Subdivision 6, is amended to read:

Subd. 6. [BUILDING EVALUATORS.] By August 1, ~~1979~~ 1980, the commissioner of administration shall certify evaluators in each county of the state who are qualified to determine the compliance of a residence with applicable energy disclosure requirements. The commissioner of administration shall, by rule pursuant to chapter 15,

establish standards for the certification and performance of evaluators and set a fee for the certification of evaluators which is sufficient to cover the ongoing costs of the program once it is established. The commissioner shall encourage the certification of existing groups of trained municipal personnel and individuals from public service organizations. Effective August 1, ~~1979~~ 1980, each certified evaluator shall, on request of the owner, inspect any residence and report the degree to which it complies with applicable energy disclosure requirements. The inspections shall be made within 30 days of the request.

Sec. 31. Minnesota Statutes 1978, Section 116H.129, Subdivision 7, is amended to read:

Subd. 7. [DISCLOSURE REPORT.] Effective October 1, ~~1979~~ 1980, no owner or agent shall sell by conveyance or contract for conveyance a residence constructed before January, 1976, without providing to the buyer, prior to the time of sale, a copy of an energy disclosure report for the residence unless the buyer has been provided a copy of the form used in making an energy disclosure report and has declared in writing that he waives his right to a report. If the residence has been evaluated subsequent to April 6, 1978, no new evaluation shall be required for five years after the date of the evaluation, if a copy of the last evaluation has been delivered to the prospective buyer. The provisions of this subdivision shall not apply to the sale or conveyance of any residence to a public body or by a sheriff, constable, marshal or other public or court officer in the performance of his official duties as such, or to trustees in bankruptcy or any other person or persons acting under the direction or authority of any court, state or federal, in selling a residence, except as to a public sale ordered by a probate court, in which case this

subdivision shall apply.

Sec. 32. Minnesota Statutes 1978, Section 116H.13, is amended to read:

116H.13 [CERTIFICATE OF NEED.] 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.

Subd. 3. No proposed large energy facility shall be certified for construction unless the applicant has justified its need. In assessing need, the director shall evaluate:

(1) The accuracy of the long range energy demand forecasts on which the necessity for the facility is based;

(2) The effect of existing or possible energy conservation programs under sections 116H.01 to 116H.15 or other federal or state legislation on long term energy demand;

(3) The relationship of the proposed facility to overall state energy needs, such as are described in the most recent state energy policy and conservation report prepared pursuant to section 116H.11;

(4) Promotional activities which may have given rise to the demand for this facility;

(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.

Subd. 4. After promulgation of the criteria for assessment of need, any person proposing to construct a large energy facility shall apply for a certificate of need prior to construction of the facility. The application shall be on forms and in a manner established by the director. In reviewing each application the director shall hold at least one public hearing pursuant to chapter 15. The public hearing shall be held at a location and hour reasonably calculated to be convenient for the public. An objective of the public hearing shall be to obtain public opinion on the necessity of granting a certificate of need. The director shall designate an energy agency employee whose duty shall be to facilitate citizen participation in the hearing process.

Subd. 5. Within six months of the submission of an application, the director shall approve or deny a certificate of need for the facility. Such approval or denial of the certificate shall be accompanied by a statement of the reasons for the decision. Issuance of the certificate may be made contingent upon modifications required by the director.

Subd. 6. Any application for a certificate of need shall be accompanied by a the fee ~~not to exceed $50,000~~ required pursuant to this subdivision. The maximum fee shall be $50,000, except for an application for an electric power generating plant as defined in section 116H.02, subdivision 5, clause (a) or a high voltage transmission line as defined in section 116H.02, subdivision 5, clause (b), for which the maximum fee shall be $100,000. The director may require an additional fee to recover the costs of any rehearing. The fee for a rehearing shall not be greater than the actual cost of the rehearing or the maximum fee specified above, whichever is less. The director shall establish by ~~regulation~~ rule 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.

Subd. 7. Other state agencies authorized to issue permits for siting, construction or operation of large energy facilities shall present their position regarding need and participate in the public hearing process prior to the issuance or denial of a certificate of need. Issuance or denial of certificates of need shall be the sole and exclusive prerogative of the director and said determinations and certificates shall be binding upon other state departments and agencies, regional, county and local governments and special purpose government districts except as provided in sections 116C.01 to 116C.08 and 116D.04, subdivision 9.

Subd. 8. This section shall not apply in any case where the director shall determine after being advised by the attorney general that its application has been

preempted by federal law.

Sec. 33. Minnesota Statutes 1978, Section 116H.15, is amended to read:

116H.15 [ENFORCEMENT, PENALTIES.] Subdivision 1. Any person who violates sections 116H.01 to 116H.15, 325.985, or 325.986, or any rule or regulation promulgated ~~hereunder~~ thereunder, or knowingly submits false information in any report required by sections 116H.01 to 116H.15, 325.985, or 325.986 shall be guilty of a misdemeanor. Each day of violation shall constitute a separate offense.

Subd. 2. The provisions of sections 116H.01 to 116H.15, 325.985, and 325.986, or any rules or regulations promulgated hereunder may be enforced by injunction, action to compel performance or other appropriate action in the district court of the county wherein the violation takes place. The attorney general shall bring any action under this subdivision upon the request of the director, and the existence of an adequate remedy at law shall not be a defense to an action brought under this subdivision.

Subd. 3. When the court finds that any person has violated sections 116H.01 to 116H.15, 325.985, or 325.986, or any rule or regulation thereunder, has knowingly submitted false information in any report required by sections 116H.01 to 116H.15, 325.985, or 325.986, or has violated any court order issued under sections 116H.01 to 116H.15, 325.985, or 325.986, the court may impose a civil penalty of not more than $10,000 for each violation. These penalties shall be paid to the general fund in the state treasury.

Sec. 34. Minnesota Statutes 1978, Chapter 116H, is amended by adding a section to read:

[116H.22] [FUNDS FOR SCHOOLS AND GOVERNING BODIES.] Funds to pay part or all of the actual costs of maxi-audits

and energy conservation measures performed by or for schools and governing bodies shall be available from legislative appropriations made for that purpose in accordance with the priorities established in section 35.

Sec. 35. Minnesota Statutes 1978, Chapter 116H, is amended by adding a section to read:

[116H.23] [PRIORITIES FOR FUNDING.] All applications for funding shall be made to the director of the Minnesota energy agency. Applications shall be accompanied by a report on the energy using characteristics of the building and any other information the director may reasonably require. A school or local government may apply to the director to receive reimbursement for up to the reasonable costs of mini-audits or maxi-audits performed pursuant to section 116H.124 or 116H.126. Notwithstanding any other law to the contrary, schools and local governments which submit their maxi-audits or mini-audits to the director prior to or on December 31, 1980 may use the state funds received to pay part of or all of the reasonable costs of energy conservation measures. In the event that the applicant receives federal funds pursuant to the National Energy Conservation Policy Act, P.L. 95-619, which funds are intended to be used to pay part or all of the costs of a mini-audit or maxi-audit, the applicant shall receive state funds, which, when combined with federal funds received, equal the reasonable costs of the mini-audit or maxi-audit. The director shall not prior to December 31, 1980, order maxi audits for more than one third of the buildings for which building energy reports are submitted.

Sec. 36. Minnesota Statutes 1978, Section 120.78, Subdivision 1, is amended to read:

120.78 [FUEL CONSERVATION REPORTS.] Subdivision 1. On or before ~~August 15~~ December 31 of each year each school

district shall submit to the commissioner of education, in such manner and upon such forms as he shall furnish, a comprehensive report of the energy consumed by the district during the previous school year ending June 30. The report shall include: (1) ~~the amount and type of fuel consumed to heat~~ a building energy report, as defined in section 116H.02, on each building and other structure maintained by the district; (2) the amount of fuel used to transport students to and from school and between schools; and (3) such other information as the commissioner may require related to the consumption of energy. The report shall be developed by the commissioner in consultation with the director of the energy agency.

Sec. 37. Minnesota Statutes 1978, Chapter 268, is amended by adding a section to read:

[268.371] [COORDINATION OF RESIDENTIAL WEATHERIZATION PROGRAM.] Subdivision 1. The department of economic security is the state agency to apply for, receive, and disburse federal money made available to the state by federal law or rules promulgated thereunder for the purpose of weatherizing the residences of low-income persons. The commissioner of economic security shall coordinate available federal money with any state money appropriated for this purpose.

Subd. 2. The commissioner shall make grants to community action agencies and other public or private nonprofit agencies for the purpose of weatherizing the residences of low-income persons. Grant applications shall be submitted in accordance with rules developed pursuant to 42 U.S.C., Sections 6861 to 6872, any other relevant federal weatherization program, and rules promulgated by the commissioner.

Subd. 3. The commissioner shall promulgate temporary

rules as necessary to administer the grants program by July 1, 1979 and shall promulgate permanent rules by July 1, 1980. The rules shall describe: (a) procedures for the administration of grants, (b) data to be reported by grant recipients, and (c) other matters the commissioner finds necessary for the proper administration of the grant program including compliance with relevant federal regulations. Weatherization assistance shall be given to households where the total income does not exceed 125 percent of the poverty level as updated by the federal office of management and budget poverty guidelines.

Subd. 4. [REPORTS.] The commissioner shall submit reports to the legislature by March 1, 1980, and March 1, 1981, evaluating the weatherization program. The reports shall describe: (a) the number of households weatherized, (b) the average cost per household, (c) any change in energy consumption after weatherization, (d) outreach efforts, and (e) any other information the commissioner feels is relevant, including information routinely submitted to the federal government.

Sec. 38. Minnesota Statutes 1978, Section 325.989, is amended by adding a subdivision to read:

Subd. 3a. Rules promulgated by the director of the energy agency pursuant to section 325.985, subdivision 1, and section 325.986, subdivision 1 may be enforced by the director of the energy agency pursuant to section 116H.15.

Sec. 39. Minnesota Statutes 1978, Section 394.25, Subdivision 3, is amended to read:

Subd. 3. Within each such district zoning ordinances or maps may also be adopted designating or limiting the location, height, bulk, number of stories, size of, and the specific uses for which dwellings, buildings, and structures may be erected or altered; the minimum and

maximum size of yards, courts, or other open spaces; setback from existing roads and highways and roads and highways designated on an official map; protective measures necessary to protect the public interest including but not limited to controls relating to appearance, signs, lighting, hours of operation and other aesthetic performance characteristics including but not limited to noise, heat, glare, vibrations and smoke; the area required to provide for off street loading and parking facilities; heights of trees and structures near airports; and to avoid too great concentration or scattering of the population. All such provisions shall be uniform for each class of land or building throughout each district, but the provisions in one district may differ from those in other districts. No provision may prohibit earth sheltered construction as defined in section 116H.02, subdivision 3, that complies with all other zoning ordinances promulgated pursuant to this section.

Sec. 40. Minnesota Statutes 1978, Section 394.27, Subdivision 7, is amended to read:

Subd. 7. The board of adjustment shall have the exclusive power to order the issuance of variances from the terms of any official control including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control in cases when there are practical difficulties or particular hardship in the way of carrying out the strict letter of any official control, and when the terms of the variance are consistent with the comprehensive plan. "Hardship" as used in connection with the granting of a variance means the property in question cannot be put to a reasonable use if used under the conditions allowed by the official controls; the plight of the landowner is due

to circumstances unique to his property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone shall not constitute a hardship if a reasonable use for the property exists under the terms of the ordinance. Variances shall be granted for earth sheltered construction as defined in section 116H.02, subdivision 3, when in harmony with the official controls. No variance may be granted that would allow any use that is prohibited in the zoning district in which the subject property is located. The board of adjustment may impose conditions in the granting of variances to insure compliance and to protect adjacent properties and the public interest. The board of adjustment may consider the inability to use solar energy systems a "hardship" in the granting of variances.

Sec. 41. Minnesota Statutes 1978, Section 451.09, is amended to read:

451.09 [STEAM HEAT SYSTEMS; DISCONTINUANCE OR CONVERSION.] Subdivision 1. Any steam heat system operated by a public utilities board or commission in any home rule charter city may be discontinued in whole or in part at the discretion of such board or commission. Funds may be expended at the discretion of such board or commission to compensate persons to whom service is discontinued for the expense of converting to some other type of heat system. Prior to exercising any of the authority granted by this section, the public utilities board or commission shall obtain the approval of the governing body of the city. The authority granted by this section shall apply notwithstanding any statute, city charter, or other law to the contrary. This ~~section~~ subdivision shall not apply to Austin, Marshall and Virginia.

Subd. 2. A public utilities board or commission operating a steam heat system in a home rule charter city shall inform the energy agency of its plans to discontinue operation at least two years prior to the intended date of discontinuance of operation. If the public utilities board or commission decides to discontinue operation of the steam heat system prior to July 1, 1981, it shall notify the director of the energy agency within 60 days of its decision.

Sec. 42. Minnesota Statutes 1978, Section 462.357, Subdivision 1, is amended to read:

462.357 [PROCEDURE FOR PLAN EFFECTUATION; ZONING.] Subdivision 1. [AUTHORITY FOR ZONING.] For the purpose of promoting the public health, safety, morals and general welfare, a municipality may by ordinance regulate the location, height, bulk, number of stories, size of buildings and other structures, the percentage of lot which may be occupied, the size of yards and other open spaces, the density and distribution of population, the uses of buildings and structures for trade, industry, residence, recreation, public activities, or other purposes, and the uses of land for trade, industry, residence, recreation, agriculture, forestry, soil conservation, water supply conservation, conservation of shorelands, as defined in section 105.485, access to direct sunlight for solar energy systems as defined in section 116H.02, flood control or other purposes, and may establish standards and procedures regulating such uses. No regulation may prohibit earth sheltered construction as defined in section 116H.02, subdivision 3, that complies with all other zoning ordinances promulgated pursuant to this section. The regulations may divide the municipality into districts or zones of suitable numbers, shape and area. The regulations

shall be uniform for each class or kind of buildings, structures or land and for each class or kind of use throughout such district, but the regulations in one district may differ from those in other districts. The ordinance embodying these regulations shall be known as the zoning ordinance and shall consist of text and maps. A city may by ordinance extend the application of its zoning regulations to unincorporated territory located within two miles of its limits in any direction, but not in a county or town which has adopted zoning regulations; provided that where two or more noncontiguous municipalities have boundaries less than four miles apart, each is authorized to control the zoning of land on its side of a line equidistant between the two noncontiguous municipalities unless a town or county in the affected area has adopted zoning regulations. Any city may thereafter enforce such regulations in the area to the same extent as if such property were situated within its corporate limits, until the county or town board adopts a comprehensive zoning regulation which includes the area.

Sec. 43. Minnesota Statutes 1978, Section 462.357, Subdivision 6, is amended to read:

Subd. 6. [APPEALS AND ADJUSTMENTS.] Appeals to the board of appeals and adjustments may be taken by any affected person upon compliance with any reasonable conditions imposed by the zoning ordinance. The board of appeals and adjustments has the following powers with respect to the zoning ordinance:

(1) To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of the zoning ordinance.

(2) To hear requests for variances from the literal

provisions of the ordinance in instances where their strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration, and to grant such variances only when it is demonstrated that such actions will be in keeping with the spirit and intent of the ordinance. Undue hardship includes, but is not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 116H.02, subdivision 3, when in harmony with the ordinance. The board of appeals and adjustments or the governing body as the case may be, may not permit as a variance any use that is not permitted under the ordinance for property in the zone where the affected person's land is located. The board or governing body as the case may be, may permit as a variance the temporary use of a one family dwelling as a two family dwelling. The board or governing body as the case may be may impose conditions in the granting of variances to insure compliance and to protect adjacent properties.

Sec. 44. Minnesota Statutes 1978, Section 462A.02, is amended by adding a subdivision to read:

Subd. 10. It is further declared that supplies of conventional energy resources are rapidly depleting in quantity and rising in price and that the burden of these occurrences falls heavily upon persons of low and moderate income. These conditions are adverse to the health, welfare, and safety of the citizens of this state. It is further declared that it is a public purpose to ensure the availability of financing to be used by low and moderate income people to install in their dwellings reasonably priced energy conserving systems using alternative energy resources and equipment.

Sec. 45. [APPROPRIATIONS.] Subdivision 1. The sum of $13,750,000 is appropriated from the general fund to the agencies and for the purposes indicated in this section, to be available until June 30, 1981, except as otherwise provided in this section.

Subd. 2. ENERGY AGENCY

(a) Energy audits and conservation measures pursuant to section 34	$10,000,000
Of this appropriation, up to $713,700 is for program administration. Approved complement — up to 13 unclassified positions for this biennium only.	
(b) Energy accounting system for schools and local governments, and training courses for local government and school personnel on energy accounting methods	$40,000
(c) Report on study of level of training and capabilities of local government and school energy management personnel, to be submitted to legislature by January 1, 1980	$10,000
(d) Revisions of the energy supply conservation and allocation plan and rule promulgation pursuant to Minnesota Statutes, Chapter 15	$30,000
(e) Model solar and earth-sheltered zoning ordinances and state building and energy code changes to achieve maximum utilization of earth-sheltered construction. These projects shall be conducted in consultation with	

the building code division of the department of administration. $20,000

(f) Technical and non-technical literature on solar energy and ethanol, assistance to solar energy system users, and coordination of adult and post-secondary energy education programs $50,000

(g) Research on district heating systems $100,000

Approved Complement - 2 unclassified positions for this biennium only.

(h) Engineering analyses of existing steam heat systems $50,000

(i) Match federal money for district heating system projects $250,000

Money from this appropriation is available for a project when the federal government issues a letter of intent to finance the project at the rate of $3 of federal money for each $1 of state money.

Subd. 3. DEPARTMENT OF ECONOMIC SECURITY

Coordinate residential weatherization program, pursuant to section 37 $3,000,000

No more than five percent of this appropriation shall be used for administrative purposes.

Subd. 4. UNIVERSITY OF MINNESOTA

For maxi-audits conducted pursuant to Minnesota Statutes, Section 116H.123 $200,000

This appropriation shall cancel if other state funds are appropriated for this purpose.

Sec. 46. The appropriation made to the department of administration by Laws 1978, Chapter 786, Section 23, is available until expended.

S. F. No. 2
SPECIAL SESSION

Edward J. Gearty
President of the Senate.

Rod Searle
Speaker of the House of Representatives.

Passed the Senate this 24th day of May in the year of Our Lord one thousand nine hundred and seventy-nine.

Patrick E. Flahaven
Secretary of the Senate.

Passed the House of Representatives this 24th day of May in the year of Our Lord one thousand nine hundred and seventy-nine.

Edward A. Burdick
Chief Clerk, House of Representatives.

Approved June 7, 1979

Albert H. Quie
Governor of the State of Minnesota.

Filed June 7, 1979

Joan Anderson Growe
Secretary of State.

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Amendment of the Rule of the Minnesota Energy Agency Governing Filing Fees for Applications for Certificates of Need for Large Electric Generating Facilities and Large High Voltage Transmission Lines, 6 MCAR § 2.0605.	)	Docket No. EA-79-004-AK STATEMENT OF COMPLIANCE WITH MANUAL OF RULEMAKING 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: June 26, 1979

Dwight S. Wagenius

Special Assistant Attorney General

ADMIN 1000 (Rev. 1/78) Our File: #526

DEPARTMENT Attorney General

STATE OF MINNESOTA

Office Memorandum

TO : Dwight S. Wagenius
Special Assistant
Attorney General

DATE: July 16, 1979

FROM : Joanne E. Hinderaker JEH
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: Rules as Approved In the Matter of the Proposed Amendment to

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

If you have any questions in this regard, please contact me.

JEH:mb

Enclosure

Joanne E. Hinderaker

Our File: #526

Dwight S. Wagenius
Special Assistant
Attorney General

July 16, 1979

Joanne E. Hinderaker

In the Matter of the Proposed Amendment to

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
ST. PAUL 55155

WARREN SPANNAUS
ATTORNEY GENERAL

TELEPHONE
(612) 296-6196

June 26, 1979

Lee E. Sheehy
Special Assistant Attorney General
Department of Administration
G-25 State Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

RE: In the Matter of the Proposed Amendment of the Rule of the Minnesota Energy Agency Governing Filing Fees for Applications for Certificates of Need for Large Electric Generating Facilities and Large High Voltage Transmission Lines, 6 MCAR § 2.0605.

Dear Mr. Sheehy:

Enclosed pursuant to Minn. Stat. § 15.0412, subd. 4 (1978) 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

720 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 296-8278

DSW/bm

Enclosure

AN EQUAL OPPORTUNITY EMPLOYER

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

RECEIVED
APR 13 19
OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed Amendment of the Rule of the Minnesota Energy Agency Governing Filing Fees for Applications for Certificates of Need for Large Electric Generating Facilities and Large High Voltage Transmission Lines, 6 MCAR § 2.0605.

Docket No. EA-79-004-AK

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in Room D of the Veterans Service Building, 20 West 12th Street and Columbus Avenue between Wabasha and Iglehart, St. Paul, on May 11, 1979, commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard, and

IT IS FURTHER ORDERED that a Notice of Hearing be given to all persons who have registered their names with the Secretary of State for that purpose, and

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

DATED: March 28, 1979

ALGERNON H. JOHNSON
Director

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Amendment of the Rule of the Minnesota Energy Agency Governing Filing Fees for Applications for Certificates of Need for Large Electric Generating Facilities and Large High Voltage Transmission Lines, 6 MCAR § 2.0605.	Docket No. EA-79-004-AK STATEMENT OF NEED AND REASONABLENESS

Agency Staff will introduce the following evidence: 6 MCAR §§ 2.0601-2.0641 and this statement.

One or more of the following expert witnesses employed by the Minnesota Energy Agency may be called upon to testify: David L. Jacobson, Manager, Certificate of Need Activity; Arthur L. Adiarte, Energy Facility Analyst; Karen R. Cole, Environmental Coordinator; and Richard A. Wallen, Acting Assistant Director, Data and Analysis Division. The named individuals played a substantial role in developing the proposed amendment or have experience in the implementation of other Agency rules. They will be available to testify on the need for and reasonableness of the proposed amendment.

The following statutes and laws will be cited: Minn. Stat. ch 116H (especially, but not exclusively, section 116H.13); Minn. Stat. ch 116D; and Minn. Stat. § 16A.128 (1978).

The above captioned rule is an amendment to an existing rule of the Minnesota Energy Agency.

The justification of the need for and reasonableness of the proposed amendment is established in the following paragraphs.

The rule in question covers the filing fees and the payment schedule for certificate of need applications for large electric generating facilities and large high voltage transmission lines. The rule initially was adopted on September 30, 1975, as a part of an entire set of rules, Minn. Regs. EA 601-638. Amendments to that set of rules were adopted on February 14, 1978. However, the filing fees and payment schedule were not altered by those amendments.

The amendment proposed at this time would simply delete the following sentence from the rules: "In no event shall the total fee required of any applicant exceed $50,000."

The first reason for the amendment is that it is unnecessary. Minn. Stat. § 116H.13, Subd. 6, provides that "[a]ny application for a certificate of need shall be accompanied by a fee not to exceed $50,000." Thus, at this time the Agency could not collect more than $50,000 per application, even if 6 MCAR § 2.0605 were not in force. In fact, Minn. Stat. § 15.0412, Subd. 1, expressly discourages duplication of statutory language. Thus, removal of the sentence in question would be in harmony with statutory dictates.

The second reason for removing the sentence is far more important. Duplication of the statutory maximum in Agency rules frustrates the Agency's attempts to collect enough fees to cover the costs of the program. Minn. Stat. § 116H.13, Subd. 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 (1978) 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 fee charged for a certificate of need application should approximate the cost of processing it.

The problem with duplicating the statutory language in the rules arises from the lead time necessary to amend rules. If the Agency waited until the statute was changed to amend its rules, any applications received while the rules were being amended would be subject to the old maximum (assuming the maximum was increased). This problem would make it difficult for the Agency to meet its goal of collecting sufficient fees to cover expenses.

This situation, of course, is a problem only if applications cost more than $50,000 to process. At least two applications have cost the Agency in excess of $50,000. The first was the proceeding on the controversial ± 400 kV transmission line in western Minnesota. Total cost calculations have not been made. However, staff and attorney cost estimates alone exceed $50,000, and hearing examiner and court reporter bills exceeded $13,000. The Agency continues to incur costs related to that project. The second was an application by Northern States Power Company for 1600 megawatts of coal-fired electric generating capability. A conservative estimate of Agency costs for that proceeding is $87,100.

The Agency has, in its housekeeping legislative proposal, H.F. 990, Article III, requested that the statutory maximum be lifted to $100,000 for electric generating plants and transmission lines. However, the Agency does not wish to wait until the legislature acts on this matter before amending its rule. If the legislature does not approve the Agency's request, the utilities will be protected by the statutory maximum, even if the rule amendment is adopted.

One final issue should be discussed regarding the applicability of the existing fee schedule between the amounts of $50,000 and $100,000. It could be argued that the existing fee schedule would not be appropriate beyond the current maximum. However, that argument should be given very little weight. For generating plants, the current maximum is reached with an 800-megawatt plant ($10,000 + $50 x 800 = $50,000). The fee for a 1600-megawatt plant would be $90,000 ($10,000 + $50 x 1600 = $90,000). As mentioned previously, the Agency believes that a conservative estimate of its last hearing on a 1600-megawatt plant is $87,100. (The Agency believes it is conservative because the number of staff hours used to calculate that amount has been called "low" by the past Certificate of Need Activity manager.)

For transmission lines, the Agency believes the current fee structure is too low. The current statutory maximum would be met at 1000 kilovolts. The largest line built in or proposed for Minnesota is 500 kilovolts. Furthermore, the Agency probably has

underestimated the opposition to increased numbers of transmission lines, if the western Minnesota line proves to be at all representative. Because processing costs are closely related to hearing length, the Agency believes the current fee schedule would not cover costs of future applications.

Another indication that, if anything, the current fee schedule is too low is that the Agency now must prepare an environmental report in conjunction with each application for a generating plant (in excess of 50 megawatts) or a transmission line. The Agency believes that $20,000 is a conservative estimate of the cost of each report. This requirement did not exist when the current fee schedule was adopted.

The Agency is not proposing to modify its fee schedule at this time, however. The Agency can bill for additional costs above the fee schedule, up to the statutory maximum, if it can justify such costs. Furthermore, the Agency does not at this time have the data it would need to establish an improved fee schedule. The current round of applications should provide such data.

To summarize, the proposed amendment is necessary for the Agency to meet its statutory mandates. The amendment is reasonable because it would merely allow the Agency to bill according to its actual costs, up to the maximum controlled by the legislature.

Dated: April 13, 1979

David L. Jacobson
Manager
Certificate of Need Program

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

RECEIVED
APR 13 1979
OFFICE OF HEARING
EXAMINERS

In the Matter of the Proposed Amendment of the Rule of the Minnesota Energy Agency Governing Filing Fees for Applications for Certificates of Need for Large Electric Generating Facilities and Large High Voltage Transmission Lines, 6 MCAR § 2.0605.	)))))))	Docket No. EA-79-004-AK **NOTICE OF HEARING**

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in Room D of the Veterans Service Building, 20 West 12th Street and Columbus Avenue between Wabasha and Iglehart, St. Paul, Minnesota on May 11, 1979, 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 material may be submitted by mail to Hearing Examiner Allan W. Klein, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone (612) 296-5938 either before the hearing, or within five working days after the close of the hearing unless the hearing examiner orders a longer period not to exceed 20 calendar days.

Notice: any person may request notification of the date on which the hearing examiner's report will be available, after which date the Agency may not take any final action on the rule for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the Agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report), or to the Agency (in the case of the Agency's submission or resubmission to the Attorney General).

The proposed amendment, if adopted, would simply delete from 6 MCAR § 2.0605 A. the following sentence: "In no event shall the total fee required of any applicant exceed $50,000." As of this time, this sentence is unnecessary because this maximum is specified by Minn. Stat. § 116H.13, Subd. 6. Furthermore, the Administrative Procedure Act discourages agencies from merely copying statutory language in their rules. However, if the statutory maximum is included in the rules, implementation of any change in the statutory maximum would have to await the outcome of a rules hearing. This would cause problems for the Agency in collecting sufficient fees to cover the costs of certificate of need applications.

Copies of the proposed amendment are now available and one free copy may be obtained by writing to the Minnesota Energy Agency, attention David L. Jacobson, 980 American

Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101. Copies will also be available at the door on the date of the hearing.

Notice: The proposed amendment is subject to change as a result of the rules hearing process. The Agency therefore strongly urges those who may be affected in any manner by the substance of the proposed rule to participate in the rules hearing process.

The Agency's authority to promulgate the proposed amendment is contained in Minn. Stat. §§ 116H.08(a) and 116H.13, Subd. 6.

Notice is hereby given that 25 days prior to the hearing, a statement of need and reasonableness will be available for review at the Agency and at the Office of Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the Agency at the hearing justifying both the need for and the reasonableness of the proposed amendment. Copies of the statement of need and reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Please be advised that Minnesota Statutes Chapter 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he/she becomes a lobbyist. Lobbying includes attempting to influence rulemaking by communicating or using others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

DATED: March 28, 1979

ALGERNON H. JOHNSON
Director

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

RECEIVED
APR 13 1979
OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed Amendment of the Rule of the Minnesota Energy Agency Governing Filing Fees for Applications for Certificates of Need for Large Electric Generating Facilities and Large High Voltage Transmission Lines, 6 MCAR § 2.0605.

AFFIDAVIT OF MAILING

Kathleen M. Strauch, being first duly sworn upon oath, deposes and says:

That on the 9th day of April, 1979, 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 a true and correct copy thereof, properly enveloped, with first class postage prepaid, to all persons and associations at the addresses listed in the attached Certificate of the Secretary of State.

Kathleen M. Strauch

Subscribed and sworn to before me
this 9th day of April, 1979.

Cecilia Lovejoy
Notary Public

CECILIA LOVEJOY
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Comm. Expires July 16, 1980

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

RECEIVED
APR 13 1979
OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed Amendment of the Rule of the Minnesota Energy Agency Governing Filing Fees for Applications for Certificates of Need for Large Electric Generating Facilities and Large High Voltage Transmission Lines, 6 MCAR § 2.0605.

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S MAILING LIST

David L. Jacobson, being first duly sworn upon oath, deposes and says:

1) That he is an employee of the Minnesota Energy Agency of the State of Minnesota.

2) That on the 4th day of April, 1979, he made of the Office of the Secretary of State of the State of Minnesota a request for 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 Minn. Stat. § 15.0412 (1978).

3) That on the 6th day of April, 1979, 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 herein.

Further affiant sayeth not.

David L. Jacobson

Subscribed and sworn to before me this 9th day of April, 1979.

Elisabeth C. McLeod
Notary Public

ELISABETH C. McLEOD
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires Nov. 24, 1983

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

RECEIVED
APR 13 1979
OFFICE OF HEARING
EXAMINERS

In the Matter of the Proposed Amendment)
of the Rule of the Minnesota Energy)
Agency Governing Filing Fees for)
Applications for Certificates of Need)
for Large Electric Generating Facilities)
and Large High Voltage Transmission)
Lines, 6 MCAR § 2.0605.)

CERTIFICATE OF DELIVERY
SECRETARY OF STATE LIST

I hereby certify that the attached 2 sheets - 589 labels constitute the complete list of persons, associations, and interested groups who as of 8:35 o'clock A.M., this 6th day of April, 1979, have requested pursuant to Minn. Stat. § 15.0412 (1978) that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

JOAN ANDERSON GROWE
Secretary of State
State of Minnesota

Joan Anderson Growe

By Kathy Hyelsr

PROPOSED AMENDMENT OF THE

MINNESOTA ENERGY AGENCY

RULE GOVERNING FILING FEES FOR APPLICATIONS

FOR CERTIFICATES OF NEED

FOR LARGE ELECTRIC

GENERATING FACILITIES AND LARGE HIGH

VOLTAGE TRANSMISSION LINES

6 MCAR § 2.0605

§ 2.0605 Filing fees and payment schedule.

A. The fee for processing an application shall be:

1. $10,000 plus $50 for each megawatt of plant capacity for LEGF's; or

2. $10,000 plus $40 per kilovolt of design voltage for LHVTL's;

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.~~

B. Twenty-five percent of the fee set according to either item A.1. or A.2. of 6 MCAR § 2.0605 shall accompany the application, and the balance shall be paid in three equal installments within 45, 90, and 135 days after submission of the application. The applicant shall be notified prior to the time its application is acted upon by the director of any additional fees, which fees shall be paid within 30 days of notification. The billing of such additional fees shall be accompanied by an itemized document showing the necessity for the additional assessment.

C. No certificate of need shall be issued until all fees are paid in full.

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

Eileen A. Gaiovnik, being first duly sworn, deposes and says that on the 1st day of June, 1979, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Report of the Hearing Examiner, EA-79-004-AK

unstamped, by placing in the designated tray to be collected by messenger for delivery to the central mailing station as required by Minn. Stat. § 16.54 (1974), a true and correct copy thereof on the individual named below.

Eileen A. Gaiovnik

Subscribed and sworn to before me this
1st day of June, 1979.

Susan C. Wojcik

SUSAN C. WOJCIK
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Commission Expires April 26, 1986

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

RECEIVED
JUN 6 1979

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Amendment of the Rule of the Minnesota Energy Agency Governing Filing Fees for Applications for Certificates of Need for Large Electric Generating Facilities and Large High Voltage Transmission Lines, 6 MCAR Sec. 2.0605.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Allan W. Klein, duly appointed Hearing Examiner, on May 11, 1979, at the Veterans Service Building, Saint Paul, Minnesota.

This was a rules hearing pursuant to Minn. Stat. Ch. 15, held to determine whether a proposed amendment to an existing rule should be adopted.

Representing the Minnesota Energy Agency (hereinafter "the Agency") were David L. Jacobson, Manager, Certificate of Need Activity, and Dwight S. Wagenius, Special Assistant Attorney General.

Only four members of the public appeared at the hearing. The hearing continued until all persons had an opportunity to be heard. The record remained open until May 18, 1979 for the submission of comments. Only one was received.

Pursuant to Minn. Stat. Sec. 15.0412, subd. 4, this Report shall be available to all affected persons for review for at least five working days before the Agency takes any final action on the proposed amendment.

Thereafter, the Agency shall, if it proposes to adopt the amendment as originally proposed or otherwise amended, submit a copy of the Order Adopting Rules, a copy of any additional Agency findings, a copy of the Rules as originally proposed, and a copy of the Rules as adopted to the Chief Hearing Examiner for review pursuant to Minn. Stat. Sec. 15.052, subd. 4. The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his report to the Agency on the issues of substantial change in the rule and compliance with Minn. Stat. Sec. 15.0412 within ten calendar days. The Agency will be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing. Three of the four persons appearing at the hearing did indicate that they desired to be notified of such filing.

Based upon all records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

1. On March 26, 1979, the Agency filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules.
(b) The Order for Hearing proposed to be issued.
(c) The Notice of Hearing proposed to be issued.
(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.

2. On April 9, 1979, a Notice of Hearing and a copy of the proposed rules were published at 3 State Register 1853.

3. On April 9, 1979, the Agency mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On April 13, 1979, the Agency filed the following documents:

(a) The Order for Hearing.
(b) The Notice of Hearing as mailed.
(c) The Affidavit of Receipt of the Secretary of State's list.
(d) The Affidavit of Mailing the Notice to all persons on the Secretary of State's list.
(e) The Secretary of State's Certificate and list.
(f) The Statement of Need and Reasonableness.
(g) The names of Agency personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.

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

5. On April 9, 1979, the Agency published an abbreviated Notice of Hearing in the EQB Monitor, Volume 3, Issue 40, at page 130.

Background and Description of the Proposed Amendment

6. Minn. Stat. Sec. 116H.13, subd. 6, read as follows at the time of the hearing:

> 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.

It was amended during the 1979 Special Session. See Finding No. 12, below.

7. Pursuant to that statute, the Agency did, in September of 1975, adopt a rule which is now numbered 6 MCAR Sec. 2.0605. The rule has remained unchanged to date, and reads in pertinent part as follows:

> Sec. 2.0605 Filing fees and payment schedule
>
> A. The fee for processing an application shall be:
>
> 1. $10,000 plus $50 for each megawatt of plant capacity for LEGF's; or
>
> 2. $10,000 plus $40 per kilovolt of design voltage for LHVTL's;
>
> 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.

8. The sole change which the Agency is proposing to make in this rules hearing is to delete the last sentence of paragraph A., which limits the total fee to $50,000. If the Agency's proposed amendment were to be adopted, there would be no maximum dollar amount of the fee in the rule, but the remaining provisions of paragraph A. would define the fee to be charged.

Statutory Authority

9. The Agency's authority to make the proposed change is found in Minn. Stat. secs. 116H.08(a), and 116H.13, subd. 6. The first of these

broadly empowers the Director of the Agency to "adopt rules . . . necessary to carry out the purposes of sections 116H.01 to 116H.15". The second is quoted above. The Examiner specifically finds that the Director does have authority to adopt the proposed amendment.

Agency Justification for Proposed Amendment

10. The Agency pointed out in its statement of Need that Minn. Stat. sec. 116H.13, subd. 6, sets forth two criteria which the Director should consider in establishing a fee schedule. Those criteria are (a) output or capacity of the facility, and (b) the difficulty of assessment of need. The Agency stated at the hearing that the philosophical approach of requiring applicants to pay such an application fee indicated a legislative intent that the Certificate of Need program operate on a "pay as you go" basis. In addition, the Agency pointed out that Minn. Stat. sec. 16A.128 requires adjustment of fees at least once each six months so that the total fees received will approximate the amount appropriated for various funds, such as the Certificate of Need activity. The Agency did not provide any documentation of approval from the Commissioner of Finance, however, in light of the fact that the statute had not been changed at the time of the hearing, such approval might have been premature.

11. The Agency pointed out that at least two applications for Certificates of Need have resulted in Agency costs in excess of $50,000, and at the hearing, they revised that statement to indicate that a third Certificate of Need proceeding (which had not yet been concluded) also appears to have exceeded the $50,000 limitation. The Agency believes that future costs of proceedings for large electric generating facilities and large high voltage transmission lines will cause more and more proceedings to exceed the $50,000 limitation. The reason for this belief is the substantial increase in the public's concern about such facilities and a concomitant increase in the public's awareness of, and participation in, the Certificate of Need process.

12. For the reasons stated above, the Agency has also proposed that the statutory limitation of $50,000 be revised upward. At the hearing, the Agency introduced the most recent version of House File 990 (Agency Ex. 7) which, in sec. 13, does delete the $50,000 limitation and substitutes a maximum limitation of $100,000 for certain proceedings. At the time of the hearing, this bill had passed the House and was scheduled for hearing in the Senate. It did not pass during the regular session, but it did pass during the Special Session as S.F. No. 2. The new law provides that the maximum fee shall be $100,000 for certain electric power generating plants and certain high voltage transmission lines. In all other cases, the maximum fee will remain at $50,000.

13. In addition to the above, the Agency pointed out that Minn. Stat. sec. 15.0412, subd. 1, expressly discourages duplication of statutory language in rules. In this particular case, the Agency suggested that to continue the duplication would require that a hearing (such as this one) be held whenever the Legislature changes the statutory maximum, and that because of the "lead time" necessary to amend rules, the Agency could be

caught in a situation where the Legislature had acted, but the old rule still limited the Agency. Therefore, the Agency believes it is best for the rule to contain no maximum fee.

14. In addition to the anticipated increase in costs of Certificate of Need proceedings discussed above, the Agency pointed out that additional costs have been imposed because of new responsibilities in connection with these proceedings. At the time that the current fee schedule was adopted, there was no absolute requirement that an environmental report be prepared in conjunction with applications for large electric generating facilities. However, the Agency is now required to prepare such reports for each such facility with a capacity in excess of 50 megawatts, and for every transmission line. While the Statement of Need estimates that $20,000 is a conservative estimate of the cost of each such report, at the hearing it was stated that the Agency now believes (based upon its most recent experiences) that $30,000 to $40,000 would be a conservative estimate.

Public Comments

15. Two public witnesses testified at the hearing. The first was Paul Ims, a citizen residing in Echo, Minnesota. The second was Martha Ballou, Staff Director, Minnesota Citizen Action (MCA). Ims discussed the proposed amendment in terms of the broader impact of existing and future energy policies of the State on agricultural, environmental and social grounds. He stated that the Certificate of Need process, in its present form, lacks credibility because of the erroneous forecasts presented in certain past proceedings, and believes that those errors were brought to light by private citizens who participated in the process. He feels, however, that, under the present system, private citizens are placed at a severe disadvantage vis-a-vis Applicants because the citizens lack the financial resources and people power to effectively participate in the process.

Ims urged that the current rule be retained unless an adequate system of financing citizen participation is developed. He recommended that the Director of the Agency initiate a series of state-wide hearings to develop a system for financing adequate citizen participation, but that if such a system could not be implemented, the Certificate of Need process loses much of its meaning, and the costs of the process ought to be limited as much as possible. To use his own words:

> In the event that an adequate system of financing citizen participation in the Certificate of Need hearings is not developed, it is recommended that the current $50,000 limitation be retained, since without adequate citizen participation, it would appear that $50,000 is already a dear sum for obtaining a decision that is probably already predetermined, and which cost gets passed on to the consumers.

16. In addition to voicing his primary concern relating to the need for a system of financing public participation in order to obtain meaningful proceedings, Ims also recommended that Minn. Stat. sec. 116H.13, subd. 3, be amended. That subdivision sets forth the standards to be used by the Director in assessing need for a proposed facility. Ims suggests that an additional standard be added, as follows:

(9) Socially and environmentally detrimental effects of large coal-fired and nuclear-power electric generating plant.

Ims stated that the statutory change was needed because:

> . . . adequate standards have not been established to protect citizens from acid rains, hazardous trace elements, low-level radiation, fly ash, and polluting particulates that cause significant respiratory complications.

The Examiner pointed out that neither he nor the Director had the power to make the statutory change recommended by Ims, and urged him to speak with his legislators about it.*

17. Martha Ballou stated that she supported Ims entirely, relating that her experience had shown, by and large, that public participation under the present system "is a farce". However, her experience related primarily to rate proceedings, not Certificate of Need proceedings. She did, however, tie the two together by pointing out that individual wage earners are being asked to hold their wage demands down to 7%, and thus, utility costs ought to be held down to that same figure. She stated:

> If we're trying to hold to a 7% increase in utility costs, we would like to go on record as opposing anything that will increase costs utilities have to pay in terms of regulation.

She also argued in favor of an expanded role for consumers in energy decision-making generally.

18. The sole written comment was submitted by Wendell G. Bradley, an assistant professor of physics at Gustavus Adolphus College.

Bradley stated that he was familiar with Certificate of Need proceedings, having participated in some and having reviewed the record in others. He urged that any additional funds that might be expended in such hearings would best be spent financing public participation as opposed to financing the Agency's Staff.

Agency Response to Public Comments

19. The Agency representatives made a number of responses to the public comments. They included the following:

a. In order to implement funding of public participation in Certificate of Need proceedings, the Agency would have to obtain specific statutory authority from the Legislature.

b. The application fee is used to pay for staff review of the application, publishing notices of hearings in local newspapers, travel, hearing examiner expenses, and court reporter expenses. If the proposed amendment is not adopted, the agency will be faced, in lengthy or controversial hearings, with either limiting its involvement or funding costs in excess of the application fee out of state tax dollars.

Focussing on the second of these responses, David Jacobson testified that the application fees go into the state treasury, and the dollars which are spent in processing a certificate are amounts budgeted to the agency in

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*Ims' proposal is presented here for the Director's information.

the state's budgetary process. Therefore, strictly speaking, the Agency could (and has) spent more on a given application than was received by the fee. However, due to the "pay for yourself" philosophy of the program cited earlier, Jacobson felt constrained, as manager of the budgeted dollars, to stay within the application fee as much as possible. He stated that he believed it to be imperative that the Agency develop a full record on any application, and that in large hearings, this has lead to (and is expected to lead to, absent any change) "overspending". Jacobson believed that such overspending was necessary, but that at the present time, it was financed from the state treasury, and ultimately by state taxpayers. If the amendment were adopted, it will be financed by applicants, and ultimately, their ratepayers.

Discussion

20. The basic questions to be answered in this proceeding are whether the Agency has justified its proposed deletion of the $50,000 maximum fee presently contained in the rule. The specific criteria to be applied are whether the Agency has demonstrated (a) the need for the deletion and (b) the reasonableness of the deletion.

21. With respect to need, the legislature's action on S.F. 2 presents the Agency with a situation where the statute sets the maximum fee at $100,000 for certain facilities, but the rule limits the fee to $50,000. This legislative change alone would be an adequate justification of need for the rule to be changed.

In addition, the Agency's proposal is certainly within the spirit, if not the letter, of Minn. Stat. sec. 15.0412, subd. 1 (1978), the statute which prohibits duplication of statutory language unless it is determined that such duplication is crucial to the ability of an affected person to comprehend the meaning and effect of a rule. Duplication is not required in this case.

22. The final argument with respect to need merges into an argument with respect to reasonableness, and it will be treated under both headings here. That is the argument presented by the public comments opposing any changes which would increase utility rates. This is countered by the Agency's belief that it is important to spend as much as is necessary to have an adequate record in Certificate of Need proceedings at the expense, if necessary, of applicants and their ratepayers.

A large portion of the application fees paid by applicants is spent on salaries for Agency personnel who review applications for completeness and make independent recommendations at the hearings. While the Examiner is aware of Certificate of Need proceedings in which public participants have played a significant role in opposition to applications, in the one proceeding in which he has functioned as an Examiner, it was the Agency Policy Analysis Staff who were the only opposition. If Ims and Ballou support the concept of the Agency staff doing a thorough job in connection with every application which is filed, then the question becomes who is to pay for the staff work. A similar question may be raised with respect to the hearing examiner's expenses. If there is to be a thorough and fair

hearing, who is going to bear the costs? It appears that the only choices are the applicant (and its ratepayers) or the State (and its taxpayers). Ims, supported by Ballou and Bradley, would have the State pay for public participation in the process. Absent such publicly-funded participation, they believe that the process is not meaningful, and therefore, is a waste of ratepayers' money. Can it be said that it is both needed and reasonable that ratepayers bear the costs of these hearings, or should taxpayers?

The Examiner believes that the Legislature has answered this question in favor of ratepayers, rather than taxpayers, footing the bill. In light of the legislative action, the Examiner finds that the Agency's proposal is reasonable.

Based upon the foregoing Findings, the Examiner hereby makes the following:

CONCLUSIONS OF LAW

1. Due, timely and adequate legal notice of the hearing was properly served and published by the Agency. All other substantive and procedural requirements of law and rule have been fulfilled with the possible exception of a failure to obtain prior approval of the Commissioner of Finance pursuant to Minn. Stat. sec. 16A.128, but see Finding No. 10.

2. The Agency has demonstrated its statutory authority to adopt the proposed rule amendment.

3. The Agency has demonstrated both the need for and reasonableness of the proposed rule amendment.

Based upon the foregoing, the Examiner hereby respectfully makes the following:

R E C O M M E N D A T I O N

That the proposed amendment be adopted.

Dated this 31st day of May, 1979.

Allan W. Klein

ALLAN W. KLEIN
Hearing Examiner

M E M O R A N D U M

Ims, Ballou and Bradley did show, in the mind of the Examiner, the frustration felt by members of the public in marshalling the finances and technical expertise necessary to play a full and meaningful role in complex hearings, whether they be rate hearings, power plant site hearings, or Certificate of Need proceedings. The Legislature can respond to this frustration in any number of ways, but clearly two choices are (a) to adopt Ims' and Bradley's suggestion, and somehow fund public participation directly, or (b) fund state agencies so that they may speak for the public. For example, there is an activity within the Consumers Services section of the Department of Commerce, funded by the State Legislature, which is charged with the responsibility for representing and furthering the interests of residential utility customers in rate proceedings. Similarly, the power

plant siting staff, its advisory committees, and the public advisor,* are charged with representing the public interest in power plant siting matters. Finally, as has been noted above, the Policy Analysis Staff of the Agency has undertaken to act as an independent advocate of the public interest in Certificate of Need proceedings. If members of the public are unsatisfied with these legislative choices, then they ought to petition their legislators for a change. But they must recognize that the power to make such a change lies not in the Examiner, nor in the Director of the Agency, but rather in the Legislature.

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*S.F. 2, the new law passed in the Special Session, created a similar position for Certificate of Need proceedings. The Director ot the Agency is to designate one of his employees "whose duty shall be to facilitate citizen participation in the hearing process." This is an example of the power of the legislature to act in response to suggestions for improvements in the process.

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Amendment of the Rule of the Minnesota Energy Agency Governing Filing Fees for Large Electric Generating Facilities and Large High Voltage Transmission Lines, 6 MCAR § 2.0605.	))))))	EA-79-004-AK **DIRECTOR'S FINDINGS OF FACT, CONCLUSIONS AND DECISION**

The hearing in the above captioned matter was ordered on March 28, 1979, and was convened for the Minnesota Energy Agency (hereinafter "Agency") by Hearing Examiner Allan W. Klein of the Minnesota Office of Hearing Examiners at 9:30 a.m. on May 11, 1979, in Conference Room D of the Veterans Service Building, St. Paul, Minnesota.

The hearing examiner made and issued his Report of Hearing Examiner on June 1, 1979. The hearing examiner recommended to the Agency that it adopt the Agency's proposed rule amendment.

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

FINDINGS OF FACT

1. The hearing examiner did an excellent, thorough job of presenting his Findings of Fact in the above-captioned matter. His Findings are hereby adopted as the Findings of the Director with the additions set out below.

2. To the hearing examiner's Finding 10 the director adds his finding that on May 29, 1979, the Commissioner of Finance approved the proposed rule change regarding fees. The memorandum indicating that approval has been made a part of the record.

3. To the hearing examiner's Finding 12 the director adds his finding that Special Session S.F. 2 was signed by the Governor on June 7, 1979, as Chapter 2, Special Session, of Minnesota Laws of 1979. The provisions of the law become effective on July 1, 1979.

4. To the hearing examiner's Finding 21, second paragraph, the director adds his comment that the Agency's proposal is consistent with the spirit and the letter of Minn. Stat. § 15.0412, subd. 1 (1978).

Based upon the foregoing Findings, the Director makes the following

CONCLUSIONS OF LAW

A. The Minnesota Energy Agency duly acquired and now has jurisdiction over the subject proceeding with statutory authority to adopt the proposed rule amendment.

B. All relevant substantive and procedural requirements of law and rule have

been fulfilled.

C. The need for and reasonableness of the proposed rule amendment have been demonstrated.

DECISION

The Director accepts the recommendation of the hearing examiner to adopt the proposed rule amendment and in a separate order adopts amended rule 6 MCAR § 2.0605. A copy of the amended rule, as adopted, is attached.

DATED: June 12, 1979

ALGERNON H. JOHNSON
Director

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA ENERGY AGENCY

IN THE MATTER OF THE PROPOSED AMENDMENT OF THE RULE OF THE MINNESOTA ENERGY AGENCY GOVERNING FILING FEES FOR APPLICATIONS FOR CERTIFICATES OF NEED FOR LARGE ELECTRIC GENERATING FACILITIES AND LARGE HIGH VOLTAGE TRANSMISSION LINES, 6 MCAR § 2.0605.

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on May 11, 1979, before Allan W. Klein, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Minnesota Energy Agency on May 31, 1979; and

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

WHEREAS, the Minnesota Energy Agency has submitted said rule to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and 9 MCAR § 2.110; and

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

NOW, THEREFORE, upon receipt of this Report, the Minnesota Energy Agency has the responsibility of submitting the complete hearing record and the rule as adopted by the Agency to the Attorney General, notifying all persons who requested to be informed that the hearing record has been submitted to the Attorney General, and publishing in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 18th day of June, 1979.

DUANE R. HARVES
Chief Hearing Examiner