

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

570

ATTORNEY GENERAL

MARY L. HARTY
Executive Secretary
Public Service Commission

January 14, 1980

Attn: LEE E. SHEEHY

JOANNE E. HINDERAKER
Special Assistant
Attorney General

296-4692

In the Matter of the Adoption of a Rule of the Public Service Commission Governing Disconnection of Service to Gas and Electric Utility Customers During Periods of Cold Weather and Repeal of PSC 299 Cold Weather Rule.

Attached hereto are copies of a letter from Otter Tail Power Co., regarding the above-captioned rules. While it was received by this office on January 14, 1980, four days after the ten day comment period expired, it appears to contain comments similar to those raised by the other utilities which have also commented to this office. Therefore, I hereby forward this comment to you for your response.

JEH/bw
Encl.
cc: Jay D. Myster
Otter Tail Power Co

Our File #570

1/5 LCS advised of need for revised Order + inclusion of deleted rule
1/5 necessary revised order and retyped rule rec'd.

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 12-31-79 DUE DATE 1-20-80

Resubmitted and Received _____

a. Returned to Agency w/o Filing w/Secretary of State _____
b. Approved 1-21-80 Date Sent Back to Agency _____
due to 1-20-80 falling on a Sunday

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1. Rules as Adopted ? Repealed Rule Not with Material to be filed Incorporated in Agency Find. of Fact
2. Rules as Proposed ✓ A - 1st set
✓ B - 2nd set.
3. Certificate of Board's Authorizing Resolution, where applicable ✓
4. Order for Hearing ✓
5. Notice of Hearing ✓
Sufficiency ✓
6. Secretary of State's List ✓ (one copy only)
7. Certificate of Acquisition of Secretary of State's List ✓ no reference to specific rule.
8. Secretary of State's Certification of Delivery of Secretary of State's List to Agency ✓
9. Affidavit of Mailing ✓
At least 30 days prior to hearing ✓
10. Publication in State Register ✓
At least 30 days prior to hearing ✓
11. Statement of Need and Evidence ✓
12. Hearing Examiner's Report ✓
13. A Agency's Findings of Fact ✓
B REVISED FINDING OF FACT ✓
14. Certificate of Board's Resolution Adopting Rules, where applicable ✓
15. Order Adopting ✓ attached to Findings of Fact No. 13. ✓
" " Revisions
REVISED ORDER ✓ incorporated in Revised Findings of Fact. 13B
16. Report of Chief Hearing Examiner ✓
17. Order Approving Incorporation by Reference, where applicable ✓ incorporated in No. 16
18. Certificate of Compliance with Rulemaking Procedures ✓
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable ✓
20. Petition by Public, where applicable N/A

NORTHERN STATES POWER COMPANY

LAW DEPARTMENT

414 NICOLLET MALL
MINNEAPOLIS, MINNESOTA 55401
612-330-6600

ARTHUR R. RENQUIST
VICE PRESIDENT - LAW

GENE R. SOMMERS
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GALE K. NORDLING
JACK F. SJOHOLM, JR.
STEPHEN C. LAPADAT
JO ANN M. McGUIRE
ROBERT W. GROTH
ATTORNEYS

December 27, 1979

Joan Hinderacker
Room G
2550 Sherburne Avenue
St. Paul, Minnesota 55155

Re: Proposed Public Service Commission
Cold Weather Rule

Dear Ms. Hinderacker:

Over the past several months, the Public Service Commission has been involved in a rule making procedure for the purpose of arriving at a new cold weather rule. NSP has been advised that you will be the representative of the Attorney General reviewing the rule pursuant to the rule making procedure. Although NSP has requested that the Public Service Commission notify the Company when the matter is sent to the Attorney General's Office, we have often found that this notification has been somewhat late.

We are therefore requesting that you notify us when you formally receive a copy of the proposed cold weather rule. This will allow the Company the maximum time within which to decide whether comments should be submitted for your consideration.

Thank you very much for your time and attention to this matter.

Very truly yours,

JACK F. SJOHOLM, JR.

JAN 2 1980

JFS:js
cc: D. McGannon
J. Prifrel

No comments

Minnesota Gas Company
LEGAL DIVISION
300 peavey building, minneapolis, minnesota 55402

George C. Mastor, General Counsel
James B. Proman, Attorney
Patricia Ann Burke, Attorney

December 19, 1979

Joan Hinderacker, Esq.
Special Assistant Attorney General
State of Minnesota
Room G25, State Administration
Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

Access to Customer Premises
Docket Nos. PSC-79-144-HC; A-8117-23

Cold Weather Rule
Docket Nos. PSC-80-020-RD; A-8117-27

Dear Ms. Hinderacker:

At Mr. Sheehy's suggestion, I am confirming my telephone request that I be informed when you receive the hearing record in the above cases. I have requested the statutory notice from the Public Service Commission pursuant to Minn. Stat. §15.0412, subd. 4.

Thank you for your help.

Very truly yours,

MINNESOTA GAS COMPANY
Legal Division

Patricia Ann Burke

By
Patricia Ann Burke

Telephone: 612/372-4828

mah

RECEIVED
DEC 20 1979
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Comments

Patricia Ann Burke
Minnesota Gas Company
Legal Division
300 Peavey Building
Minneapolis, Minnesota 55402

Re: Public Service Commission Cold Weather Rule

Dear Ms. Burke:

Enclosed herewith is a copy of the memorandum of approval of the PSC Cold Weather Rule issued by this office, which you requested in our telephone conversation today.

Very truly yours,

JOANNE E. HINDERAKER
Special Assistant
Attorney General

G-25 State Administration Building
50 Sherburne Avenue
Saint Paul, Minnesota 55155
Telephone: (612) 296-4692

JEH/lh
Enclosure

DEPARTMENT Attorney General

Office Memorandum

MARY L. HARTY
TO : Executive Secretary
Minn. Public Service Commission

DATE: January 21, 1980

Attn: LEE E. SHEEHY

FROM : Joanne E. Hinderaker JEH
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: Rules as Approved In the matter of the Proposed Adoption of a Rule of the Public Service Commission governing disconnection of service to gas and electric utility customers during periods of cold weather and Repeal of PSC 299.

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

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT Public Service

Office Memorandum

TO : Joanne Hinderaker
Special Assistant Attorney General
G-25 Administration Building

DATE: 1/15/80

FROM : Mary Harty, Executive Secretary MK Harty
Minnesota Public Service Commission
7th Floor, American Center Building

PHONE: 6-8994

SUBJECT: In the Matter of the Proposed Adoption of a Rule of the Public Service Commission Governing Disconnection of Service to Gas and Electric Utility Customers During Periods of Cold Weather and Repeal of PSC 299

The "Rule as Adopted in Final Form" earlier submitted to your office failed to completely implement the Commission's Revised Findings of Fact, Conclusions and Order Adopting the Rule dated December 31, 1979. Specifically, 4 MCAR § 3.0299 G(6) contains a procedure governing limitation of time within which an appeal must be taken. However, the procedure contained in section G(6) conflicts with Commission Finding of Fact No. 5 and the corresponding Commission Order implementing changes suggested by the Chief Hearing Examiner. While the changes required by the Commission's Revised Order were made elsewhere in the rule, the required change was not made in section G(6). Attached hereto is a corrected copy of the final rule which I asked be substituted for the document earlier submitted.

We have also noted that the codification references do not conform to the MCAR citation system. We have corrected this on the attached copy.

If you have any questions, do not hesitate to contact me.

/jg

Attachment

RECEIVED
JAN 15 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

PRINTED ON RECYCLED PAPER

CHAPTER 216B

PUBLIC UTILITIES

Sec.
216B.01 Legislative finding.
216B.02 Definitions.
216B.03 Reasonable rate.
216B.04 Standard of service.
216B.05 Publish schedules; regulations; files; joint rates.
216B.06 Receiving different compensation.
216B.07 Rate preference prohibited.
216B.08 Duties of commission.
216B.09 Standards; classifications; regulations; practices.
216B.10 Accounting system.
216B.11 Depreciation rates and practices.
216B.12 Right of entrance; inspection.
216B.13 Production of records.
216B.14 Investigation.
216B.15 Hearings; examiner.
216B.16 Rate changes; procedure; hearing.
216B.17 Complaints.
216B.18 Service of notice.
216B.19 Joint hearings and investigations.
216B.20 Separate rate hearings.
216B.21 Summary investigations.
216B.22 Municipalities; amicus curiae authority.
216B.23 Lawful rates; reasonable service.
216B.24 Construction of facilities; commission approval.
216B.25 Change; amendment; rescission of orders.
216B.26 Orders; effective date.
216B.27 Rehearings before commission; condition precedent to judicial review.
216B.28 Subpoena; witnesses; fees; and mileage.
216B.29 Oaths; contempt; examiner's powers.
216B.30 Depositions.
216B.31 Testimony and production of records; perjury.
216B.32 Copies of documents as evidence.
216B.33 Orders and findings in writing.
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216B.35 Transcribed record to be kept.
216B.36 Franchises continued.
216B.37 Assigned service areas; electric utilities; legislative policy.
216B.38 Definitions.
216B.39 Assigned service areas.
216B.40 Exclusive service rights.
216B.41 Effect of incorporation, annexation, or consolidation.
216B.42 Service extensions in certain situations.
216B.421 Homestead; option of electric service.
216B.43 Hearings; complaints.
216B.44 Service extensions in annexed areas; municipal purchase.
216B.45 Municipal purchase of public utility.
216B.46 Municipal procedure; notice; election.
216B.47 Acquisition by eminent domain.
216B.48 Relations with affiliated interests.
216B.49 Securities.
216B.50 Acquiring property; merger.
216B.51 Stock purchase.
216B.52 Appeals.
216B.53 Suspension of commission orders.
216B.54 Actions by commission; attorney general to institute.
216B.55 Priority of action.
216B.56 Burden of proof.
216B.57 Penalties.
216B.58 Acts; omission; failure; construction thereof.
216B.59 Continuing violations.
216B.60 Penalties cumulative.
216B.61 Actions to recover penalties.
216B.62 Cost of examination; assessment of expenses; limitations; objections.
216B.63 Interest on assessments.
216B.64 Attorney general to represent commission.
216B.65 Department to employ necessary staff.
216B.66 Construction.
216B.67 Citation.

NOTE: For penalties for the violation of the provisions of this chapter, see section 235.13.

216B.01 LEGISLATIVE FINDING. It is hereby declared to be in the public interest that public utilities be regulated as hereinafter provided in order to provide the retail consumers of natural gas and electric service in this state with adequate and reliable services at reasonable rates, consistent with the financial and economic requirements of public utilities and their need to construct facilities to provide such services or to otherwise obtain energy supplies, to avoid unnecessary duplication of facilities which increase the cost of service to the consumer and to minimize disputes between public utilities which may result in inconvenience or diminish efficiency in service to the consumers. Because municipal utilities are presently effectively regulated by the residents of the municipalities which own and operate them, and cooperative electric associations are presently effectively regulated and controlled by the membership under the provisions of chapter 308, it is deemed unnecessary to subject such utilities to regulation under this chapter except as specifically provided herein.

[*1974 c 429 s 1; 1978 c 795 s 1*]

216B.02 DEFINITIONS. Subdivision 1. For the purposes of Laws 1974, Chapter 429 the terms defined in this section have the meanings given them.

Subd. 2. "Corporation" means a private corporation, a public corporation, a municipality, an association, a cooperative whether incorporated or not, a joint stock association, a business trust, or any political subdivision or agency.

Subd. 3. "Person" means a natural person, a partnership, or two or more persons having a joint or common interest, and a corporation as hereinbefore defined.

Subd. 4. "Public utility" means persons, corporations or other legal entities, their lessees, trustees, and receivers, now or hereafter operating, maintaining, or controlling in this state equipment or facilities for furnishing at retail natural, manufactured or mixed gas or electric service to or for the public or engaged in the production and re-

tail sale thereof but does not include a municipality or a cooperative electric association, organized under the provisions of chapter 308 producing or furnishing natural, manufactured or mixed gas or electric service. Except as otherwise provided, the provisions of Laws 1974, Chapter 429 shall not be applicable to any sale of natural gas or electricity by a public utility to another public utility for resale. No person shall be deemed to be a public utility if it presently furnishes its services only to tenants in buildings owned, leased or operated by such person. No person shall be deemed to be a public utility if it presently furnishes service to occupants of a mobile home or trailer park owned, leased, or operated by such person. No person shall be deemed to be a public utility if it presently produces or furnishes service to less than 25 persons.

A cooperative electric association may elect to become subject to rate regulation by the commission pursuant to sections 216B.03 to 216B.23. The election shall be (a) approved by July 1, 1978 by the board of directors of the association in accordance with the procedures for amending the articles of incorporation contained in section 308.15, subdivision 1, excluding the filing requirements; or (b) approved by a majority of members of stockholders voting by mail ballot initiated by petition of no less than five percent of the members or stockholders of the association. The ballot to be used for the election shall be approved by the board of directors and the department of public service. The department shall mail the ballots to the cooperative's members who shall return the ballots to the department. The department will keep the ballots sealed until a date agreed upon by the department and the board of directors. On this date, representatives of the department and the cooperative shall count the ballots. If a majority of the cooperative's members who vote elect to become subject to rate regulation by the commission, the election shall be effective 30 days after certified copies of the resolutions approving the election are filed with the commission. Any cooperative electric association subject to regulation of rates by the commission shall be exempt from the provisions of sections 216B.48, 216B.49, 216B.50, and 216B.51.

Subd. 5. "Rate" means every compensation, charge, fare, toll, tariff, rental and classification, or any of them, demanded, observed, charged, or collected by any public utility for any service and any rules, regulations, practices, or contracts affecting any such compensation, charge, fare, toll, rental, tariff, or classification.

Subd. 6. "Service" means natural, manufactured or mixed gas and electricity; the installation, removal, or repair of equipment or facilities for delivering or measuring such gas and electricity.

Subd. 7. "Commission" means the public service commission of the department of public service.

Subd. 8. "Department" means the department of public service of the state of Minnesota.

Subd. 9. "Municipality" means any city however organized.

[*1974 c 429 s 2; 1978 c 795 s 2*]

216B.03 REASONABLE RATE. Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable. Rates shall not be unreasonably preferential, unreasonably prejudicial or discriminatory, but shall be sufficient, equitable and consistent in application to a class of consumers. Any doubt as to reasonableness should be resolved in favor of the consumer. For rate making purposes a public utility may treat two or more municipalities served by it as a single class wherever the populations are comparable in size or the conditions of service are similar.

[*1974 c 429 s 3*]

216B.04 STANDARD OF SERVICE. Every public utility shall furnish safe, adequate, efficient, and reasonable service; provided that service shall be deemed adequate if made so within 90 days after a person requests service. Upon application by a public utility, and for good cause shown, the commission may extend the period for not to exceed another 90 days.

[*1974 c 429 s 4*]

216B.05 PUBLISH SCHEDULES; REGULATIONS; FILES; JOINT RATES. Subdivision 1. Every public utility shall file with the commission schedules showing all rates, tolls, tariffs and charges which it has established and which are in force at the time for any service performed by it within the state, or for any service in connection

therewith or performed by any public utility controlled or operated by it.

Subd. 2. Every public utility shall file with and as a part of the schedule all rules and regulations that, in the judgment of the commission, in any manner affect the service or product, or the rates charged or to be charged for any service or product, as well as any contracts, agreements or arrangements relating to the service or product or the rates to be charged for any service or product to which the schedule is applicable as the commission may by general or special order direct.

Subd. 3. Every public utility shall keep copies of the schedules open to public inspection under rules and regulations as the commission may prescribe.

[*1974 c 429 s 5*]

216B.06 RECEIVING DIFFERENT COMPENSATION. No public utility shall directly or indirectly, by any device whatsoever, or in any manner, charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered by the utility than that prescribed in the schedules of rates of the public utility applicable thereto when filed in the manner provided in Laws 1974, Chapter 429, nor shall any person knowingly receive or accept any service from a public utility for a compensation greater or less than that prescribed in the schedules, provided that all rates being charged and collected by a public utility upon January 1, 1975 may be continued until schedules are filed.

[*1974 c 429 s 6; 1978 c 795 s 3*]

Minnesota rules here

216B.07 RATE PREFERENCE PROHIBITED. No public utility shall, as to rates or service, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage.

[*1974 c 429 s 7*]

216B.08 DUTIES OF COMMISSION. The commission is hereby vested with the powers, rights, functions, and jurisdiction to regulate in accordance with the provisions of Laws 1974, Chapter 429 every public utility as defined herein. The exercise of such powers, rights, functions, and jurisdiction is prescribed as a duty of the commission. The commission is authorized to make rules and regulations in furtherance of the purposes of Laws 1974, Chapter 429.

[*1974 c 429 s 8*]

216B.09 STANDARDS; CLASSIFICATIONS; REGULATIONS; PRACTICES. The commission, after hearing upon reasonable notice had upon its own motion or upon complaint, may ascertain and fix just and reasonable standards, classifications, regulations, or practices to be observed and followed by any or all public utilities with respect to the service to be furnished; ascertain and fix adequate and reasonable standards for the measurement of the quantity, quality, pressure, initial voltage, or other condition pertaining to the supply of the service; prescribe reasonable regulations for the examination and testing of the service and for the measurement thereof; establish or approve reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters, instruments and equipment used for the measurement of any service of any public utility. Any standards, classifications, regulations, or practices now or hereafter observed or followed by any public utility may be filed by it with the commission, and the same shall continue in force until amended by the public utility or until changed by the commission as herein provided.

NR - pg 5

The commission may require the filing of all rates, including rates charged to and by public utilities. The commission is empowered to appear before the Federal Power Commission to offer evidence and to seek appropriate relief in any case in which the rates charged consumers within the state of Minnesota may be affected.

[*1974 c 429 s 9*]

216B.10 ACCOUNTING SYSTEM. Subdivision 1. The commission shall establish a system of accounts to be kept by public utilities subject to its jurisdiction. A public utility which maintains its accounts in accordance with the system of accounts prescribed by a federal agency or authority shall be deemed to be in compliance with the system of accounts prescribed by the commission. Where optional accounting is prescribed by a federal agency or authority, the commission may prescribe which option is to be followed.

Subd. 2. Every public utility engaged directly or indirectly in any other business than that of the production, transmission or furnishing of natural gas or electric service shall, if required by the commission, keep and render separately to the commission in like manner and form the accounts of all the other business, in which case all the provisions of Laws 1974, Chapter 429 shall apply to the books, accounts, papers and records of the other business.

Subd. 3. Every public utility is required to keep and render its books, accounts, papers and records accurately and faithfully in the manner and form prescribed by the commission, and to comply with all directions of the commission relating to these books, accounts, papers and records.

Subd. 4. The commission may require any public utility to file annual reports in the form and content, having regard for the provisions of this section, as the commission may require, and special reports concerning any matter about which the commission is authorized to inquire or to keep itself informed. The commission may require the reports to be verified. The basic financial statements in the annual report of a public utility may, at the direction of the public service commission, be examined by an independent certified public accountant and his opinion thereof included in the annual report filed with the commission.

Subd. 5. The commission may require the examination and audit of all accounts, and all items shall be allocated to the accounts in the manner prescribed by the commission.

Subd. 6. The term public utility as used in this section includes a municipal utility.

[*1974 c 429 s 10*]

216B.11 DEPRECIATION RATES AND PRACTICES. The commission shall fix proper and adequate rates and methods of depreciation, amortization, or depletion in respect of utility property, including utility property owned by a municipally owned gas or electric utility, and every public and every municipally owned gas and electric utility shall conform its depreciation, amortization or depletion accounts to the rates and methods fixed by the commission.

[*1974 c 429 s 11*]

216B.12 RIGHT OF ENTRANCE; INSPECTION. Subdivision 1. The commissioners and the duly authorized officers and employees of the department, during business hours, may enter upon any premises occupied by any public utility for the purpose of making examinations and tests and to inspect the accounts, books, papers, and documents of any public utility for the purpose of exercising any power provided for in Laws 1974, Chapter 429, and may set up and use on the premises any apparatus and appliance necessary therefor. Such public utility shall have the right to be represented at the making of the examinations, tests, and inspections. The public utility, its officers and employees, shall facilitate the examinations, tests, and inspections by giving every reasonable aid to the commissioners and any person or persons designated by the department for the duties aforesaid.

Subd. 2. The term public utility as used in this section includes a municipal utility.

[*1974 c 429 s 12*]

216B.13 PRODUCTION OF RECORDS. Subdivision 1. The commission may require, by order served on any public utility in the manner provided herein for the service of orders, the production within this state at a reasonable time and place as the commission may designate, of any books, accounts, papers, or records of the public utility relating to its business or affairs within the state, pertinent to any lawful inquiry and kept by said public utility in any office or place within or without this state, or, at its option, verified or photostatic copies in lieu thereof, so that an examination thereof may be made by the commission or under its direction.

Subd. 2. The term public utility as used in this section includes a municipal utility.

[*1974 c 429 s 13*]

216B.14 INVESTIGATION. The commission upon complaint or upon its own initiative and whenever it may deem it necessary in the performance of its duties may

distribution of the refund to persons entitled thereto. No suit under this subdivision shall be maintained unless instituted within two years after the end of the period of time prescribed by the commission for repayment of refunds. However, no public utility shall put a suspended rate schedule into effect as provided by this subdivision until at least 90 days after the commission has made a determination concerning any previously filed change of the rate schedule or the change has otherwise become effective under subdivision 2.

Subd. 4. The burden of proof to show that the rate change is just and reasonable shall be upon the public utility seeking the change.

Subd. 5. If, after the hearing, the commission finds the rates to be unjust or unreasonable or discriminatory, the commission shall determine the level of rates to be charged or applied by the utility for the service in question and shall fix the same by order to be served upon the utility; and the rates are thereafter to be observed until changed, as provided by Laws 1974, Chapter 429. In no event shall the rates exceed the level of rates requested by the public utility, except that individual rates may be adjusted upward or downward.

Subd. 6. The commission, in the exercise of its powers under this chapter to determine just and reasonable rates for public utilities, shall give due consideration to the public need for adequate, efficient, and reasonable service and to the need of the public utility for revenue sufficient to enable it to meet the cost of furnishing the service, including adequate provision for depreciation of its utility property used and useful in rendering service to the public, and to earn a fair and reasonable return upon the investment in such property. In determining the rate base upon which the utility is to be allowed to earn a fair rate of return, the commission shall give due consideration to evidence of the cost of the property when first devoted to public use, to prudent acquisition cost to the public utility less appropriate depreciation on each, to construction work in progress, to offsets in the nature of capital provided by sources other than the investors, and to other expenses of a capital nature. For purposes of determining rate base, the commission shall consider the original cost of utility property included in the base and shall make no allowance for its estimated current replacement value.

Subd. 6a. To the extent that construction work in progress is included in the rate base, the commission shall determine in its discretion whether and to what extent the income used in determining the actual return on the public utility property shall include an allowance for funds used during construction, considering the following factors:

(a) The magnitude of the construction work in progress as a percentage of the net investment rate base;

(b) The impact on cash flow and the utility's capital costs;

(c) The effect on consumer rates;

(d) Whether it confers a present benefit upon an identifiable class or classes of customers; and

(e) Whether it is of a short term nature or will be imminently useful in the provision of utility service.

Subd. 7. Notwithstanding any other provision of Laws 1974, Chapter 429, the commission may permit a public utility to file rate schedules containing provisions for the automatic adjustment of charges for public utility service in direct relation to changes in federally regulated wholesale rates for energy delivered through interstate facilities or fuel used in generation of electricity or the manufacture of gas.

Subd. 8. The commission shall disapprove the portion of any rate which makes an allowance directly or indirectly for expenses incurred by a public utility to provide a public advertisement which:

(a) Is designed to influence or has the effect of influencing public attitudes towards legislation or proposed legislation, or toward a rule, proposed rule, authorization or proposed authorization of the public service commission or other agency of government responsible for regulating a public utility;

(b) Is designed to justify or otherwise support or defend a rate, proposed rate, practice or proposed practice of a public utility;

investigate and examine the condition and operation of any public utility or any part thereof. In conducting the investigations the commission may proceed either with or without a hearing as it may deem best, but it shall make no order without affording the affected parties a hearing.

[*1974 c 429 s 14*]

216B.15 HEARINGS; EXAMINER. The commission may, in addition to the hearings specifically provided for by Laws 1974, Chapter 429, conduct any other hearings as may reasonably be required in the administration of the powers and duties conferred upon it by Laws 1974, Chapter 429. The commission may designate one of its members to act as an examiner for the purpose of holding any hearing which the commission has the power or authority to hold or in the event parties to the hearing so stipulate the commission may designate a qualified commission employee as the examiner. Reasonable notice of all hearings shall be given the persons interested therein as determined by the commission.

[*1974 c 429 s 15*]

216B.16 RATE CHANGES; PROCEDURE; HEARING. Subdivision 1. Unless the commission otherwise orders, no public utility shall change any rate which has been duly established under this chapter, except after 90 days notice to the commission, which notice shall include statements of facts, expert opinions, substantiating documents, and exhibits, supporting the change requested, and further shall state the change proposed to be made in the rates then in force, and the time when the modified rates will go into effect. The filing utility shall give written notice, as approved by the commission, of the proposed change to the governing body of each municipality and county in the area affected. All proposed changes shall be shown by filing new schedules or shall be plainly indicated upon schedules on file and in force at the time.

Subd. 2. Whenever there is filed with the commission any schedule modifying or resulting in a change in any rates then in force as provided in subdivision 1, the commission may suspend the operation of the schedule by filing with the schedule of rates and delivering to the affected utility a statement in writing of its reasons for the suspension, at any time before the rates become effective. The suspension shall not be for a longer period than 90 days beyond the time when the schedule of rates would otherwise go into effect. During the suspension the commission shall determine whether all questions of the reasonableness of the rates requested raised by persons deemed interested or by the administrative division of the department of public service can be resolved to the satisfaction of the commission. If the commission finds that all significant issues raised have not been resolved to its satisfaction, or upon petition by ten percent of the affected customers or 100 affected customers, whichever is less, it shall refer the matter to the office of hearing examiners with instructions for a public hearing as a contested case pursuant to chapter 15, and may further extend the period of suspension for a period not to exceed a total of nine months. If the commission does not make a final determination concerning any schedule of rates within a period of nine months beyond the time when the schedule of rates would otherwise go into effect, under subdivision 1, the schedule shall be deemed to have been approved by the commission. For the purposes of this subdivision, "final determination" means the initial decision of the commission and not any order which may be entered by the commission in response to a petition for rehearing or other further relief. The commission may further suspend rates until it determines all such petitions.

Subd. 3. Notwithstanding any order of suspension of a proposed increase in rates, the public utility may put the suspended schedule into effect on the date when it would have become effective if not suspended, or any date subsequent thereto within the suspension period, by filing with the commission a bond in an amount approved by the commission with sureties approved by the commission, conditioned upon the refund, in a manner to be prescribed by order of the commission, of the excess in increased rates, including interest thereon which shall be at the current rate of interest as determined by the commission, collected during the period of the suspension if the schedule so put into effect is finally disallowed by the commission. There may be substituted for the bond other arrangements satisfactory to the commission for the protection of persons affected. If the public utility fails to make refunds within the period of time prescribed by the commission, the commission shall sue therefor and is authorized to recover on behalf of all persons entitled to a refund. In addition to the amount of the refund and interest due, the commission shall be entitled to recover reasonable attorney's fees, court costs and estimated cost of administering the

(c) Is designed primarily to promote consumption of the services of the utility; or

(d) Is designed primarily to promote good will for the public utility or improve the utility's public image.

The commission may approve a rate which makes an allowance for expenses incurred by a public utility to disseminate information which:

(a) Is designed to encourage conservation of energy supplies;

(b) Is designed to promote safety; or

(c) Is designed to inform and educate customers as to financial services made available to them by the public utility.

The commission shall not withhold approval of a rate because it makes an allowance for expenses incurred by the utility to disseminate information about corporate affairs to its owners.

Subd. 9. The commission shall allow as operating expenses only those charitable contributions which the commission deems prudent and which qualify under section 290.21, subdivision 3, clause (b). Only 50 percent of the qualified contributions shall be allowed as operating expenses.

[*1974 c 429 s 16; 1977 c 359 s 1-6; 1977 c 364 s 5; 1978 c 694 s 1*]

216B.17 COMPLAINTS. Subdivision 1. On its own motion or upon a complaint made against any public utility, by the governing body of any political subdivision, by another public utility, or by any 50 consumers of the particular utility that any of the rates, tolls, tariffs, charges, or schedules or any joint rate or any regulation, measurement, practice, act or omission affecting or relating to the production, transmission, delivery or furnishing of natural gas or electricity or any service in connection therewith is in any respect unreasonable, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission shall proceed, with notice, to make such investigation as it may deem necessary. The commission may dismiss any complaint without a hearing if in its opinion a hearing is not in the public interest.

Subd. 2. The commission shall, prior to any formal hearing, notify the public utility complained of that a complaint has been made, and ten days after the notice has been given the commission may proceed to set a time and place for a hearing and an investigation as provided in this section.

Subd. 3. The commission shall give the public utility and the complainant, ten days notice of the time and place when and where the hearing will be held and such matters to be considered and determined. Both the public utility and complainant shall be entitled to be heard and be represented by counsel.

Subd. 4. Notice shall also be given to the governing bodies of affected municipalities and counties, and to any other persons the commission shall deem necessary.

Subd. 5. The notice provided for in subdivisions 2 and 3 may be combined but if combined the notice shall not be less than ten days.

Subd. 6. The commission shall have the power to hear, determine and adjust complaints made against any municipally owned gas or electric utility with respect to rates and services upon petition of ten percent of the non-resident consumers of the municipally owned utility or 25 such non-resident consumers whichever is less. The hearing of the complaints shall be governed by subdivisions 1 to 5.

Subd. 6a. For the purposes of this section, public utility shall include cooperative electric associations with respect to service standards and practices only.

Subd. 7. Section 15.0419 shall be applicable to all contested cases before the commission.

[*1974 c 429 s 17; 1978 c 795 s 4*]

216B.18 SERVICE OF NOTICE. Service of notice of all hearings, investigations and proceedings pending before the commission and of complaints, reports, orders and other documents shall be made personally or by mail as the commission may direct.

[*1974 c 429 s 18*]

216B.19 JOINT HEARINGS AND INVESTIGATIONS. In the discharge of its duties under Laws 1974, Chapter 429, the commission may cooperate with similar commissions of other states and any federal agency and may hold joint hearings and make joint investigations with other commissions.

[*1974 c 429 s 19*]

216B.20 SEPARATE RATE HEARINGS. The commission may, in its discretion, when complaint is made of more than one rate or charge, order separate hearings thereon, and may consider and determine the several matters complained of separately and at times it may prescribe.

[*1974 c 429 s 20*]

216B.21 SUMMARY INVESTIGATIONS. Subdivision 1. Whenever the commission has reason to believe that any rate or charge may be unreasonable or unjustly discriminatory or that any service is inadequate or cannot be obtained or that an investigation of any matter relating to any public utility should for any reason be made, it may on its own motion summarily investigate the same with or without notice.

Subd. 2. If, after making the summary investigation, the commission becomes satisfied that sufficient grounds exist to warrant a formal hearing being ordered as to the matters investigated, it shall set a time and place for a hearing.

Subd. 3. Notice of the time and place for the hearing shall be made as provided in sections 216B.17 and 216B.18.

[*1974 c 429 s 21*]

216B.22 MUNICIPALITIES; AMICUS CURIAE AUTHORITY. Any municipality that regulates and controls the exercise of a public utility franchise by reason of its home rule charter on January 1, 1975 is authorized to assist the public service commission as amicus curiae in any proceeding brought before the commission with respect to the rates, fares, prices, regulation or control of any utility operating therein.

[*1974 c 429 s 22*]

216B.23 LAWFUL RATES; REASONABLE SERVICE. Subdivision 1. Whenever upon an investigation made under the provisions of Laws 1974, Chapter 429, the commission shall find rates, tolls, charges, schedules or joint rates to be unjust, unreasonable, insufficient or unjustly discriminatory or preferential or otherwise unreasonable or unlawful, the commission shall determine and by order fix reasonable rates, tolls, charges, schedules or joint rates to be imposed, observed and followed in the future in lieu of those found to be unreasonable or unlawful.

Subd. 2. Whenever the commission shall find any regulations, measurements, practices, acts or service to be unjust, unreasonable, insufficient, preferential, unjustly discriminatory or otherwise unreasonable or unlawful, or shall find that any service which can be reasonably demanded cannot be obtained, the commission shall determine and by order fix reasonable measurements, regulations, acts, practices or service to be furnished, imposed, observed and followed in the future in lieu of those found to be unreasonable, inadequate or otherwise unlawful, and shall make any other order respecting the measurement, regulation, act, practice or service as shall be just and reasonable.

Subd. 3. A copy of the order shall be served upon the person against whom it runs or his attorney, and notice thereof shall be given to the other parties to the proceedings or their attorneys.

[*1974 c 429 s 23*]

216B.24 CONSTRUCTION OF FACILITIES; COMMISSION APPROVAL. Subdivision 1. The words "major utility facility" means: (1) electric generating plant and associated facilities designed for, or capable of, operation at a capacity of 50 megawatts or more; (2) an electric transmission line and associated facilities of a design capacity of 125 kilovolts or more; and (3) a gas transmission line and associated facilities designed for, or capable of, transporting gas at pressures in excess of 125 pounds per square inch; provided, however, that the words "major utility facility" shall not include electric or gas distribution lines and gas gathering lines and associated facilities as defined by the commission.

PSC-80-020-RD

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA PUBLIC SERVICE COMMISSION

In the Matter of the Proposed Adoption of a Rule Governing Disconnection of Service to Gas and Electric Utility Customers During Periods of Cold Weatner and Repeal of PSC 299 Cold Weather Rule.

REPORT OF THE HEARING EXAMINER

Hearings in the above-entitled matter were held before Richard DeLong, Hearing Examiner for the Minnesota Office of Hearing Examiners on the following dates and at the following locations:

October 18, 1979: 1:30 p.m. and 7:30 p.m., Albert Lea

October 19, 1979: 1:30 p.m., Minneapolis

October 19, 2979: 7:30 p.m., St. Paul

October 22, 1979: 1:30 p.m. and 7:30 p.m., Grand Rapids

October 23, 1979: 1:30 p.m. and 7:30 p.m., Little Falls

James Lackner, Special Assistant Attorney General, Seventh Floor, American Center Building, 160 East Kellogg, St. Paul, Minnesota 55101, appeared on benalf of tne Minnesota Public Service Commission at all of the hearings.

Randy Young, Director of the Public Service Commission Support Staff and Stuart Mitcnell, Rate Analyst for the Commission appeared at all of the hearings to testify in support of the proposed rule.

Names of persons testifying at the individual hearings are listed on Appendix A nereof.

PROCEDURAL HISTORY

Minnesota Public Service Commission Rule 299, codified as 4 MCAR § 3.299, presently governs the disconnection by public utilities under the jurisdiction of the Commission of gas and electric service which affects the primary heat source to residential dwelling units during cold weather. In the fall of 1978, the United States Congress passed comprehensive energy-related legislation known as the Public Utilities Regulatory Policies Act of 1978, hereinafter PURPA. Among its many provisions are included sections 115(g) and 304(a) which provide guidelines governing the termination of electric and gas service, respectively, to residential consumers when temperatures fall to a level detrimental to human health. PURPA requires that the various state utility regulatory commissions consider these guidelines for electric and gas utilities operating under their jurisdictions. Such consideration must be completed by 1980. As a result of this federal legislation, and in consideration of the present inflationary spiral which makes it more and more difficult for consumers to pay their utility bills, the Public Service Commission proposes to replace tne present rule with a more comprehensive one. The proposed rule will also be known as PSC Rule 299 (4 MCAR § 3.299) and will be referred to hereinafter simply as tne proposed rule.

In furtnerance of this endeavor tne Commission caused to be published in the Minnesota State Register of March 19, 1979, a "Notice of Intent to Solicit Outside Opinion Concerning Rules Governing Interruptions of Utility Service During Winter Months". Said notice set forth the issues to be considered by tne Commission and invited comments thereon. A copy of said notice has been received herein as Exhibit 1.

By order dated July 26, 1979, and served upon 11 utilities doing business in Minnesota, the Commission directed those utilities to produce certain detailed data relating to their historical experience with disconnections, accounts receivable and associated sales and costs which the Commission deemed would be useful in promulgating an appropriate rule. Said utilities duly responded to said order.

By order dated August 30, 1979, the Commission directed that 8 public hearings be held in 5 cities throughout Minnesota on the proposed rule. A copy of tne contents of said order was published in the Minnesota State Register of September 17, 1979, together with the entire context of the proposed rule and instructions as to how a copy thereof and a copy of the Statement of Need and Reasonableness could be obtained by interested parties. See Exhibits 2 and 7. All other jurisdictional documents required by 9 MCAR § 2.105 were duly filed by the Commission and were received as Exhibits 3, 4, 5, 6, 9 and 10.

By document dated October 27, 1979, and received herein as Exhibit 8, the Commission proposed several changes to its proposed rule as previously publisned in the State Register. At the first hearing on October 18, 1979, where this document was admitted into evidence, James Lackner, Special Assistant Attorney General who represented the Commission Staff, described the contents of Exhibit 8 as "minor word changes". The Examiner finds that there was no general circulation of these changes to the proposed rule prior to the hearings but that reference was made thereto at the commencement of each hearing and copies thereof were available to all people in attendance at each hearing.

Subsequent to its Order for Hearing and the publication thereof in the State Register, the Commission referred the matter to the Minnesota State Office of Hearing Examiners for purposes of conducting said hearings. In accordance with said order, public hearings were conducted by the undersigned Examiner as set forth above.

After the conclusion of the hearings, the record remained open until October 30, 1979 for the purpose of receiving written comments on the proposed rule from any person desiring to submit same.

A large number of such statements were received from individuals, organizations, utilities and tne staff of the Public Service Commission.

The following utilities filed a joint statement setting forth their collective position:

Bigfork Valley Electric Service Company
Community Utility Company
Great Plains Natural Gas Company
Greely Gas Company
Home Light and Power Company
Inter City Gas Limited, Incorporated
Interstate Power Company
Iowa Electric Light and Power Company
Island Gas, Incorporated

Minnesota Gas Company
Minnesota Power and Light Company
Montana-Dakota Utilities Company
North Central Public Service Company
Northern States Power Company
Northwestern Wisconsin Electric Company
Otter Tail Power Company
Peoples Natural Gas Division
Rainy River Improvement Company
Western Gas Utilities, Incorporated

In addition several of the above utilities filed individual statements.

PROPOSED RULE AND RESPONSES THERETO BY AFFECTED PARTIES

1. The avowed purpose for the rule and the authority for its promulgation is stated as follows in Section A:

> A. Purpose and authority. The rule contained herein is prescribed by the Commission pursuant to Minn. Stat. § 216B.05, subd. 1 to prohibit disconnection to an occupied residential unit if the temperature is reported to be at 32 degrees Fahrenheit or lower or the payment agreement procedure applies.

In amendments proposed after publication of the proposed rule, Commission Staff deleted the above cited statute and replaces it with Minn. Stat. § 216B.04 and B.08. It also substituted the word "predicted" for the word "reported" which immediately precedes the phrase "to be at 32 degrees Fahrenheit", et cetera. In its posthearing statement, the Stff inserted the word "low" imediately before the word "temperature".

The utilities have raised the question of this Commission's authority to promulgate the proposed rule. It is not clear whether they mean that the Commission is without authority to promulgate any cold weather shut-off rule or whether they challenge its authority to promulgate this specifically proposed rule. The Examiner believes they mean the latter because, as discussed later herein, they deem it to be an absolute ban on shut-offs for 6 months.

2. Section C of the proposed rule originally provided as follows:

> C. Disconnection restrictions for occupied residential units notwithstanding the provisions of any other customer service rule, no utility shall disconnect service to an occupied residential unit for any reason, except the safety of the occupants or the public as provided in PSC 298 B.2, if the disconnection affects the primary heat source of the residential unit and if the minimum temperature restriction or the payments agreement restriction set forth below applies.
>
> 1. Minimum temperature restriction. Disconnection shall not take place if the predicted 24-hour (12 a.m. to 12 p.m.) temperature as reported by the National Weather Service at its first order station nearest the dwelling unit is to be 32 degrees Fahrenheit (0 degrees Celsius) or lower.
>
> 2. Payment agreement restriction. No utility shall terminate residential service during cold weather months unless:
>
> a. the utility has made a written offer, or an oral offer confirmed in writing within 72 hours, for a deferred payment agreement; and
>
> b. the customer has failed to enter into or comply with such an agreement or an alternative payment agreement. The customer shall have five days after receipt of the utility's written offer:
>
> (1) to deposit in the mail, or otherwise deliver to the utility or its agent, written acceptance of the offer; or
>
> (2) to enter into an alternative payment agreement.

c. For purposes of determining the reasonableness of the amount of the initial payment under a payment agreement, the parties shall consider:

(1) The size of the delinquent account;

(2) the customer's ability to pay (if the customer is a landlord and the service is to a tenant the landlord shall be presumed to be able to pay the bill):

(3) The customer's payment history;

(4) The length of time that the debt has been outstanding;

(5) The reasons why the debt is outstanding;

(6) Any other relevant factors concerning the circumstances of the customer.

In amendments after the proposed rule was published and in its posthearing statement, Commission Staff proposed that Section C-1 read as follows in its entirety:

Minimum Temperature Restriction. Disconnection shall not take place if the minimum 24-hour temperature as predicted by the National Weather Service at its first order station nearest the dwelling unit is to be 32 degrees Fahrenheit (0 degrees Celcius) or lower on the day of disconnection.

In a post-publication amendment to Section C-2(a), Commission Staff deleted the alternative oral offer requirement and added the following provision:

Each written offer shall include a copy of Rule 299, the Cold Weather Rule, in order that the customer may ascertain his or her rights and obligations.

Testimony was received from Paul Marincel of the Minnesota Citizen Action, Keith Dunder of the St. Cloud Area Legal Service Association, and other individuals that the formality and complexity of the official rule may make it difficult to comprehend by many people and they proposed that a common language explanation of the rule accompany the written offer. On the basis of this testimony the Commission Staff amended the above amendments to provide as follows:

Each written offer shall include a copy of this rule and a PSC approved easy to understand language explanation of the customer's rights and obligations including the customer's right to negotiate an alternative payment agreement and the right to appeal disputes to the Department of Public Service. The utility shall also include with any disconnection notice issued pursuant to this rule either a statement which lists all the government or private programs available to provide assistance to the customer in paying the delinquent bill or a statement which provides the customer with a telephone number of the utility and informs the customer that he or she may call that number to receive information concerning such programs;

3. Section B-2 defines "cold weather months " as follows:

2. "Cold weather months" means the period of time beginning on October 15 and terminating on April 15 following. The Commission shall vary the period for a given year if the National Weather Service reports temperature variation of extreme amounts.

In its posthearing statement the Commission Staff substituted the word "predicts" for the word "reports" immediately preceding the final phrase "temperature variation of extreme amounts".

The 32 degrees Fahrenheit temperature restriction of Section C-1 was the target of criticism from virtually every consumer and organized consumer group which testified or submitted written comments for the record. One of the major criticisms of this temperature restriction can be summed up in a paraphrase of a slogan heard and observed frequently at the hearings, namely: "32 degrees Fahrenheit protects pipes, not people". In other words, while the plumbing may not burst at 32 degrees, human health cannot be maintained at that temperature level. It was pointed out by numerous individuals and organized groups that those who are most likely to have their heat source terminated by regulated utilities are the elderly, the handicapped and ill, yet it is these very persons who are the most sensitive to and the most greatly damaged by temperatures at this low level. It is the position of many of these individuals and groups that the 32 degrees Fahrenheit temperature restriction should be eliminated and that all disconnections of utility service affecting a residential primary heat source should be prohibited between October 15 and April 15. A number of people and groups primarily from northern Minnesota not only favored a total ban on utility shut-offs during cold weather but further recommended that the "cold weather months" be defined so as to include a longer period of time than that defined in the proposed rule. Representative Joe Begich, speaking on behalf of himself and other state representatives and senators from northern Minnesota, proposed a winter period from October 1 through May 1. Robert Williams, representing Local 2660 of the United Steelworkers Union proposed a total ban on shut-offs for the period extending from September 1 through May 30. Legal Aid Society of Northeastern Minnesota proposed a winter period from October 1 through April 30.

See 2-B Prop. Rule

One of the reasons for the proposed expanded winter period was the recognition of the obvious fact that northern Minnesota has a longer heating season than southern Minnesota. Not all advocates of a longer applicable winter season, however, were from northern Minnesota. Ramsey Action Program, a St. Paul community action organization, proposed that the winter season during which a total ban on shut-offs be instituted be defined as the period from October 15 through May 15 and St. Cloud Legal Services Association proposed on behalf of the St. Cloud Area Recipients Alliance that the period run from October 1 through April 1.

4. Other persons and groups suggested that in addition to, or as an alternative to, the expansion of the definition of the winter season, the temperature restriction be increased from the presently proposed 32 degrees Fahrenheit. The Senior Coalition of Northern Minnesota proposed a temperature restriction of 55 degrees or 60 degrees. Other groups and individuals proposed temperatures of 40 degrees and 45 degrees.

These higher temperatures were proposed for several reasons. First is the previously mentioned reasons that 32 degrees Fahrenheit is not an adequate temperature to maintain human health. Another reason given is that it is not uncommon for temperatures to rise above 32 degrees between October 15 and April 15. It is the fear of many of the witnesses herein that the utilities will perform mass shut-offs on these balmy days, meaning that when, as is common in Minnesota, the temperature again soon plummets to sub-zero ranges, the customer will be without a primary heat source. August Rivera of the Urban

Coalition of Minneapolis likened this to playing Russian roulette with the Minnesota winter. Another reason given for the increased temperature restriction is the uncertain reliability of the weather forecasting business. As seen, implementation of the ban on shut-offs is dependent upon weather predictions for a defined 24 hour period. Several persons pointed out that predicted temperatures do not always arrive as forecasted. Thus it is possible that a utility could shut off a primary heat source on the basis of predicted temperatures of more than 32 degrees. However, if the temperature for the given period does not reach this level, both people and plumbing alike will be left unprotected.

Minnesota Power and Light argues that the Commission has failed to substantiate the need for including the last 15 days of October and the first 15 days of April in the cold weather period and recommends that the cold weather months be shortened to November through March 31.

5. The utilities in their joint statement criticize the restriction against termination of services as being too broad by reason of failing to provide standards by which to identify the customers who need the protection of a cold weather rule. They point out that Section 115(g)(2)(A & B) of PURPA dealing with gas utility service require a customer to establish that he is unable to pay his utility bill or that he can pay it only in installments before he may come under the protection of a shut-off moratorium. The utilities in this proceeding point out that the Commission, in its Statement of Need and Reasonableness which purports to support the proposed rule, dismissed this federal requirement as too cumbersome. As a result of this rejection, the utilities say "even those who are able to pay are given an open invitation for a six-month free ride". (emphasis in original)

The utilities view the proposed rule as a blanket moratorium against utility shut-offs during the entire cold weather period. This is because even though the temperature does rise above 32 degrees Fahrenheit during that period, a utility cannot terminate service without going through the procedure of giving the customer an opportunity to enter into an alternative agreement and must also notify the local welfare agency 10 days in advance of actual termination. As a practical matter, they argue, this cannot be accomplished during the short periods of 32 degrees Fahrenheit temperatures between October 15 and April 15. The blanket moratorium will apply to all customers without consideration of whether or not a customer has the ability to pay his utility bills. This will have an adverse effect upon all utility customers, according to the utilities. They base this, in part, upon the fact that during the winter of 1978-79, the Commission ordered a moratorium on gas and electric utility shut-offs until after April 1, 1979. Pursuant to a Commission order to produce special information, the utilities provided statistical data showing that the number and amounts of customer accounts in arrears as of April 1, 1979, was up considerably over customer arrearages at the end of the previous heating season. This disruption of operating revenue for 6 months of every year, argue the utilities, will result in their need to raise working capital for daily operations through borrowing money and eventually through higher utility rates which will affect every consumer, including those who are unable to pay their present bills.

Peoples Natural Gas, whose operations as a provider of natural gas at retail in Minnesota may be considered a moderately-sized operation in comparison with other gas and electric utilities in this state, estimated that the amount of customer payments delayed between January and March of 1979 averaged approximately $193,000 and increased Peoples' need for working capital by $112,000. It furtner estimated that it incurred an additional $2,000 in costs for collections, customer contacts, forms and postage and $4,000 in additional payroll costs to carry out collections and customer contacts as a result of the moratorium. Data produced by the other utilities indicate the larger and smaller utilities incurred these additional costs in varying magnitudes.

Orbin Holt, who along with his brother Chester, owns and operates Bigfork Valley Electric Service Company at Bigfork, Minnesota, presented testimony more readily comprehensible because of the small size of his company. His fatner founded the electric distribution company in 1929 and it has been in tne family ever since. No one in the company can remember any customer ever being cut off because of inability to pay a utility bill. The company provides electric service through 225 meters of which approximately 150 are those of residential customers. At the end of the moratorium on April 1, 1979, 18 of those customers owed arrearages in the amount of $4,700. Mr. Holt testified that approximately 10 to 20 percent of these customers are still paying on these arrearages and that about $300 of the total arrearages are owed by former customers who have left the service area. Mr. Holt testified that 65 percent of his company's income must be paid to its wholesale supplier of electricity on a monthly basis and that such wholesale rates have increased drastically in the recent past and are projected to increase again. Payment of this monthly bill by nis company for the purchased electricity is an absolute obligation and not contingent upon tne retail customers paying their bills. Thus wnen customer arrearages drastically increase as they did during the recent moratorium, tne company must get the money from other sources.

Several persons and groups, particularly Minnesota Public Interest Research Group (MPIRG), testified that tne data shows that the utilities have recovered a substantial portion of the arrearages which accumulated during the recent moratorium and that, therefore, the total arrearages as of April 1, 1979, do not reflect a loss to the utilities in that amount. They contend tnat tne utilities have not provided adequate data on the total amounts of bad debt write-offs. The utilities state that it is too early to tell what percentage of the arrearages will eventually be written off as uncollectable.

6. The utilities propose to amend the first paragraph of Section C so that failure of a customer to enter into or to comply with the terms of a payment agreement would form the basis for allowing a utility to terminate service regardless of temperature. They quote the Commission's language from page 15 of its Statement of Need and Reasonableness that, "If utilities are denied termination rights, there must be a guarantee of payment of past due bills". It is the position of the utilities that there can be no such guarantee without the right to terminate service.

7. The utilities would also amend the first paragraph of Section C so as to allow a utility to terminate service where there is unauthorized use of utility service or tampering with utility equipment. This would be done by incorporating by reference in Section C the provisions of 4 MCAR § 3.298B.1 in addition to B.2 of that same section.

8. The utilities would amend Section C-2(b) so as to require that a customer's response to the utility's offer of a payment agreement be received at the utility's office within 8 calendar days. The proposed rule provides that it must be deposited in the mail or otherwise delivered to the utility within five days.

9. The utilities would also add to § C-2(c) a seventh standard to be considered in determining the reasonableness of the initial payment to be made under a payment agreement. This additional standard would be "the customer's annual consumption of utility services".

10. Section C-2(c)(2) contains the parenthetical declaration that "if the customer is a landlord and the service is to a tenant, the landlord shall be presumed to pay the bill".

A number of consumers and consumer advocates proposed that the provision somehow be amended so as to protect the tenant from the failure of a landlord to pay the utility bill where the landlord is the customer of the utility.

11. Minnesota Gas Company (Minnegasco) argues that the proposed rule is violative of the statutes prohibiting discriminatory rates. It points out that Minn. Stat. § 216B.06 provides as follows:

> 216B.06 RECEIVING DIFFERENT COMPENSATION. No public utility shall directly or indirectly, by any device whatsoever, or in any manner, charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered by the utility than that prescribed in the schedules of rates of the public utility applicable thereto when filed in the manner provided in Laws 1974, Chapter 429, nor shall any person knowingly receive or accept any service from a public utility for a compensation greater or less than that perscribed in the schedules, provided that all rates being charged and collected by a public utility upon January 1, 1975 may be continued until schedules are filed.

and Minn. Stat. § 216B.03 provides in relevant part as follows:

> 216B.03 REASONABLE RATE. Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable. Rates shall not be unreasonably preferential, unreasonably prejudicial or discriminatory, but shall be sufficient, equitable and consistent in application to a class of consumers.

Minnegasco argues that the proposed rule will cause it to receive no payments from some residential customers who will take advantage of the restrictions against shut-offs while it will receive full compensation from customers of the same class who pay their bills when due. This, according to Minnegasco, is prohibited by the above statutes.

Minnegasco argues that the blanket restriction against shut-offs constitutes a confiscation of its property and denies it equal protection of the law, all in violation of the United States and Minnesota Constitutions. Minnegasco argues that the rule will compel it to provide gas service on credit whereas oil suppliers, non-regulated utilities and providers of other necessities of life are not compelled to furnish their respective services without compensation.

12. Section C-1 of the proposed rule bases the temperature restriction on the predicted temperature during the 24-hour period between 12 a.m. and 12 p.m. In their joint comments, the utilities recommend that this be changed to the 24-hour period between 6 a.m. and 6 a.m. the following day, since that is how the National Weather Service issues its predictions.

13. The last sentence of Section B-2 reserves to the Commission the right to vary the period defined as "cold weather months" during years of reported temperature variations of extreme amounts.

The utilities suggest that this provision be deleted. They argue that such a provision would allow the Commission to circumvent the public hearings requirement of the Minnesota Administrative Procedures Act, particularly Minn. Stat. § 15.0412, subd. 4.

14. At times during the cold weather months when the temperature restriction does not prohibit shutoffs, § C-2(a) requires that a utility must offer a customer a deferred payment plan before terminating utility service which affects the primary heat source to an occupied residential unit. Section B-3 defines a "Deferred Payment Agreement" as follows:

> 3. "Deferred payment agreement" means a plan providing installment payment of amounts which the customer owes the utility at the beginning of the deferred payment period and for estimated usage during the deferred payment period, wherein payment shall be made by:
>
> a. Payment of a reasonable amount of the outstanding bill at the time the agreement is entered into; and
>
> b. Payments of the following amount in equal monthly installments:
>
> (1) the balance of the outstanding bill; and
>
> (2) bills for estimated usage during the remaining months of the deferred payment period.
>
> (3) a true-up to reconcile actual and estimated usage in the final months.

In its posthearing statement, Commission staff amended § 3(b)(3) to read in its entirety, "(3) a true-up to reconcile actual and estimated usage in the final month of the deferred payment period."

Section B-4 defines a "deferred payment period": as follows:

> 4. "Deferred payment period" means the 12-month period commencing with the first day of the period covered by an outstanding bill.

Section C-2(b) gives the customer five days from receipt of the utility's offer to enter into a deferred payment plan or to enter into an "alternative payment agreement" which is defined by § B-1 as follows:

> 1. "Alternative payment agreement" means a plan providing for deferred payment of bills for usage which does not meet the definition of "deferred payment agreement."

As seen above, § B-3(a) requires that a deferred payment agreement shall provide for an initial payment by the customer at the time of entering into the agreement.

Section E-1 provides that the following Notice relating to the deferred payment must be given to the customer in the following manner:

> E. Payment agreements.
>
> 1. A deferred payment agreement or an alternative payment agreement shall state immediately preceding the space provided for the customer's signature and in bold face print at least two sizes larger than any other used thereon: "IF YOU ARE NOT SATISFIED WITH THIS AGREEMENT, DO NOT SIGN. IF YOU DO SIGN THIS AGREEMENT, YOU AGREE THAT YOU OWE THE AMOUNT STATED TO BE YOUR OUTSTANDING BILL AND YOU AGREE TO MAKE PAYMENTS IN ACCORDANCE WITH THIS PLAN."

Section G provides that the utility must inform the customer that he or she may contact the Department of Public Service for assistance in the event of a dispute over the execution or administration of a deferred payment agreement. This section gives the Public Service Commission final jurisdiction over the resolution of such disputes.

15. Much public criticism was offered of the deferred payment plan provision above cited. Some persons and organizations suggested that it is unfair to force people who are unable to pay their utility bills to negotiate with the utility for life-sustaining heat. It was pointed out that the consumer who is threatened with imminent utility shut-off is in no position to negotiate in any constructive way with the utility. Testimony was given about consumers in this position agreeing to pay the entire amount of their next month's income to the utility in order to prevent termination of service. This, of course, leaves that consumer without means to purchase the other necessities of life for at least an entire month. There was further testimony that many consumers under the threat of disconnection will, out of desperation, sign any agreement submitted to them by the utility, no matter how unreasonable that agreement may be. It is clear from the record that some people in this state have been subjected to high pressure negotiating tactics by over-zealous utility personnel in attempting to reach an agreement which will allow continuance of utility service in the face of an inability of such persons to pay their entire utility bill. It is equally clear that a larger number of persons believe that such a negotiating stance by the utilities is widespread. Other modifications of the deferred payment plan proposed by various witnesses include a provision that the minimum payments be fixed as a percentage of the outstanding bill, or based on a budgeted percentage of the customer's income.

17. The Minnesota Office of Consumer Services proposes the addition of a provision in the proposed rule which would not require deferred payments by certain low income customers. It suggested that no termination of utility service would be permitted if the family income of the customer is less than or equal to the Bureau of Labor Statistics guidelines for defining "low income".

In determining this family income, the utility would be required to give consideration to the following evidence:

(1) The most recent income tax return(s) filed by members of the household;

(2) For each employed member of the family, either paycheck stubs for the last two months or a written statement from the customer's employer of wages for the last two months;

(3) A Medicaid card or food stamp eligibility document; or

(4) Documentation from the Department of Public Welfare, the Social Security Administration, or other pension providers.

(5) A letter showing dismissal from a job or documentation of unemployment.

The utility could, however, waive the production of these documents by the consumer if it otherwise agreed that the consumer was within the low income guidelines.

18. The utilities criticize the provision for a deferred payment on the grounds that it puts the burden on them to determine what is a reasonable payment plan for each customer in need thereof. They state that they have no expertise in making these types of evaluations and that such a determination could more appropriately be done by such organizations as welfare agencies or community action groups which participate in the disbursement of public energy assistance funds. The utilities recognize that this Commission has no jurisdiction to shift this burden to these other agencies.

The utilities state that in attempting to negotiate a mutually satisfactory payment agreement, it is necessary to question the customer about his or her financial affairs and point out that such questioning by utility personnel is often resented by customers as an undue prying into personal affairs.

19. Section G, as originally proposed, sets out the procedure for mediating disputes between the customer and utility as follows:

> G. Disputes. If a dispute arises concerning the reasonableness, application or performance of any payment agreement or modification of a payment agreement under this rule, the utility shall provide the customer with a copy of the Commission's customer service rules and the telephone number of the Department of Public Service together with a statement that the customer may call the Department for information and assistance. The Commission may resolve any such dispute which cannot be resolved by the Department on an informal basis.

Change from B-1 to B-2

In its post-publication amendments, Commission Staff changed the first part of the last sentence to read "The Commission shall resolve any such dispute. . . ." (Emphasis added) rather than leaving it discretionary. In addition, they added the following provision:

> The utility shall not terminate service, regardless of Section C.1 of this rule, until the dispute is resolved by the Department, or if not, then by the Commisson, pursuant to this rule.

As an indication that the post-publication amendments by Staff were not widely noticed, a number of witnesses criticized the fact that the proposed rule did not expressly prohibit termination of service pending settlement of the dispute.

A number of participants expressed doubt that the Public Service Commission has the resources to resolve such disputes in the expeditious manner required by the rigors of Minnesota winters. Still others proposed a provision requiring that the Commission be required to resolve these disputes within a specified time period from receipt of such dispute. Minnesota Power and Light proposed that such a period be defined as 30 days. In its posthearing statement, the Commission Staff amended the above amendment by adding a provision that:

MPL - 30 days

B-2-299F

> "All disputes shall be resolved by the Commission within 30 days of receipt of a complaint by the Department or the Commission.

20. Much criticism was directed at § B-3(a) which requires an initial payment by the customer at the time of entering into a payment agreement. Many people believed that if a person cannot pay their current bills, they are unlikely to have funds with which to make an initial payment. Much support was heard for an amendment deleting this provision or making the initial payment equal to the first month's payment under the agreement.

B-2 deleted (Fres)

21. The definition of a "deferred payment period" in § B-4 came under criticism from utilities, social service agencies and several consumer groups

See B-2 299B-5 (pg 2)

alike. Under this provision, the deferred payment period is the next 12 months after the first day of the period covered by an outstanding bill. It was pointed out that this will allow a consumer to carry a delinquent utility bill from one heating season into the next. For instance, if a customer's account becomes delinquent on February 1, he or she could enter into an agreement providing that such bill, along with projected service costs for the next 12 months, would not be required to be paid until the next January 31. Yet it is possible that this very customer will have difficulty paying his or her current bills after October 1, let alone having funds available to pay arrearages on bills incurred in the past heating season. Critics of this provision referred to this as pyramiding of bills and fear that it will result in many instances of such extremely high arrearages that the customer will never be able to make a complete payment thereof.

In order to prevent this pyramiding effect, the utilities proposed a definition of the deferred payment agreement to be the "time between the date of the deferred period agreement and the next October 15". Other witnesses proposed similar provisions.

22. Section D of the proposed rule sets out the procedures which a utility must follow in the termination of service to a residential unit which it believes to be unoccupied as follows:

> D. Disconnection restriction for unoccupied residential units.
>
> 1. No utility shall disconnect service to the primary heat source of a residential dwelling unit during cold weather months, which it believes to be unoccupied, prior to conducting an on-site inspection of such residential unit and attempting to make direct personal contact with any occupants therein. Such inspection shall include at least one visit to the residential unit by field personnel during normal working hours; and in the event that personal contact is not achieved, another on-site visit during non-business hours.
>
> 2. If the field personnel are unable to make direct personal contact with any occupants, and if it reasonably appears from the on-site inspection the residential unit is unoccupied, then service may be disconnected pursuant to the procedures and requirements of PSC 298, 300 and 301.
>
> 3. The utility shall follow up termination of service to an unoccupied residential unit by conducting an additional on-site inspection of the premises and attempting to make direct personal contact with any occupants thereon on the day immediately following termination of service, including Sundays and holidays. If such residential unit is then found to be occupied, service must be reconnected:
>
> a. If the minimum temperature restriction applies; or
>
> b. If the utility has not satisfied the requirements and procedures of the payment agreement restriction.
>
> The utility shall not charge the customer for reconnection of service pursuant to this subsection.

The utilities propose amendments to this section which would eliminate the requirement for an after-business hours personal visit to the premises and also the required personal visit to the premises after disconnection has been made. It is their position that these personal visits are unnecessary and unduly expensive. Their amended proposal would generally require the utility to first send to the address in question a letter by first class mail requesting any potential occupant to apply for service, giving a final date for such

contact to be made. Upon failure of any occupant of the premises to respond thereto, the utility would then be required to make a personal on-site inspection of the premises and attempt to talk to anyone present therein. If no personal contact is made thereat, the utility would be required to leave a written notice that service will be discontinued unless the utility is contacted within five calendar days. If no such contact is made, the utility would be authorized to disconnect service in the manner prescribed by other Commission rules but would be required to reconnect services if thereafter the occupant makes application for service and makes arrangement for payment of any amount due. The utilities recommend that no reconnection service charge be made under the circumstances.

This appears to be what B-2 299-H incorporated

23. The provision of § E-1 that a warning about signing a payment plan be placed immediately preceding the space provided for the customer's signature was also the subject of proposed amendments. The utilities contend the first sentence stating: "IF YOU ARE NOT SATISFIED WITH THIS AGREEMENT, DO NOT SIGN" is an encouragement to customers to refuse to enter into any agreement with which they are not satisfied. They state that it is doubtful that a customer who is in arrears will be satisfied with any payment agreement. They suggest replacing the quoted sentence with the following: "DO NOT SIGN THIS AGREEMENT UNTIL YOU HAVE READ AND UNDERSTAND ITS TERMS."

The St. Cloud Legal Services Association, representing the St. Cloud Recipients Alliance, and the Legal Services Advocacy Project of St. Paul, counsel for its Minnesota Recipients Alliance, suggested that the Notice, as proposed in § E-1, does not give adequate warning to the customer about his or her alternate remedies. They propose an amendment which would contain essentially the following language:

> IF YOU ARE NOT SATISFIED WITH THIS AGREEMENT, DO NOT SIGN IT. YOU HAVE THE RIGHT TO PROPOSE AN ALTERNATE PAYMENT PLAN, AND YOU HAVE THE RIGHT TO CONTACT THE PUBLIC SERVICE COMMISSION TO MEDIATE ANY DISPUTE BETWEEN YOU AND THE UTILITY. THE UTILITY WILL PROVIDE YOU WITH THE TELEPHONE NUMBER OF THE PUBLIC SERVICE COMMISSION.

In its posthearing statement, Commission Staff deleted the entire first sentence of bold type and replaced it with the following language to be in bold type:

> DO NOT SIGN ANY AGREEMENT UNTIL YOU READ AND UNDERSTAND ITS TERMS.

In addition, they would add the following in bold type:

> IF YOU BELIEVE THAT THIS AGREEMENT IS NOT FAIR AND YOU REFUSE TO SIGN IT, YOU MUST NOTIFY THE MINNESOTA DEPARTMENT OF PUBLIC SERVICE AT (phone no.) OF YOUR APPEAL WITHIN 3 DAYS OR YOU WILL BE SUBJECT TO HAVING YOUR UTILITY SERVICE SHUT-OFF."

This doesn't appear in B-2299 revisions

The utility shall print the Minnesota Department of Public Service telephone number in the above blank.

24. Peoples Natural Gas offered a proposal which would give consumers a broader notice of their alternate remedies. Under Nebraska law, utilities are required to notify their residential customers that they have a right to third-party assistance in dealing with possible utility service discontinuance. Accordingly, Peoples sends out a notice to its residential customers at various times throughout the year informing them of this right and further informing them that Peoples will notify any third party designated by the customer of any notice of utility discontinuance. In this way, any person with a handicap precluding them from adequately dealing with a potential discontinuance

3rd P issue notice

Notice is assured of immediate assistance by someone of their own choice in dealing with the utility.

Another notice which is sent along with the Notice of Discontinuance of Service advises the customer that if he or she cannot pay the full amount due, he or she should contact the utility's Account Supervisor to arrange a conference for the purpose of working out a mutually satisfactory payment agreement. The notice also informs the customer that he or she shall set forth the reasons for the dispute and the relief requested and that the utility may not disconnect service pending the conclusion of the conference.

25. Sections E-2, 3, 4 and 5 deal primarily with modifications in a payment plan as the result of consumption patterns or other changed circumstances affecting the consumer during the life of the payment agreement. These provisions state as follows:

> 2. If during the term of a payment agreement consumption or rates are substantially greater than estimated, the difference shall be amortized over subsequent months for a reasonable time and the required payments shall be adjusted accordingly. At least 30 days prior to billing the customer such an adjusted amount, the utility shall send written notice of the reasons for the adjustment and the amount of the adjusted monthly installment.
>
> 3. If during the term of a payment agreement the consumption or rates are substantially less than estimated, the utility shall refund any excess payments as soon as possible and shall adjust future billings under the agreement accordingly. The utility may, with express consent of the customer, credit excess payments to future bills. Such consent must be given in writing, and signed after the amount of any excess payments has been determined and reported to the customer.
>
> 4. The terms of a payment agreement may be modified because of a change in a customer's circumstances if it would be reasonable to do so. Reasonableness shall be determined under the criteria set forth in this rule for determination of the initial payment.
>
> 5. Any payments made by a customer in compliance with a payment agreement or otherwise shall first be considered made in payment of the previous account balance with any remainder credited to the current bill.

Comments on these sections related primarily to amendments which would make it clear that a customer's move from one premises to another would be considered a changed circumstance to be taken into account for purposes of possible modification of an existing payment agreement. The St. Cloud Legal Services Association suggested that a provision be included stating that if a customer moves to a new residence, he or she may not be denied utility service by a regulated utility if conditions are such that service could not be terminated at the customer's former place of residence.

26. Section F of the proposed rule provides as follows for termination of utility service for failure to enter into or comply with a payment agreement:

> F. Termination for failure to enter into or comply with payment agreement. If a customer has failed to enter into or comply with the terms of a payment agreement, the utility shall have the right to disconnect pursuant to the procedures and requirements of PSC 298, 300, and 301, but subject to the restrictions contained in the minimum temperature restriction. If the utility has offered a deferred payment agreement and the customer has failed to enter into such agreement within the time provided herein, or if the customer has failed to comply with a payment agreement, then the utility shall notify the local welfare agency orally, followed by a written notice within five days, of their intent to discontinue

service, the name and address of the customer, and telephone number if known; the name and address of any tenant occupying the residen- tial unit if such tenant is not the customer of the utility, and telephone number of the tenant if known; and a statement of the amount then due and payable. The utility shall not terminate ser- vice until 10 days after the written notice is given to the local welfare agency.

Many witnesses supported that the requirement for notification of the welfare agencies prior to disconnection be eliminated. Some view this requirement as an invasion of privacy with little benefit to be gained therefrom. Numerous persons pointed out that the welfare agencies cannot grant financial assistance unless it is requested by the recipient. Therefore, those utility shutoff notices become nothing more than dead paper in the welfare agency files.

Many persons suggested the provision for notification of the welfare agencies. Others suggested that, in addition to notification of the welfare agencies, the utilities be required to notify the local community action organizations which are responsible for disbursing public energy assistance funds. Elwood Jensen, Mayor of Geneva, Minnesota, suggested that, in addition to notice to local welfare agencies, the utility be required to notify the local CAP (Community Action Program) organization. Lisa Wrabek, a VISTA volunteer from Cass County, suggested that the description of the agencies to which the utilities be required to send notice be made broader so as to include any local agency charged with "dispensing federal emergency assistance funds".

Harry Herman of Minneapolis, commented that no disconnection of service should be authorized without requiring utility personnel to make a personal visit to the residence. He pointed out the incongruity of the rule's requirement for up to three visits to a residential unit believed to be unoccupied and no required visits to an occupied unit.

On the basis of this testimony, the Commission staff, in its posthearing statement, amended the original Section F by inserting, after the words "welfare agency" in the second sentence, the phrase "and the local agency dispensing federal emergency assistance funds for the area". For consistency, it deleted the last three words "local welfare agency" and substituted the word "agencies". In addition, it added an entirely new subdivision to Section F which provides as follows:

> 2. Before the utility may disconnect services, pursuant to this section, a representative of the utility shall make an on-site visit to the residential unit. Such a visit shall include at least one visit to the residential unit by field personnel during normal working hours; and in the event that personal contact is not achieved, another on-site visit during non-business hours. The representative shall explain to the customer: 1) the pending disconnection; 2) the terms of the deferred payment agreement; 3) the customer's rights and obligation under this rule and PSC 303; and 4) private and governmental programs that may provide assistance in paying the delinquent bill.

27. The ten-day notice requirement to the welfare agencies was also criticized by a number of people for being too short a period of time. They point out that if people do seek financial assistance in paying their delinquent bills, the money may not be made available to them within that time. Testimony was given that the time between application for some forms of energy crisis assistance and the time it takes to actually receive the money can range up to 60 days.

28. The utilities suggest an amendment to this section consistent with their previously discussed position that failure to enter into or comply with a payment agreement should constitute cause for authorizing a disconnecion without regard to the temperature restriction.

The utilities would also amend this section so as to delete the requirement tnat they furnish the local welfare agency with the names and addresses of all tenants occupying the residence where service is terminated if the landlord is the customer, together with a statement of the amount due.

29. Section H of the proposed rule, as originally published, reserves to tne Commission the right to grant variances from the rule as follows:

> H. Exemptions. The Commission may grant variances from this rule upon a showing of good cause, and may suspend part or all of this rule in order to comply with federal regulations.

In a post-publication amendment, the Commission Staff altered the section to read as follows in its entirety:

> H. Exemptions. The Commission shall grant variances from this rule upon a showing of good cause, to protect the public health and welfare and snall suspend part or all of this rule, if necessary, in order to comply with federal statutes and regulations.

The utilities would eliminate this entire section on the grounds that it circumvents the rulemaking provisions of the Minnesota Administrative Procedures Act and the rules of the Office of Hearing Examiners as discussed in relation to their position on § B-2 above.

30. Section B-6 defines "Residential" as follows:

> 6. "Residential" means pertaining to a dwelling unit receiving gas and/or electric service which is occupied by its owner or tenant whether or not the occupant is the customer of the utility.

The utilities would delete a portion of this definition so as to cause it to read as follows:

> 6. "Residential" means pertaining to a dwelling unit receiving gas and/or electric service wnich is occupied by the customer of tne utility.

They believe that the part of the Rule which they delete is meant to cover landlord-tenant situations and tnat such situations are adequately covered by 4 MCAR § 3.298E.

In a statement filed prior to the hearings, Minnesota Power and Light suggested that the definition be amended so as to clearly distinguish between a primary residence and a vacation or like home used only occasionally and to make the rule inapplicable to the latter.

31. The proposed rule does not expressly define the phrase "if the disconnection affects the primary heat source" found in §§ C and D. This gave rise to a number of comments suggesting that where the primary heat source is gas, it may still be necessary to have electric service in order to run the water pumps, forced air fans and ignition system of a heating unit and under these circumstances, the shutoff rule should apply to both gas and electric service at the same residence.

32. The proposed rule is silent as to how a resident who has been disconnected can become reconnected. It was pointed out by several witnesses that tnose who have been disconnected during warm weather months for non-payment of their utility bill are in just as great a need of protection during cold weather months as are otner customers. They suggested that a provision be added allowing these persons to be reconnected by entering into a payment agreement.

33. In the rule, as initially proposed, a "payment agreement" was defined as follows by § B-5:

> "Payment agreement" means a "deferred payment agreement" proposed by the utility or an "alternative payment agreement" agreed upon by the utility and the customer.

In its posthearing statement, Commission staff amended the definition to read as follows in its entirety:

> "Payment agreement" means a "deferred payment agreement" or an "alternative payment agreement" as defined above.

CONCLUSIONS

1. Due, timely and adequate legal notice of the hearings herein was properly served and filed by the Minnesota Public Service Commission and all of the substantive and due process requirements of statutes, rules and constitutions have been complied with.

2. The Commission has, in its post publication amendments, documented its statutory authority to promulgate the proposed rule and amendments.

3. The Commission has demonstrated the need for a cold weather rule. It has not, however, demonstrated that the specific cold weather rule proposed herein reasonably meets the needs of the utility customers and utility industry of Minnesota. In order to meet the demonstrated public needs, the proposed rule must be amended to provide substantially the following conclusions:

4. PSC 299 B should contain, substantially, the following definitions:

1. "Cold weather months" means the period of time beginning on October 15 and terminating April 15 following.

2. "Periods of cold weather" means any 24-hour period wherein the minimum temperature, as predicted by the National Weather Service at its first order station nearest the dwelling unit, is to be 32 degrees Farenheit (0 degrees Celcius) or lower.

3. "Residential unit" means the primary dwelling of the customer during cold weather months or periods of cold weather.

4. "Third party notice" means a notice of, substantially, the following content and form:

CUSTOMER NOTICE

Under a Minnesota Public Service Commission Rule (4 MCAR § 3.299) third party notice is available to all customers of (name of utility).

At your request, we will send a copy of any possible future notice of utility service discontinuance to the person (third party) you authorize.

We believe this service will be of special benefit to the disabled, handicapped or elderly since the notice will ensure that a third party is aware of possible discontinuation of utility service.

A list of public agencies and community organizations which may be able to provide you with financial or other assistance is available at your local (name of utility) office.

If you desire third party notification or names of organizations which may be of assistance to you please contact your local (name of utility) office at (telephone number).

Copies of the Public Service Commission Rules governing utility service disconnection are also available at your local (name of utility) office.

THIS IS NOT A NOTICE OF UTILITY SERVICE DISCONNECTION

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5. "Notice of customer rights and possible assistance" means a notice of substantially the following content and form:

Information Regarding Customer Rights and
Availability of Possible Assistance.

If you are unable to pay the full amount due please contact the Account Supervisor at the telephone number and location designated on the Notice of Discontinance of Service within 8 calendar days of receipt of this notice to arrange a conference with a (name of utility) representative for the purpose of arranging a mutually agreeable payment schedule. You may be represented at such conference by any person of your choice.

You should be prepared to show at the conference why you are unable to pay the full amount due and propose a reasonable payment schedule.

If no payment schedule can be arranged at the conference you will have the right to appeal to the Minnesota Department of Public Service for resolution of the problem. (name of utility) shall inform you of the address and telephone number of the Department of Public Service at the conference if no payment schedule is arranged.

Your utility service may not be disconnected until after the conclusion of the conference, if one is requested by you, or until after the conclusion of your appeal to the Minnesota Department of Public Service, if such an appeal is taken.

You may qualify for financial or other assistance for purposes of paying your utility bill or arranging a payment schedule. The following organizations may be contracted for this purpose:

a. (name, address and telephone number of local welfare agency)
b. (name, address and telephone number of appropriate community action organization which disburses emergency fuel assistance)
c. (any other appropriate agency or organization)

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6. "Payment schedule" means a schedule of payments to be made by the customer to the utility in the following amount between the date of the payment schedule and the following October 15:

a. the balance of the outstanding bill; and

b. bills for estimated usage during the remaining months between the date of the schedule and the October 15 following.

c. a true-up to reconcile actual and estimated usage in the final months.

The payments under said schedule need not be made in equal monthly installments but may be divised so as to take into account any of the following:

a. Tax refunds due to be received by the customer during the life of the payment schedule.

b. Other lump sum monetary payments reasonably expects to be received by the customer during the life of the payment agreement.

c. Other additional income reasonably expected to be received by the customer during the life of the payment schedule which is not being received by the customer at the time of entering into said payment schedule.

Sec B-2
299 B5

4. PSC 299C should be amended as to contain substantially the following provision:

> The monthly billing mailed to residential customers immediately prior to the commencement of the billing cycle including October 15 of each year by all electric and gas utilities shall be accompanied by a third party notice as defined above. Said notice shall also be given to all new customers when they are first provided service.

The purpose of this recommended section is to notify all residential customers that they have the right to designate a person of their choice to receive a copy of any possible gas or electric utility service disconnection during the upcoming cold weather months. As stated in the required notice, it is intended to assist those who are elderly or handicapped and may not be able to deal readily with utility shut-off problems. Admittedly this notice will have limited value to those who have difficulty reading the English language. However, since the notice is to be mailed annually to all residential consumers, the contents will become general knowledge and hopefully will thereby be made known through word of mouth to many persons with reading disabilities.

5. PSC 299C should be amended so as to contain a provision substantially as follows:

> Disconnection restriction for residential units. Notwithstanding the provisions of any other customer service rule, no utility shall disconnect service to a residential unit during cold weather months or periods of cold weather for any reason other than those set out in 4 MCAR §3.298B, if the disconnection in any way affects the primary heat source of the residential unit and the occupant of said residential unit has demonstrated that he or she is unable to pay the full amount of his or her utility bill or can pay it only in installments.

This recommended section provides that the customer who requests protection of the rule must establish that he or she is unable to pay the entire amount of his or her utility bill or can pay it only in installments. This brings the rule into conformity with sections 115(g)(2)(A&B) and 304(a)(2)(A&B) of PURPA as discussed herein before. While these federal provisions may not be binding upon the various state regulatory bodies, they appear to be reasonable and should be adopted by this Commission. It makes no administrative sense to attempt to formulate a rule to protect those persons in need of assistance in paying their utility bills, yet not require those persons to step forward and identify themselves.

The Examiner is well aware of the fact that many people are reluctant to request public assistance in any form and he does not mean to criticize that attitude. The fact remains, however, that this Commission has no jurisdiction to provide emergency energy financial assistance to those in need. The best it can provide in a rule such as this is additional time for those in need to seek such assistance. Just as cold weather is certain to come to Minnesota, so is April 15. The proposed rule allows disconnection of utility services for non-payment of utility bills between April 15 and October 15. It is inevitable that many of those who cannot pay their utility bills during cold weather months will have to request assistance in order to maintain utility service after April 15. The experience with last season's moratorium on utility service shut-offs supports such a conclusion. Thus the need for requesting such assistance has only been delayed under the proposed rule and not eliminated. It is best that such assistance be requested when needed rather than delaying all such requests until April 15.

Another reason for requiring the customer to show his or her inability to pay the entire amount of the bill is to ensure, to the greatest extent possible, that those who can pay their utility bills when due, do so. It is clear from the statistical data submitted relating to last season's moratorium by the utilities that there are customers who will not pay their utility bills when due even though they have the financial wherewithal to do so. Even though a great percentage of those delayed payments are eventually received by the utility, the disruption caused to the utilities' cash flow will adversely affect all consumers because of the increased costs in working capital to the utilities. It is a basic regulatory principle that working capital must be allowed as a component of a utility's rate base for ratemaking purposes. The greater the rate base, of course, the greater the amount of money the utility must be allowed to earn through the rates which it must collect uniformly from all members of the same class. Thus, the utility will eventually have to raise its rates to account for increased working capital or for interest expenses attendant upon borrowing the needed capital. These increases will apply to those who presently cannot pay their utility bills as well as to those who can.

This recommended section also prohibits disconnection of utility service between October 15 and April 15 without regard to minimum temperature where inability to pay has been demonstrated. Given the severe nature of Minnesota winters and the well-known possibility of relatively warm weather being immediately followed by sub-zero temperatures during these months, the Examiner concludes that the temperature restriction detracts unnecessarily from the protection intended to be offered by the rule during cold weather months.

This recommended section also adds a provision defined as "periods of cold weather" without reference to time of year. The first reason for this provision is that it provides for the difference in length of the heating season between northern Minnesota and southern Minnesota. From the record it is clear that residents in northern Minnesota need protection from utility shutoffs for a longer period of time during the year.

A second reason for the "period of cold weather" definition is that it eliminates the need for the provision in the proposed rule authorizing the Commission to vary the period of "cold weather months" from year to year. The Examiner agrees with the utilities that this latter provision allows the Commission to circumvent the rulemaking procedure prescribed by the Administrative Procedures Act and the rules of the Office of Hearing Examiners. Thus,, the Examiner has concluded that the variance provision should be eliminated and that the protection offered during the recommended "periods of cold weather" will provide, pursuant to defined standards, the additional protection which may be necessary in unusually long cold weather seasons. The Examiner believes that, taken in conjunction with the need for the customer to show inability to pay, neither of these two altered definitions will work an undue hardship upon the utility industry and will offer the extra protection needed by the residential consumers.

Another change made in this recommended section is that it makes it clear that unauthorized use of utility services or tampering with utility property is a basis for terminating utility service. This is already provided for by

present Commission rule 4 MCAR § 3.298(B)(1) and the Examiner has incorporated that provision into this recommended rule by incorporating all of Section B rather than only § B-2 as in the proposed rule.

See B-2 299D

A final, and perhaps unnecessary, change contained in this recommended section is the insertion of the phrase "in any way" immediately before the term "affects the primary heat source". This addresses the expressed concerns that the proposed rule might allow disconnection of electric service when a customer's heat source is natural gas but he or she still needs electricity to run the fans, pumps and ignition system of the heating unit. The Examiner believes that the rule, as proposed, would offer adequate protection against disconnnection of electic utility service under these circumstances but believes that addition of the phrase "in any way" may make it more difficult to give the proposed rule a more restrictive meaning than intended by the Commission.

6. PSC 299C should be amended so as to provide a section substantially as follows:

> No disconnection of utility service shall be made during cold weather months or periods of cold weather if said service in any way affects the primary heat source of a residential utility until after the utility has served upon the customer and any third party designated by the customer, if any, a Notice of Proposed Disconnection and an accompanying Notice of Customers Rights and Possible Assistance informing the customer or third party of the right to request, within 8 calendar days of receipt of such notice, a conference with a utility representative to arrange a mutually agreed-upon payment schedule. If the customer or third party timely requests such a conference, utility service disconnection shall not be made pending the conclusion of said conference.

PSC Findings 6-7 modifies

This proposed provision notifies the customer and designated third party, if any, at the time of proposed service disconnection of the customer's rights to contact the utility in order to work out a payment schedule. It also advises the customer and third party that the customer must show his or her inability to pay the full amount of the utility bill. It further provides the customer and third party with Notice of the Customer's Right to appeal the Department of Public Service and provides the customer and third party with names, addresses and telephone numbers of organizations which may be of assistance to the customer.

The "other assistance" referred to in the Notice of Customer's Rights leave open the possibility that a customer may contact a community organization or perhaps a legal assistance organization for assistance in negotiating an appropriate payment schedule even though he or she may not qualify for financial assistance.

The "payment schedule" in this recommended section has been defined to require payment of all arrearages and estimated service costs between the date of the schedule and the beginning of the next heating season, thus eliminating the problem of carrying one heating season's arrearages into the next heating season.

The Examiner believes that requiring equal monthly installments for these payments will in many instances preclude the flexibility of tailoring the payments to each individual customer's financial circumstances. For instance, an income tax refund or other monetary settlement may be expected by a customer during the life of the payment schedule, or a customer who is unemployed at

the time of the execution of the payment schedule may know that he or she will be recalled to work at a given time before the next October 15. This expected income should be considered in arranging a payment schedule, but it obviously cannot be used to make installment payments until after it is received by the customer. For the same reasons, the Examiner has eliminated the provision for an initial payment.

The Examiner sees no real benefit in distinguishing between a "deferred payment" and "alternate payment" under the definition of a "payment schedule." Presumably, the best possible payment schedule will be arranged in accordance with the customer's ability to pay. Therefore, it matters little what it is titled so long as it is specifically defined.

8. The proposed rule should be amended to contain a provision substantially as follows:

A. The utility shall consider the following if provided by the customer, in negotiating a payment schedule:

1. The most recent income tax return(s) filed by members of the customer's family.

2. For each employed member of the customer's family, either paycheck stubs for the last two months or a written statement from the employer of wages for the last two months.

3. A Medicaid card or food stamp eligibilty document.

4. Documentation from the Department of Public Welfare, the Social Security Administration, the Veteran's Administration, or other pension providers.

5. A letter showing dismissal from a job or other documentation of unemployment.

B. The utility may waive consideration of such evidence if it otherwise determines that the customer is unable to pay the full amount due or can pay it only in installments.

C. Evidence that the family income of the customer is less than or equal to the Bureau of Labor Statistics guidelines defining "low income" shall constitute a prima facie showing that the customer cannot pay the total amount due on his or her utility bill.

D. If no payment schedule is agreed upon at the conference between the customer and the utility, the utility shall serve upon the customer, or third party, at the conclusion of said conference a written statement notifying the customer of the following:

1. The customer has the right to appeal within five calendar days to the Minnesota Department of Public Service for resolution of the issue and that termination of utility service will not be made pending conclusion of the appeal, if taken.

2. The address and telephone number of the Minnesota Department of Public Service.

3. If the customer appeals to the Minnesota Department of Public Service, written proof of such appeal must be served upon the utility within the five days allowed for such appeal.

4. If appeal is not made to the Department of Public Service within the prescribed time, the utility may terminate utility service pursuant to the procedures and requirements of PSC Rules 298, 300 and 301.

E. If a payment schedule is agreed upon at the conference between the customer and the utility, the utility shall serve upon the customer a written notice at the conclusion of the conference that utility service will not be terminated so long as the customer complies with the terms of the payment schedule, and that the customer should notify the utility immediately of any circumstances making it impossible for the customer to comply with said terms and shall propose specific modifications to the payment agreement and give the reasons therefor.

F. Upon receipt of a request for modification of an existing payment schedule, the utility shall give consideration to the changes in the customer's consumption pattern and intervening utility rate increases subsequent to the date of the original schedule, in addition to changes in the basic financial circumstances which it ws required to consider before entering into the original payment schedule. If the utility refuses to make the requested modification in the payment schedule, it must notify the customer of this fact in writing and shall also serve the customer with a notice of right to appeal to the Department of Public Service identical to the one required to be served in section 8 D. above.

G. If no appeal is taken by the customer as provided for in Sections 8 D. and 8 F. above, the utility may disconnect service pursuant to the procedures and requirements of PSC Rules 298, 300 and 301.

H. The Department of Public Service or the Commission shall resolve all appeals herein within 20 days of receipt thereof.

The provisions of these recommended sections are rather basic and self-evident. They incorporate the recommendations of the Office of Consumer Services regarding the information and factors to be considered in negotiating a payment schedule. They also provide that the utility must notify the customer at the conference of his or her right to appeal any failure to enter into a payment schedule or the failure to agree upon a modification of an existing payment schedule and the consequences of failure to make such appeal.

The provisions also eliminate the requirement for notification of the local welfare agency or other organizations prior to termination of service because the customer already has notice that he or she may seek such assistance and the customer has had personal contact with the utility and has been informed of his or her right to appeal to the Department of Public Service.

By incorporating the procedures of PSC Rule 301, this section requires a personal visit to the premises by a utility representative before disconnection can be made.

These provisions maintain appeal to the Department of Public Service as a matter of right because the Commission is without jurisdiction to delegate the resolution of such appeals to other agencies or organizations and some forum to which the customer may appeal is essential.

8. PSC 299D should be amended so as to contain a section providing substantially as follows:

a. If the utility receives no response to the original Notice of Proposed Disconnection and Notice of Customer's Rights and Possible Assistance within the time prescribed therein, the utility shall not disconnect service which in any way affects the primary heat source of a residential unit prior

to conducting an onsite inspection of such residential unit and attempting to make direct personal contact with any occupants therein.

b. If personal contact is not made, the utility shall leave a written notice advising any occupants that service will be discontinued if the occupant does not contact the utility within 10 calendar days. A copy of this notice shall be served by first class mail upon the customer and third party designated by the customer, the local welfare agency and any apapropriate community organization responsible for disbursing any form of fuel emergency assistance funds. If no response by the occupant or by some person, agency or organization on behalf of said occupant is received within 10 days following the service of the notice as provided, the utility may disconnect service pursuant to the procedures and requirements of PSC Rules 298, 300 and 301.

c. If, following termination of service to such residential unit, the unit is then found to be occupied, service must be reconnected if:

1. The occupant makes proper application for service.

2. The occupant agrees to pay arrearages incurred by himself or herself while occupying the residential unit in question.

3. The utility shall not charge the customer for reconnection of service pursuant to this section.

This is NOT in 299 H'

/ See PSC Findings @ 11

These provisions cover the circumstances of an unoccupied residence. They eliminate the need for up to three personal visits to the residential unit before termination as provided in the proposed rule. It is difficult to understand why such greater precautions are required for an unoccupied unit than the proposed rule provides for an occupied unit.

This section maintains the requirement of notification of the local welfare agency 10 days before termination. This allows a total of 18 days between the service of the original Notice of Proposed Disconnection and accompanying Notice of Customer's Rights and the earliest possible shut-off date. The section also provides for notification of other organizations which may be of assistance to the customer. These requirements were included here because the section presumes no personal contact has been made with the customer. Thus, it is better to notify other parties of the intended disconnection rather than concentrating the effort on attempting to contact the customer who is perhaps not available.

This recommended section provides the tenant of a residential unit served in the name of the landlord the opportunity to take service in his or her name prior to termination of utility service for failure of the landlord to pay the utility bill. This is done by incorporating by reference PSC Rule 298 E. which provides as follows:

> E. Landlord-tenant rule. In situations where the service is rendered at an address different from the mailing address of the bill, or where the utility has reason to know that a landlord-tenant relationship exists and that the landlord is the customer of the utility; and where the landlord as customer would otherwise be subject to disconnection of service; the utility may not disconnect service until the following actions have been taken:
>
> ***

9. A provision substantially as follows should be added to the proposed rule:

> The utility shall reinstate service which in any way affects the primary heat source to a residential unit whereat such service remains disconnected as of October 15 if the occupant of said unit makes application for said reinstatement and enters into a payment schedule as defined hereinbefore.

Sec B-2 299 I. This is it!

The purpose of this proposed section is to provide the customer whose utility service may have been disconnected during warm weather the same opportunity for a primary heat source during cold weather as afforded to other residential customers.

10. Section H. of the proposed rules requiring the Commission to grant exemptions to the rule must be eliminated because it allows the Commission to circumvent the rulemaking procedures prescribed by the Minnesota Administrative Procedure Act and the Rules of the Office of Hearing Examiners. Additionally, the rule would grant the Commissions absolute discretion which, absent specific standards and criteria, is illegal.

11. The Commission is advised to recodify PSC Rule 299 according to the MCAR system.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE PUBLIC SERVICE COMMISSION WILL ISSUE THE ORDER OF AUTHORITY WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATIONS.

RECOMMENDATION

By reason of the foregoing, the undersigned Examiner recommends that the Minnesota Public Service Commission amend its proposed rule so as to conform to the above Conclusions which have been based on public testimony and written statements from parties who will be affected by the proposed rule.

NB

Dated: November 21, 1979.

Richard DeLong

RICHARD DeLONG
Hearing Examiner

MEMORANDUM

Discussions were had throughout the hearings relating to the possibility that if substantial changes were made in the rule as proposed it would probably result in no shut-off rule being adopted before the end of the present heating season. This discussion was generally prompted by the Commission Support Staff who have drafted the proposed rule. The reason for this discussion is a result of the provisions of the Rules of the Office of Hearing Examiners published at 9 MCAR § 2.110 and § 2.111, which states as follows:

> § 2.110 Submission of rule to Chief Hearing Examiner. The agency shall, if it proposes to adopt the rules as originally proposed or 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. § 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 changes in the rule and compliance with Minn. Stat. § 15.0412, subd. 4, within ten calendar days. The agency will be responsible for filing the rules with the Attorney General.
>
> § 2.111 Reconvened Hearings. Should the Chief Hearing Examiner find, after a review of the record, that the proposed final rule is substantially different from the rule which was proposed at the public hearing, or should the Chief Hearing Examiner find that the agency failed to meet the requirements of Minn. Stat. § 15.0412, subd. 4 or these rules, then the Chief Hearing Examiner shall forthwith notify the agency and the Attorney General of said finding. The agency shall then either withdraw the proposed final rule or reconvene the rule hearing. The reconvening of the rule hearing shall comply with all statutory and regulatory requirements as if a new rule hearing were being held. In determining whether the proposed final rule is substantially different, the Chief Hearing Examiner shall consider the degree to which it:
>
> A. Affects classes of persons not represented at the previous hearing; or
>
> B. Goes to a new subject matter of significant substantive effect; or
>
> C. Makes a major substantive change that was not raised by the original Notice of Hearing in such a way as to invite reaction at the hearing; or
>
> D. Results in a rule fundamentally different from that contained in the Notice of Hearing.

While such discussions were allowed to become a part of the record for possible consideration by the Commission, the Chief Hearing Examiner or the Attorney General, this Examiner has not concerned himself with the possible ramifications of substantial change within the meaning of the cited rules. He has not done so for several reasons. First, he is without jurisdiction to do so. As the statutes and rules indicate, these considerations have been reserved to the Chief Hearing Examiner and the Attorney General.

Second, the purpose of the hearings which were conducted on the proposed rule was to hear and receive testimony and evidence from parties who would be affected by said rule in order to assess the adequacy of said rule against the public need. As indicated in the body of this Report, the testimony and evidence so received indicate that public necessity requires certain changes in the rule as proposed. This Examiner can conceive of no greater mockery of the

hearing process than to conduct a series of hearings for the avowed purpose of receiving responses to a proposed rule and then reject the import of those responses merely to assure immediate implementation of a rule which those very responses have showed to be inadequate.

The real tragedy of this proceeding relative to the possibility that an adequate cold weather rule may not be adopted for implementation during the present cold weather season lies in the initial scheduling of the hearings herein. By its very terms, the cold weather rule was to become effective October 15. Yet, the first of a series of eight hearings was not scheduled to begin until October 18. To now refuse to make the indicated necessary changes for the sole purpose of assuring immediate implementation of the rule as proposed would be to compound rather than to remedy the original tragedy.

R.D.

APPENDIX A

The following people spoke at the public hearings herein. The names of those who spoke in a representative capacity are followed by the names of the organizations which they represented.

Albert Lea

Marlene Cram, Minnesota Action Council; Manning Van Nostrand; Joan Jones; Eileen Schmidt, Owatonna Public Utilities; Don Hamill, Interstate Power; Geraldine Zerck, Minnesota Citizens Action; Elwood Jensen, Mayor of Geneva and Representative of Southeastern Minnesota Regional Development Commission; Eileen Knudtson, Mower County Coalition; Elaine Wend.

Minneapolis

August Rivera, Urban Coalition of Minneapolis; Joan Growe, Minnesota Secretary of State; Connie Pechous, Minnesota Citizens Action; Matt Schuth, Minnesota Citizens Action; David Van Ness, Minnesota Citizens Action; Jim Sundholm; Tina Gibson; Mary Jane Partyka, Eastside Neighborhood Services Project Help; Diane Hunt, Minnesota Office of Consumer Services; Harvey Herman, Minneapolis Mayor's Office; Anne Guzy, Northeast Neighborhood House; Janet Stanlheber, Minnesota Community Action Program Association; Lee Lambert, Minneapolis Urban League; John Cina, Ombudsman's Office, Hennepin County; Paul Marincel, Minnesota Citizens Action; Margaret Vallencourt, Minnesota Recipients Alliance; Eileen Hoyord.

St. Paul

Connie Pecnous, Minnesota Citizens Action; David Van Ness Target Area Advisory Council C; Nancy Post; Bess Pechous, Minnesota Citizens Action League and Target Areas Advisory Council League C; Linda Ady, Minnesota Department of Welfare; Diane Fuller, Spencer Blaw, St. Paul Tenants Union; Susan Stewart, Minnesota Energy Agency; Alice Murphy, St. Paul Mayor's Office; Kathryn Barron, Ramsey Action Program; Katie McWatt, St. Paul Urban League; John Beusen, Legal Services Advocacy Project representing Minnesota Recipients Alliance; James Brown, Ramsey Action Program; Steven Watson, Minnesota CAP Association; Mary Rantilla, Roosevelt Resident Council, Target Area Advisory Council C, and Ramsey Action Program; Jerry Messin; Jean Nelson, Park Four Seasons Tenants Association; Gwen Brown; Kenneth Cons; Mary Overby.

Grand Rapids

Hazel Medved, Community Action Program; Joe Begich, State Representataive, District 6-A; Joel Martin, Dairyland Electric Cooperative; Ruth Richardson; Wilma Rahiar, Koochiching-Itasaca Head Start Program; Carl Miller, International Steelworkers Union; Bonnie McCabe; Ruth Elmes Target Area Group; Lisa Wrabek, VISTA Volunteer, Cass County; Irene LeBlanc, Koochiching-Itasca County; Wynn Wagenseil, Community Action Program; Robert J. Williams, United Steel Workers Local 2660; Fred Little, Inter-City Gas, Cloquet; Tessie Soular; Gail Blackmer, Koochiching-Itasca Action Council; Larry Esko, Minnesota Power and Light Co.; Orbin Holt and Chester Holt; Bigfork Valley Electric Service Company; Mary Beers; Alice Brown, Koochiching-Itasca Action Council; Colleen Nardone; Martha Ballou, Minnesota Citizens Action.

Little Falls

Jay Myster, Otter Tail Power Co.; Donald Strie, Sherburne County Social Services Director; Claudia Swendseid, Minnesota Public Interest Research Group; Ronald Pierce, United Automobile Workers Local 2010; Craig Martell, Anoka County Community Action Program; Joan Shaw, St. Cloud Community Action Program; Keith Dunder, St. Cloud Area Legal Services; Florence McIntosh, Crow Wing County Concerned Citizens Council; Marjorie Jordan, Crow Wing Concerned Citizens Council; Betty Geiselhart; Evalyn Foshay, Minnesota COACT; Pauline Veeser; Jim Veeser; Pete Ranum, Crow Wing Concerned Citizens Council; Jim Graeve, Field Representative for Congressman Richard Nolan; Helen Maciej on behalf of Reverend Neidermeier, Assembly of God Church, Little Falls; Mercedez Schultz, Concerned Citizens of Morrison County and also on behalf of Reverend Marvin Ediger, First United Church, Little Falls; a letter from State Representative Steve Wenzel, District 12-B, was read into the record by the Examiner.

Copy of Order - incorporates Adopted Rule

BEFORE THE MINNESOTA PUBLIC SERVICE COMMISSION

Katherine E. Sasseville	Chairperson
Roger L. Hanson	Commissioner
Richard J. Parish	Commissioner
Juanita R. Satterlee	Commissioner
Lillian Warren-Lazenberry	Commissioner

In the matter of the adoption of a rule of the Public Service Commission governing disconnection of service to gas and electric utility customers during periods of cold weather and repeal of PSC 299 cold weather rule.	DOCKET NO. A-8117-27 FINDINGS OF FACT, CONCLUSIONS AND ORDER ADOPTING RULE

The above-entitled matter came on for hearings before Hearing Examiner Richard DeLong on October 18, 19, 22 and 23, 1979. The record was closed on October 30, 1979.

After affording all interested persons an opportunity to present written and oral data, statements and arguments, having carefully considered all of the evidence adduced and the Report of the Hearing Examiner dated November 21, 1979, and upon record, files and proceedings herein, the Public Service Commission (hereinafter "Commission") hereby concurs with, adopts and incorporates the attached Report of the Hearing Examiner in this matter, except as specified in the following Findings and Conclusions:

FINDINGS OF FACT

1. In general, the Commission finds the Hearing Examiner's rule recommendations to be meritorious and reasonable in their attempt to protect those utility customers actually in need of protection from winter disconnections resulting from inability to pay their utility bills. However, the Commission has modified several findings and conclusions of the Hearing Examiner in order that the rule would better serve the needs of both customers and utilities, as established in four days of hearings. For instance, the Commission, for reasons explained below, finds that the determination of inability to pay should be made by the Commission upon appeal by a utility disputing the customer's declaration of inability to pay, rather than have the utility make this determination. Additionally, the Commission has added several safeguards to limit potential problems of the "pyramiding" of unpaid utility bills of customers. The Commission also finds it necessary to make some changes in organization and wording to clarify the intent of the rule and the process established therein. The rule as proposed for adoption in its final form is attached hereto. Unless otherwise indicated in these Findings and Conclusion, all references and citations are to the attached rule.

2. The Commission adopts this rule to protect utility customers who are unable to pay for utility service during cold weather months from disconnection at that time. The Commission's authority to promulgate this rule is based upon the following statutes: (1) Minn. Stat. § 216B.09 (1978) which authorizes the Commission to "ascertain and fix just and reasonable standards, classifications, relations or practices to be observed and followed by any or all public utilities with respect to the service to be furnished." (2) Minn. Stat. § 216B.23, Subd. 2 (1978), which authorizes the Commission to regulate utility practices which are unjust, unreasonable or inefficient. The Commission finds that it is just, necessary, and reasonable to protect people who are unable to pay for utility service from the loss of their primary heating unit at a time when disconnection would seriously endanger their health. (3) Minn. Stat. §§ 216B.04 and 216B.08 (1978) authorize the Commission to adopt rules ensuring that every public utility shall furnish "safe, adequate, efficient and reasonable service." The Commission finds that winter disconnections are not safe, and that it is unreasonable to disconnect customers who have not been given the opportunity to enter into a payment schedule, or who cannot pay their bills during cold weather months. Therefore, the Commission is responsible for establishing regulations controlling such disconnections.

The purpose and authority section of the rule as originally proposed and in the Hearing Examiner's recommendation (H.E. Finding 1) refers to 32 degrees. The Commission finds this language to be unnecessary because the 32 degree requirement and "periods of cold weather" have been deleted from the rule. (See Commission Finding No. 3 below.)

3. The Commission finds the definition "cold weather months" to be necessary and reasonable. The six month "cold weather months" period from October 15 through April 15 has been supported by the record as including those periods of time when it is most likely that cold weather will occur. This, coupled with the fact that the rule proposed for adoption prohibits disconnection of those who cannot pay their utility bills during that entire six month period, provides adequate protection for those who need it.

4. The original proposal prohibiting utility shutoffs at temperatures of 32 degrees Fahrenheit and below was not adopted by the Commission because it did not provide adequate protection against unpredictable winter weather. The record amply supports the Commission finding that under the original proposal customers who are unable to pay their utility bills would have been at the mercy of a possible January "thaw." One warm day in January would have allowed utilities to disconnect despite the fact that temperatures would drop below freezing for several more months.

See HE 3, 4, 13 etc Conclus 4

5. For the reasons set forth in Commission finding 3 above, the Commission has deleted the term "periods of cold weather."

6. 4 MCAR § 3.299B.2. of the rule as finally adopted defines a residential unit as "a primary dwelling which receives gas and/or electric service and is occupied by its owner or tenant, whether or not the occupant is the customer of the utility, during cold weather months." The Commission finds that the definition proposed by the Hearing Examiner does not explicitly address the landlord/tenant situation. The record indicates problems and concerns of renters regarding possible heat disconnections due to the failure of their landlords to pay utility bills. The Commission finds the above definition a reasonable and necessary inclusion in the rule to protect tenants as well as owners. It includes the intent of Hearing Examiner Conclusion No. 8 in the definition itself rather than relying on the incorporation of PSC 298, which governs service to tenants when service is in the landlord's name. Additionally, the Commission provides cross-references to PSC 298 in every section of the rule which provides standards for utility disconnections.

See HE 30; Conclus 4, 8

7. The Hearing Examiner recommended a requirement that a "third party notice" be mailed by the utilities to its customers at a certain point in the disconnection process. The Commission finds this concept to be a useful means of assuring notification to those customers who do not or cannot read or understand the notices sent by the utility. This notice addresses numerous concerns which were raised on the record by members of the public. The Commission, however, feels that the rule should not dictate the specific language of the notice. Flexibility should be allowed so that utilities may tailor the notice to best suit the needs of their customers. The requirement of Commission approval for the notices ensures that the customer's rights will be protected.

See HE 24; Conclus 4

8. The Hearing Examiner also recommended a specific "notice of customer rights and possible assistance." Here again, the Commission finds this notice a useful means of informing customers of their rights. However, the Commission feels that it would be more appropriate to allow each utility to draft its own notice rather than citing specific language in the rule. Similar to the third party notice above, the requirement of Commission approval will ensure that customers will be informed of their rights.

See HE 24; Conclus 4

9. The Commission accepts with several minor modifications the recommendation of the Hearing Examiner in his Conclusion No. 6 concerning payment schedules. The payment schedule is defined in 4 MCAR § 3.299 B.5. and represents the Commission's adoption of the Hearing Examiner's proposal. The Commission adds the words "mutually acceptable" so that payment schedules are worked out to the satisfaction of both parties, thus preventing the utility from unilaterally imposing an unacceptable payment schedule on the customer who has no bargaining power. The Commission also adds the option of a payment schedule period ending on a date other than October 15, if the customer and the utility agree. This addition is intended to meet the needs expressed at several hearings by representatives of Minnesota Citizen Action and other citizen groups, as well as individuals, to allow for longer or shorter time periods when warranted. Because the alternative payment period must be mutually agreeable, the utilities' concern regarding pyramiding of unmanageable bills is also met.

10. The Commission also finds it necessary to include an additional definition, of "working days" in 4 MCAR § 3.299B.6. to provide certainty when that term is used in the rule.

11. The Commission accepts the Hearing Examiner's Conclusion No. 4 recommending a mechanism for distributing the "third party notice" and has incorporated it in 4 MCAR § 3.299C. The Commission also finds it beneficial to both utilities and customers to have each customer receive information concerning his or her rights as early as possible in the cold weather months. As a result, this section requires utilities to include "a Commission approved, easy-to-understand general statement of the protections of this rule" in the mailing of the third party notices.

12. The Commission has considered and deliberated at great length on Conclusion No. 5 of the Hearing Examiner's Report. It agrees with the Hearing Examiner's interpretation of Sections 115(g)(2)(A & B) and 304(a)(2)(A & B) of PURPA and realizes the potential impacts upon both customers and the utilities if bills are not paid. While there is merit to the Hearing Examiner's proposal in Conclusion No. 5, the Commission believes it would create two very serious problems which were addressed at the hearings. In effect, the Hearing Examiner's proposal would require the utilities to make the initial determination of inability to pay and then have the Commission review that decision. The Commission finds that this proposal would be unreasonable. At the hearings both citizen's groups and utilities argued against any proposal which would require the utility to determine "ability to pay." The utilities testified that they did not want to become "social welfare agencies." They argued they had neither the

ability nor the desire to make determinations on issues concerning the ability to pay or specific payment plans. Similarly, various citizens' groups testified that they did not want utilities to know their specific financial data; many citizens were sensitive to utilities acquiring this information because they perceive utilities as adversaries. While most of this testimony concerned the issue of payment plan negotiation, the issue it addresses would become more poignant if utilities were required to determine a customer's "ability to pay."

By placing the initial determination of "inability to pay" on the utilities the Hearing Examiner's recommendation does not address concerns raised at the hearings regarding possible utility abuse and intimidation. Again while the concerns were raised with regard to payment plans, the same concerns are relevant to a determination of "ability to pay." Furthermore, the Commission finds that placing this responsibility on the utilities would be an unreasonable administrative burden, as well as a potential imposition on customers. Therefore, to address these concerns the Commission has modified the Hearing Examiner's Conclusion No. 5 to shift the burden of determining "inability to pay" from the utilities to the Commission. Sections D, E, and F of the proposed rule provide for this modification.

In essence, before any utility can disconnect service affecting the primary heat source of a residential unit, it must send to the customer a Commission approved addressed form on which that customer or any designated third party may declare the customer's inability to pay. The utility has the choice of accepting this declaration or appealing it to the Commission. Testimony was received throughout the hearings to prohibit disconnections during the winter. On its face, the Commission finds this to be unreasonable. The potential for widespread abuse overshadows the simplicity of administration. Under the rule as finally adopted, the utilities can contest declarations of those customers who the utilities believe have the ability to pay. In this manner, abuses can be minimized. In effect, the utility would screen those who declare an inability to pay and the Commission would make a final determination on those customers the utility contests. The Commission finds this to be more reasonable and feasible than the Hearing Examiner's recommendation.

The Hearing Examiner also recommended in his Conclusion No. 5 that not only those who are unable to pay their bills but also those who can pay only in installments should be protected by this rule. 4 MCAR § 3.299D.2. provides this protection. That section states that those who are determined able to pay will not be disconnected as long as they enter into a payment schedule and are reasonably on time with their

payments. Thus, this section incorporates the payment schedule as a means of providing protection to those people who can only pay on an installment basis.

The Commission concurs with the Hearing Examiner's concern in Conclusion No. 5 over unmanageable bills arising after April 15 of each year and the pyramiding of these bills from one year to the next. 4 MCAR § 3.299D.1a.&b., and F.2. address this concern by requiring any customer who declares an "inability to pay" to meet two criteria. First, the customer must agree to enter into a payment schedule for the current cold weather months before he or she is protected under the rule. However, this does not mean that the payment schedule need be established or the terms set at this time. The Commission finds that to require that a payment schedule be established before the customer is protected would have the effect of forcing the customer to negotiate a payment schedule under duress, or at least with the perception of duress. Accordingly, 4 MCAR § 3.299D.1.a. requires that any payment schedule be made pursuant to 4 MCAR § 3.299G.2. Section G.2. provides that the terms of the payment schedule need not be addressed until the customer is guaranteed the protection of the rule. All that is required at that point is an expression of willingness by the customer to enter into a payment schedule.

The second requirement of Section D.1.6. is designed to prevent "pyramiding" of several years debts. That section requires that the customer either be fully paid up as of the commencement of the October 15 beginning of the cold weather months or be reasonably on time with his or her payments under a payment schedule. Because this rule will go into effect after the beginning of the 1979-1980 "cold weather months," implementation of this provision is postponed until October 15, 1980.

To ensure that the Commission's protections against pyramiding are effective, 4 MCAR § 3.299F.2. provides that in making a determination that a customer is unable to pay his or her bills the Commission must first determine that that customer has met the requirements of sections D.1.a & b.

Paragraphs 5 and 6 of the Hearing Examiner's Conclusion No. 5 are unnecessary because the definition of "periods of cold weather" is not adopted by the Commission (See Commission finding 3 above).

13. In Conclusion No. 6 of his Report, the Hearing Examiner recommended an amendment to the original proposal in PSC 299C. which provided for notice to customers. The Commission finds the Hearing Examiner's requirement of notice to be necessary and reasonable. However, because the rule as finally adopted contains a

different structure than that contemplated by the Hearing Examiner, several modifications to his conclusion are necessary. The Hearing Examiner proposed a conference between customer and utility to arrange a payment schedule and a notice concerning the right of a customer to request such a conference.

The rule as finally adopted provides that the Commission makes any determination concerning inability to pay; as a result, a conference on this issue is not necessary. Under the adopted rule the customer merely has to sign a declaration of inability to pay which the utility can appeal. Accordingly, the provision concerning notice has been redrafted and adopted as 4 MCAR § 3.299E.1. and 2. Additionally, the Commission finds it reasonable to require the utility to enclose a reply card for the customer to declare his or her "inability to pay."

For ease of administration, the Commission finds it reasonable and necessary to make all time periods relating to appeal, or disconnection after a time within the rule consistent. Thus, 4 MCAR § 3.299E.2. requires the utility to refrain from any disconnection for seven working days after the customer's receipt of the notice, rather than the eight calendar days recommended by the Hearing Examiner. The seven working day time frame is used throughout the rule.

4 MCAR § 3.299E.3. provides the utility with the option of either accepting or appealing the customer's declaration of inability to pay. The last sentence of that section provides that the utilities shall not prevent any customer or designated third party from making a declaration of inability to pay. This will prevent the utility from attempting to apply the criteria of Section 299D.1. which provides for declaring an inability to pay. The Commission finds it necessary and reasonable that it, and not the utilities, apply the criteria.

14. Conclusion No. 8 (sic) on page 22 of the Hearing Examiner's Report concerns the setting of a payment schedule. As part of this process, the Examiner set forth standards for determination of ability to pay. These standards are found in Conclusions 8.A., B., and C. To clarify the rule, the Commission has separated the determination of ability to pay from the determination of the payment schedule. Ability to pay criteria are found in 4 MCAR § 3.299F.

The Commission finds that the documentation called for in the Hearing Examiner's recommendation 8.A. is easily obtainable by customers and easily interpreted. It is reasonable and necessary to make a determination of ability to pay. Accordingly, the Commission has adopted the Examiner's recommendation for 4 MCAR §

3.299F.3. The Commission has also found it necessary and reasonable to add one other criterion to the Hearing Examiner's proposal. 4 MCAR § 3.299.F.3.f. provides that "other documentation which supports the customer's declaration of inability to pay" shall be considered by the Commission. This allows flexibility where the customer has other or better documentation of income beyond that set forth in the rule.

The Commission finds that the Hearing Examiner's recommendation 8.B. is unnecessary because the Commission, not the utility, will make the determination of ability to pay.

The Commission has adopted in 4 MCAR 3.299F.2., the Examiner's recommendation 8.C. on page 22. The Bureau of Labor Statistics Guidelines are widely available and are used to determine low income levels. Therefore, they are reasonable and necessary criteria for use in determining ability to pay utility bills.

In following the Hearing Examiner's recommendation, the Commission also provides in 4 MCAR § 3.299G.7. that these same criteria will apply to appeals to the Commission concerning the establishment, reasonableness, or modification of a payment schedule, or the reasonable timeliness of the payments under a payment schedule.

15. Proposed language in Hearing Examiner's Conclusion No. 8 concerning waiver of evidence is no longer necessary because the utility would, in effect, be exercising this waiver if it chose not to appeal the customer's declaration of inability to pay.

16. In Section D. of the Hearing Examiner's Conclusion No. 8, the Examiner set forth the customer's right to appeal to the Commission if no payment schedule can be agreed upon by the customer and the utility. The Commission finds this proposal to be a necessary and reasonable addition to the rule. The Commission, therefore, applies the principle of this section to payment schedules as well as the inability to pay. However, because the structure of the rule has been changed, the Commission has redrafted this section so that it is consistent with the other provisions of the rule-4 MCAR § 3.299G.6.

17. In order to clearly set forth the rights of both the customer and utility concerning payment schedules the Commission finds it necessary and reasonable to include 4 MCAR § 3.299G.1, 2, 3 and 5. These sections will eliminate confusion as to who may negotiate a payment schedule and when the plan may be established. Section G.1. provides that any customer who has received a notice of proposed disconnection has the right to enter a payment schedule. This provision is adopted so that those customers who do not meet the criteria of "inability to pay" but still are only able to pay their bills in installments will be protected by this rule, provided that they make timely payments under a payment schedule. Section G.3. requires the

utility and customer to arrange a payment schedule in good faith and provides that the length of the payment schedule and the amounts of each particular payment be made under that schedule shall consider the customer's economic situation and any extenuating circumstances. Section G.5. provides that if a customer has delcared his or her inability to pay (or if that declaration has been appealed and the Commission has found that the customer is unable to pay), that customer will not have his or her service disconnected if the customer does not make payments under the payment schedule during the cold weather months under consideration. This reflects the intent of both the Commission and the Hearing Examiner to protect those who are unable to pay their utility bills from disconnection during winter months when a disconnect would be dangerous to the customer's health.

18. The Commission finds the Hearing Examiner's recommendation for modification of payment schedules as set forth in Sections No. 8.F and G of his conclusions are meritorious, necessary, and reasonable. Accordingly, the Commission adopts this provision and amends it to conform with the structure of the rule. 4 MCAR § 3.299G.4, 6, 7 and 8 of the rule provide for modification of payment schedule and the right of the customer to appeal if he or she and the utility cannot agree on changes.

19. The rule provides the customer and the utility with the right to appeal both the payment schedules and the customer's declaration of inability to pay to the Commission. At the Grand Rapids hearings, Minnesota Power and Light Company proposed language which would require the Commission to act within 30 days of receipt of an appeal under this rule. The Hearing Examiner recommended that this period be shortened to 20 days. The Commission concurs with Minnesota Power and Light Company and finds that a 30 day time limit for Commission action is necessary for a timely process and is reasonable in length of time. 4 MCAR Section 3.299F.1 and 4 places this constraint on the Commission.

20. The Hearing Examiner in Conclusion No. 8, page 23 and following, also addressed the issue of disconnection of potentially unoccupied units. The rule as originally proposed by the Commission required three visits by utility personnel to the residence of a customer who had received notice of proposed disconnection but had not responded. This was proposed so that there would be no accidental cutoffs by the utilities to what appeared to be an unoccupied unit, but which later turned out to be occupied. There is testimony on the recond from the utilities which indicate that this requirement would be administratively cumbersome and expensive. The Hearing Examiner concurred with this testimony and therefore recommended a requirement of

only one visit. The Commission finds this proposal to be inadequate to protect citizens from inadvertent disconnects. However, the Commission agrees that three visits may be unreasonable. Therefore the Commission adopts the language in 4 MCAR § 3.299H. to minimize administrative expense for the utilities while still providing an adequate degree of protection to citizens from inadvertent disconnects. The language provides that before a utility can disconnect service to a residential unit, when the utility has received no response to the notice of proposed disconnection within 7 working days, the utility must investigate the residence to determine whether it is occupied or unoccupied. This provision provides that only one visit by the utility is necessary unless "personal contact is not made and there is reason to believe that the unit is occupied." In these situations a second visit during non-business hours is required.

Additionally, in 4 MCAR § 3.299H.2. the rule requires that if the utility does make contact with the customer the utility shall provide that customer with notice of his rights and an addressed postage prepaid form with which the customer may make a statement of inability to pay. This section then allows the customer to exercise his rights under 4 MCAR § 3.299E. and F. The utility must wait seven working days fro a response from the customer before it may disconnect and if no response is forthcoming the utility, as stated before, must provide notice both by telephone and letter to the local welfare office and any local community organization dispersing fuel assistance. The Commission finds this provision to be necessary and reasonable to protect the rights of those customers who either did not receive notice which the utility sent out earlier, or did not understand it.

The Hearing Examiner in his Conclusion No. 8, page 24 recommended that in cases where there was no contact made by the utility a copy of a written notice advising the occupant or any occupants that service will be disconnected be mailed first class to the customer and any designated third party. He further provided that if no response was received by the occupant or some third party within ten days following the service of the notice that the utility may disconnect service pursuant to PSC Rules 298, 300 and 301. The Commission finds this to be reasonable and necessary and has accordingly adopted the Hearing Examiner's recommendation in 4 MCAR § 3.299H.3.

21. In his Conclusion No. 8.C., the Hearing Examiner also recommended a provision which dealt with utility disconnections of residential units it believed to be unoccupied and which later turned out to be occupied. The Hearing Examiner recommended that, before reconnection could occur, the customer had to make proper application to the utility and also to agree to pay the arrearages incurred while

occupying the residential unit. The Commission finds this proposal to be potentially too cumbersome, time consuming and restrictive if it is strictly interpreted. It might also be dangerous to the lives of people who would fall under the provisions of this section. For instance, if the occupant or customer of the utility lives a great distance away from the utility's headquarters, it might take a significant amount of time to make proper application for service. During the dead of winter that period of time might be the difference between life and death. The second requirement that the occupant agree to pay arrearages may mean either that he must agree to enter into a payment schedule, which would be reasonable or it might mean that before the utility reconnected the customer would have to pay the arrearages, which would be unreasonable. In order to avoid these problems the Commission has adopted language in 4 MCAR § 3.299H.4 which corrects these inadequacies. The provision eliminates the time consuming formality of "proper application" by providing that the customer or any designated third party need only to agree to pay the outstanding balance owed to the utility or agree to enter into a payment schedule with the utility. This will provide for the economic requirements of the utility as well as the protection of financial restrictions of the customer. Furthermore this section also provides the customer with the right to assert his or her inability to pay as provided for under this rule.

Finally, the Hearing Examiner recommended that the utility not charge the customer for reconnection of service. The Commission finds this to be unreasonable. It believes that there will be situations where it is obvious that disconnection resulted from a customer's negligence. In those situations the customer should be required to pay the reconnection charge. 4 MCAR § 3.301 controls on reconnection issues.

22. In his Conclusion No. 9, the Hearing Examiner addressed the issue of reconnection of those customers who have been disconnected by the utility during the summer and who now having not paid their bill wish to be reconnected. After careful consideration the Commission finds the Hearing Examiner's recommendation to inadequately address the problem of pyramiding. The Hearing Examiner's recommendation requires that the disconnected customer need only make application for reinstatement and enter into a payment schedule. It does not require that any payment be made under the payment schedule, but only that one in effect be agreed upon. Conceivably, this would allow for continual pyramiding of bills from one year to the next. A customer could merely enter into an agreement to pay under a payment schedule to become reconntecte without having to make any payment whatsoever after he or she was reconnected.

This would also be in conflict with 4 MCAR § 3.299D.1 which is also designed to prevent pyramiding.

In order to prevent the above scenario the Commission finds that a good faith effort on the part of the Customer is necessary in order to be reconnected at the beginning of the cold weather months. Thus the Commission finds it necessary to include in the Hearing Examiner's reconnection proposal the words "and is reasonably on time with his or her payments under a payment schedule." This would provide that the customer would at least have had to begin repaying the company under the payment schedule agreed upon. This section taken in conjunction with the requirements and criteria for declaring an inability to pay will prevent serious problems with pyramiding.

23. Other modifications, deletions, or additions exist in the final rule as adopted. These amendments implement the legislative actions discussed above and make additional minor technical changes. The Commission finds all such amendments to be necessary and reasonable.

CONCLUSIONS

1. The Public Service Commission is authorized to promulgate this rule under Minnesota Statutes Chapter 216B, particularly §§ 216B.01, 216B.08, 216B.09, and 216B.23.

2. The Commission provided due, timely, and adequate legal notice of the hearings held herein. The hearings were properly conducted by the Hearing Examiner. Sufficient opportunity was given for persons to submit written testimony, statements, and arguments. All substantive and due process requirements of statutes, rules, and constitutions have been complied with.

3. The need for and reasonableness of the cold weather rule have been shown by the testimony received herein as set forth above.

4. PSC 299A should consist of the following language:

A. Purpose and Authority.

This rule is prescribed by the Commission pursuant to Minn. Stat. Chapter 216B, in particular §§ 216B.01, 216B.08, 216B.09 and 216B.23, and the Public Utilities Regulatory Policies Act of 1978, 15 U.S.C. §§ 3201 et seq. and 16 U.S.C. §§ 2601 et seq. to prohibit disconnection of a utility customer who is unable to pay for utility service during cold weather months.

5. PSC 299B should consist of the following language:

B. Definitions.

For the pruposes of this rule, the following definitions shall apply:

1. "Cold weather months" means the period beginning October 15 and continuing through April 15 of the following year.

2. "Residential unit" means a primary dwelling which receives gas and/or electric service and is occupied by its owner or tenant, whether or not the occupant is the customer of the utility, during cold weather months.

3. "Third party notice" means a Commission approved notice containing, at a minimum, the following information:

a. A statement that the notice is not a disconnect notice (stated in block letters at the top of the first page);

b. A statement that the utility will send a copy of any future Notice of Proposed Disconnection of utility service to a third party designated by the customer;

c. Instructions on how to request this service;

d. A statement that the customer should contact the person he or she intends to designate as the third party contact before providing the utility with the party's name; and

e. A list of public agencies and community organizations which may be able to provide the customer with financial assistance.

4. "Notice of Customer Rights and Possible Assistance" means a Commission approved easy-to-understand explanation of the customer's rights and responsibilities under this rule. It shall also include a list of organizations (with addresses and phone numbers) which may provide financial aid to the customer. At a minimum this list shall include the local welfare agency, and the local community action program which disperses emergency fuel assistance.

5. "Payment schedule" means any mutually acceptable agreement between the customer and utility that provides for the payment of the balance of any outstanding bills and future bills for estimated usage during the period covered by the payment schedule. The following guidelines shall apply to payment schedules:

a. The payment schedule may extend from the date of the schedule to the following October 15, or any other period agreed upon by the customer and utility;

b. The customer may make payments to the utility in installments which need not be equal but may be based on factors such as lump sum payments or additional income reasonably expected to be received by the customer during the payment period;

c. At the termination of the payment schedule, there shall be a true-up to reconcile actual and estimated usage during the schedule period.

6. "Working days" means Mondays through Fridays excluding legal holidays. The day of receipt of any notice shall not be counted in caluclating a period of time under this rule.

6. PSC 299C should consist of the following language:

C. Early Notification of Rights and Third Party Notice Option.

All utilities shall include a "third party notice" and a Commission approved easy-to-understand general statement of the protections of this rule annually in the monthly billing mailed to residential customers immediately prior to the commencement of the billing cycle which includes October 15. These notices shall also be provided to all new customers when they are first provided service by the utility.

7. PSC 299D should consist of the following language:

D. Disconnection Restriction for Occupied Residential Units.

No utility shall disconnect the service of any residential unit during "cold weather months", notwithstanding any other customer service rule, except 4 MCAR § 3.298B., if the disconnection would affect in any way the primary heat source of the residential unit and:

1. The customer, or any designated third party, has declared his or her inability to pay, as provided in 4 MCAR § 3.299E; or, if appealed, the Commission has determined the customer is unable to pay. To declare his or her inability, the customer must meet the following requirements:

a. The customer expresses willingness to enter into a mutually acceptable payment schedule for the current cold weather months, pursuant to 4 MCAR § 3.299G2; and

b. The customer was fully paid up or was reasonably on time with his or her payments under a payment schedule as of the billing cycle immediately preceding the start of the current cold weather months. (This provision becomes effective as of October 15, 1980.)

or;

2. Where the customer has not declared his or her inability to pay or where the Commission has determined that the customer is able to pay and, in either case, the customer has entered into a payment schedule and is reasonably on time with his or her payments under the schedule.

8. PSC 299E should consist of the following language:

E. Declaration of Inability to Pay.

1. Prior to disconnecting the service affecting the primary heat source of any residential unit for failure to make payment for such service, the utility shall serve, personally or by first class mail, the following upon the customer and any designated third party:

a. A Commission approved Notice of Proposed Disconnection;

b. A Notice of Customer Rights and Possible Assistance; and

c. A Commission approved, addressed, postage prepaid form on which a customer, or any designated third party, may deldeclare his or her inability to pay.

2. The utility shall not disconnect the service for seven working days after the customer's receipt of personally served notice, or for ten working days after the utility has deposited first class mail notice in the United States mail. If the utility has not received a response from the customer or any designated third party within the appropriate period, the service may be disconnected, pursuant to section 4 MCAR §§ 3.298, 3.299H., 3.300 and 3.301.

3. The utility may accept the customer's declaration of inability to pay or appeal the customer's declaration of inability to pay to the Commission in writing, on forms prescribed by the Commission, within seven working days after receipt. The utility shall not prevent any customer or designated third party from making a declaration.

4. If it appeals, a copy of the appeal, and a Commission approved letter explaining that the customer may have his service terminated, shall be mailed by the utility to the local welfare agency and any local community organization responsible for dispersing fuel emergency assistance on the same day as the utility files its appeal.

9. PSC 299F should consist of the following language:

F. Commission Determination of Inability to Pay.

1. All appeals of declarations of inability to pay shall be determined on an informal basis by the Commission within thirty days after receipt of the utility's written appeal.

2. The Commission shall determine the customer's inability to pay based upon the following:

a. A finding that the customer is in compliance with 4 MCAR § 3.299D.1.; and

b. A finding of "lower budget", as defined in the Bureau of Labor Statistics Guidelines, which are those applicable on the effective date of this rule.

3. In making its determination, the Commission shall consider one or more of the following:

a. The most recent income tax return(s) filed by members of the customer's household; or

b. For each employed member of the customer's household, either paycheck stubs for the last two months or a written statement from the employer of wages earned during the preceding two months; or

c. A medicaid card or food stamps eligibility document; or

d. Documentation that the customer is on a pension from the Department of Public Welfare, the Social Security Administration, the Veterans Administration or other pension providers; or

e. A letter showing the customer's dismissal from a job or other documentation of unemployment; or

f. Other documentation which supports the customer's declaration of inability to pay.

4. The utility shall not disconnect the service until expiration of the 30 day appeal period. If the Commission determines that the customer is able to pay, the utility may disconnect the service, purusant to 4 MCAR §§ 3.298, 3.299G., 3.300 and 3.301.

10. PSC 299G should consist of the following language:

G. Payment Schedule.

1. Every customer, without regard to his or her ability to pay who receives a notice of proposed disconnection during cold weather months, shall have the right to a payment schedule. A designated third party may request and negotiate a payment schedule on behalf of a customer.

2. It shall not be necessary to establish a payment schedule until the utility has accepted the customer's declaration of inability to pay, or the customer has refused to sign the declaration of inability to pay, or the Commission has determined an appeal of a customer declaration of inability to pay.

3. The utility and customer or any designated third party shall attempt in good faith to arrange a payment schedule, which shall take into consideration the customer's economic situation and any extenuating circumstances.

4. The customer or third party should notify the utility immediately of any circumstances making it impossible for the customer to comply with the payment schedule and should propose specific modifications to the payment schedule. Upon receipt of a request for modification of a payment schedule, the utility shall consider changes in the customer's consumption pattern, utility rate increases effective since the date of the original schedule and changes in the customer's financial circumstances.

5. No customer who has declared his or her inability to pay, or if appealed, has been determined to be unable to pay, shall be disconnected during cold weather months for failure to make payments under a payment schedule which applies to that period of time.

6. The utility shall provide the customer and any designated third party with a Commission approved written notice of the right to appeal to the Commission when the utility and customer are unable to agree on the establishment, reasonableness or modification of a payment schedule, or on the reasonable timeliness of the payments under a payment schedule. Any appeal must be made within seven working days of the receipt of notice by the customer.

7. In determining an appeal, the procedures set forth in 4 MCAR § 3.299F. shall apply. The determination shall be based upon the criteria set forth in the Bureau of Labor Statistics Guidelines.

8. The utility shall not disconnect service while a payment schedule is pending appeal, or until any appeal involving payment schedules have been determined by the Commission. If no appeal is made by the customer or designated third party and the customer has been determined to have the ability to pay his or her utility bill purusant to 4 MCAR § 3.299F., the utility may disconnect service pursuant to the procedures and requirements of 4 MCAR §§ 3.298, 3.300 and 3.301.

11. PSC 299H should consist of the following language:

H. Disconnection of Potentially Unoccupied Units.

1. Prior to disconnecting any service affecting the primary heat source of any residential unit, when the utility has received no response to the Notice of Proposed Disconnection within seven working days of the customer's receipt of personally served notice, or within ten working days after the utility has deposited first class mail notice in the United States mail, the utility shall investigate whether the unit is occupied or unoccupied, which at a minimum shall include:

a. One visit by the utility to the unit during normal working hours;

b. If personal contact is not made, and there is reason to believe that the unit is occupied, the utility shall make another on-site visit during non-business hours.

2. If contact is made with the customer, the utility shall provide the customer with the Notice of Customer Rights and Possible Assistance and an addressed, postage prepaid form with which the customer may make a statement of inability to pay for the service, in which case sections 4 MCAR § 3.299E. and F. shall apply. At least seven working days before disconnecting the customer, the utility shall notify by telephone and a Commission approved letter the local welfare office and any local community organization responsible for dispersing fuel emergency assistance of the proposed disconnection.

3. If the utility is unable to contact the customer, and it reasonably appears from the on-site inspections that the unit is unoccupied, the utility shall provide notice by first class mail to the recorded billing address of the customer. Such notice shall include an easy-to-understand explanation of the protections of this rule, Notice of Customer Rights and Possible Assistance, and an addressed, postage prepaid form with which the customer may make a declaration of inability to pay. If no response has been received by the utility after seven working days of the customer's receipt, the service may be disconnected, pursuant to 4 MCAR §§ 3.298, 3.300 and 3.301.

4. If, following disconnection, the residential unit is found to be occupied, the utility must reconnect service if the customer or designated third party:

a. Agrees to pay the outstanding balance owed the utility, or

b. Agrees to enter a payment schedule with the utility, or

c. Asserts his or her rights under 4 MCAR §§ 3.299E. and 3.299F.

12. PSC 299I should consist of the following language:

I. Reconnection at Beginning of Cold Months.

The utility shall reinstate service which in any way affects the primary heat source to a residential unit if such service remains disconnected as of October 15 if the customer makes application for reinstatement and is reasonably on time with his or her payments under a payment schedule. Any customer disconnected as of October 15 shall have the same rights as provided in 4 MCAR § 3.299G.

ORDER

1. The Findings of the Report of the Hearing Examiner dated November 21, 1979, relating to the proposed rule, are adopted as the Commission's own, except as they are modified by the Commission's Findings as set forth above.

2. The Conclusions of the Report of the Hearing Examiner dated November 21, 1979, relating to the proposed rule, are adopted as the Commission's own, except as they are modified by the Commission's Conclusions as set forth above.

3. The proposed rule is hereby modified to implement the Commission's Findings and Conclusions, and as modified, the rule is hereby adopted by the Commission.

4. This Order shall be effective immediately.

BY ORDER OF THE COMMISSION

M L Harty

MARY L. HARTY
Executive Secretary

SERVICE DATE December 28, 1979

(S E A L)

PSC-80-020-RD

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DEC 31 1979
Commission Support

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA PUBLIC SERVICE COMMISSION

In the Matter of the Proposed Adoption of a Rule Governing Disconnection of Service to Gas and Electric Utility Customers During Periods of Cold Weatner and Repeal of PSC 299 Cold Weather Rule.

REPORT, ORDER AND MEMORANDUM OF THE CHIEF HEARING EXAMINER

The above entitled matter came on for hearing before Richard DeLong, a hearing examiner of the Minnesota Office of Hearing Examiners, between October 18, 1979, and October 23, 1979. Following the conclusion of the hearings, the record remained open until October 30, 1979, for the purpose of receiving written comments on the proposed rule from any persons desiring to submit same. The hearing examiner issued his report and recommendations on November 21, 1979.

After waiting the required five working days from issuance of the hearing examiner's report, the Minnesota Public Service Commission (hereinafter "PSC" or "Commission") met over a period of days and did, on Monday, December 17, 1979, officially vote to adopt a rule, after first having reviewed the hearing examiner's report and the record of the hearing. The Public Service Commission, in an effort to expedite the proceedings herein, furnished the chief hearing examiner with a draft of the rule proposed for adoption at 4:30 p.m., Monday, December 17, 1979. The PSC's Findings of Fact and Order Adopting Rule were officially filed with the chief hearing examiner on December 28, 1979, pursuant to the provisions of Minn. Stat. § 15.052, subd. 4, and rule 9 MCAR § 2.110, for the purposes of having the chief hearing examiner review the rules proposed for adoption to determine whether or not the adopted rules are substantially different from those which had been proposed in the Notice for Hearing and to determine whether or not the agency had complied with the procedures in Minn. Stat. § 15.0412, subd. 4.

The chief hearing examiner, having now reviewed all of the files, records and proceedings herein, issues the following Report which shall include findings of fact, conclusions, recommendations for clarity, and Order.

1. Statutory Authority

In the original rule proposed for adoption, the PSC indicated that its statutory authority was contained in Minn. Stat. § 216B.05, subd. 1. In its final submission to the hearing examiner, the Commission substituted, for its authority, Minn. Stat. §§ 216B.04 and 216B.08 and the Public Utilities Regulation Policies Act of 1978, ("PURPA") 15 U.S.C. § 3201 et seq. and 16 U.S.C. § 2601 et seq.

In its passage of PURPA cited above, the Federal Government instructed state regulatory agencies such as the Minnesota PSC to consider a number of issues relating to the regulation of public utilities over a period of time which were to result in a decision by the state regulatory agencies to adopt policies or rules relating to a number of issues. However, the Minnesota PSC can only derive authority to adopt rules from the Minnesota Legislature which, by the Minnesota Constitution, is given legislative power. Our legislature can delegate its authority to legislate to a state agency by authorizing it to adopt rules. Therefore, the citation to a federal law is not, standing alone, authority for a Minnesota agency to adopt rules.

Minn. Stat. §§ 216B.04 and 216B.08 state as follows:

> 216B.04 Standard of service. Every public utility shall furnish safe, adequate, efficient, and reasonable service; provided that service shall be deemed adequate if made so within 90 days after a person requests service. Upon application by a public utility, and for good cause shown, the commission may extend the period for not to exceed another 90 days.
>
> 216B.08 Duties of commission. The commission is hereby vested with the powers, rights, functions, and jurisdiction to regulate in accordance with the provisions of Laws 1974, Chapter 429 every public utility as defined herein. The exercise of such powers, rights, functions, and jurisdiction is prescribed as a duty of the commission. The commission is authorized to make rules and regulations in furtherance of the purposes of Laws 1974, Chapter 429. (Emphasis added)

The Minnesota Supreme Court, in its decision in the case of Minnesota - Dakotas Retail Hardware Association v. State, 279 N.W.2d 360 (Minn. 1979), stated that the authority of the director of the Consumer Services Section of the Minnesota Department of Commerce to promulgate rules was authority only to adopt interpretative rules which would not have the force and effect of law. The language delegating authority to the director is: ". . . adopt, pursuant to the Administrative Procedure Act, rules and regulations to implement the provisions of this section." (Emphasis added) Again, on September 7, 1979, in the case of Can Manufacturers Institute, Inc., et al, v. State of Minnesota, MPCA, the Court found that Minn. Stat. § 116F.06, subd. 3, did not grant the MPCA sufficient authority to adopt legislative rules, but rather, only interpretive rules. In that statute, the term "guidelines" was used instead of the terms "rules" or "regulations". However, the statute did indicate that the "guidelines" were to be adopted pursuant to the Minnesota Administrative Procedure Act.

Given the Supreme Court decisions cited above, the chief hearing examiner was concered that the statute cited by the PSC in this instance may have been insufficient statutory authority to adopt the rule which is the subject matter of this proceeding. However, upon a reading of Minn. Stat. Ch. 216B as a whole, the chief hearing examiner is convinced that the Minnesota PSC has sufficient authority to adopt this legislative rule. Thus, in determining statutory authority, direction should be given to the entire statute but in particular, §§ 216B.01 (which gives the policy of the legislature), 216B.08, 216B.09, and 216B.23. From a reading of those sections, it can be seen that the legislature has vested the broadest possible authority in the Commission to regulate utilities in order that consumers will be provided with adequate

and reliable service at reasonable rates. The standards to be applied to such regulation include such phrases as: "in the public interest", "may ascertain and fix just and reasonable standards, . . . regulations, or practices," and "Whenever the commission shall find any . . . practices, acts or service to be unjust, unreasonable, insufficient, preferential, unjustly discriminatory or otherwise unreasonable or unlawful, . . .".

(It should be noted that the Commission, in the documents officially filed on December 28, has also discussed this statutory authority issue, obviously having noted the same difficulties discussed above between the December 17 vote to adopt the rule and the signing of its Findings of Fact and Order Adopting the Rule.)

Based on the foregoing, the chief hearing examiner concludes that the PSC has authority to adopt the proposed rule but should amend section A of the rule to reflect that its authority arises from Minn. Stat. Ch. 216B in its entirety.

2. Clarity Recomendations.

It is clear from a reading of the rule in its entirety that the rule applies to a prohibition of disconnection of electric or gas service to a utility customer's primary residential unit when such disconnection would affect, in any way, the primary heating source for such customer. Therefore, there are several sections in the rule where, adding the word "residential" before the word or words "utility customer" would add clarification. An example can be found in section A. This would make it clear to those reading the rule that it does not apply to any utility customers other than the residential customer. It should be noted that this is solely a recommendation to the PSC which is not binding on them.

3. Incorporation by Reference.

What about prior use ref?

Minn. Stat. § 15.0412, subd. 4, provides in part as follows:

> ". . . [W]ith the approval of the chief hearing examiner, the agency may incorporate by reference provisions of federal law or rule or other materials from sources which the chief hearing examiner determines are conveniently available for viewing, copying and acquisition by interested persons. The chief hearing examiner shall not approve incorporation by reference of materials which are less than 3000 words in length or which would require less than five pages of publication in the State Register."

In this instance, following the recommendation of the hearing examiner, the PSC has cited to the "Bureau of Labor Statistics Guidelines" in it's definition section and further refers to those guidelines in sections G. and F. as the criteria the Commission will use in determining ability to pay and the reasonableness of payment schedules. These guidelines are contained in the Autumn 1978, Urban Family Budgets and Comparative Indexes for Selected Urban Families issued by the Bureau of Labor Statistics, United States Department of Labor. The chief hearing examiner, having reviewed the above referenced material, finds that it exceeds 3000 words in length and would require more than five pages of publication in the State Register and further finds that it is

conveniently available for viewing, copying and acquisition by interested persons. Therefore, the chief hearing examiner hereby approves said incorporation by reference.

4. Substantial Change.

Minn. Stat. § 15.052, subd. 4, authorizes the chief hearing examiner to promulgate rules to cover the procedural conduct of all hearings, relating to both rulemaking and contested cases. Part of that authority includes the following: "The procedural rules shall establish a procedure whereby the proposed final rule of an agency shall be reviewed by the chief hearing examiner to determine whether or not a new hearing is required because of substantial changes or failure of the agency to meet the requirements of § 15.0412, subd. 4." Pursuant to that authority, the chief hearing examiner adopted rule 9 MCAR § 2.110 which relates to the procedure to be followed by an agency in submitting the rule to the chief hearing examiner for review. Additionally, pursuant to the foregoing authority, the chief hearing examiner adopted rule 9 MCAR § 2.111 which reads as follows:

> § 2.111 Reconvened Hearings. Should the Chief Hearing Examiner find, after a review of the record, that the proposed final rule is substantially different from the rule which was proposed at the public hearing, or should the Chief Hearing Examiner find that the agency failed to meet the requirements of Minn. Stat.§ 15.0412, subd. 4 or these rules, then the Chief Hearing Examiner shall forthwith notify the agency and the Attorney General of said finding. The agency shall then either withdraw the proposed final rule or reconvene the rule hearing. The reconvening of the rule hearing shall comply with all statutory and regulatory requirements as if a new rule hearing were being held. In determining whether the proposed final rule is substantially different, the Chief Hearing examiner shall consider the degree to which it:
>
> A. Affects classes of persons not represented at the previous hearing; or
>
> B. Goes to a new subject matter of significant substantive effect; or
>
> C. Makes a major substantive change that was not raised by the original Notice of Hearing in such a way as to invite reaction at the hearing; or
>
> D. Results in a rule fundamentally different from that contained in the Notice of Hearing.

During the course of the hearings relating to this proposed rule, and in written comments submitted thereafter, there was much discussion relative to exactly how far the PSC could go in amending its rule proposed for adoption without the changes becoming "substantial changes" which would require new notice and hearing and thus delay the implementation of the new rule. The testimony on the rule ranged from those questioning whether or not any rule relating to disconnections during cold weather should be adopted to arguments in favor of a total moritorium during "cold weather months" without any criteria such as a temperature minimum or ability to pay. From a review of the transcript of the public hearings and a review of written comments submitted following the hearing, it is clear that all "classes of persons" affected by

the rule were represented at the hearings. Therefore, 9 MCAR 2.111.A. is not applicable. Thus, any such review must center on the language of the rule itself, but more importantly, the basic or primary thrust of the rule.

Taken as a whole, it is the chief hearing examiner's opinion that the "basic" or "primary" thrust of both the proposed rule and the rule as proposed for final adoption by the PSC is the protection of residential utility customers during periods of cold weather who, due to their income levels and the dramatic rise in the costs of gas and electricity, would be unable to meet their obligation to pay for utility service during this period of high demand for heat.

Therefore, based upon a reading of the proposed rule and the rule as proposed for final adoption, it is a conclusion of the chief hearing examiner that the rule proposed for final adoption does not go to a new subject matter of significant substantive affect, does not make a major substantive change that was not raised by the original Notice of Hearing in such a way as to invite reaction at the hearing, nor does it result in a rule fundamentally different from that contained in the Notice of Hearing, and thus, does not constitute a substantial change under the provisions of rule 9 MCAR § 2.111.

5. Compliance with Minn. Stat. § 15.0412, subd. 4.

Except as hereinafter noted, the chief hearing examiner finds that the PSC has complied with all of the provisions of 15.0412, subd. 4. That subdivision contains the basic elements of procedures to be followed and the standards by which rules must be "justified" at the hearing by the proposing agency. It includes provisions indicating that a rule must be needed and reasonable and that substantive requirements of law must be complied with before a rule can be adopted. On numerous occasions, the Attorney General has indicated that rules are illegal if they are vague. With these elements in mind, the following exceptions are noted:

A. PSC 299 B. Declaration of Inability to Pay. This section provides that a utility may not disconnect service at a residential unit until certain requirements have been met. They are required to serve certain documents on the customer and any designated party and then, "shall not disconnect the service for seven working days after the customers receipt of the notice." (Emphasis added.) The rule does not contain a definition of the word "serve" nor does it contain any direction to the public or, more importantly, to the utilities, as to what is needed to prove "receipt" of the notice by the customer. As such, the rule is vague in the sense that it does not provide an understandable rule of conduct so that persons may know how to comply with the rule, and thus may not be adopted in its present form, for to do so would be in violation of Minn. Stat. § 15.0412, subd. 4. In order to expedite this rule adoption, if the PSC should amend this section to provide that service may be made personally or by first class mail, the chief hearing examiner would find the rule in compliance on that issue. Secondly, with respect to the "receipt of the notice", should the PSC amend the rule to provide that in cases other than personal service, receipt is deemed accomplished by depositing in the United States mail and, at the same time, increasing the time frame from seven working days to ten working days, then the rule would then be

in compliance with Minn. Stat. § 15.0412, subd. 4. In both instances, should the PSC amend the rule in accordance with the foregoing, it need not resubmit this section to the chief hearing examiner for review.

B. In section 299 H, the same problem with respect to "customer receipt of notice" can be found. Thus, the same rationale and comments referred to above in the discussion of 299 E, would apply to this rule as well as the changes required.

C. 299 J. Confidentiality. This rule provides: "Any information or documentation used either for determining inability to pay or setting a payment schedule shall be treated as confidential by the utility and its employees." Minn. Stat. (1978) §§ 15.162 through 15.167 as amended by Laws 1979, Chapter 328, relate to the definitions of confidential, private, or public data on individuals. Pursuant to those sections of our law, unless the information provided under 299 J comes within the purview of that law or, unless the commission has obtained an emergency classification of the information from the Commissioner of Administration, it cannot declare such information to be confidential. Thus, the PSC is without authority to adopt this rule and it must therefore be withdrawn.

ORDER

Based upon the foregoing, pursuant to Minn. Stat. § 15.052, subd. 4 and rule 9 MCAR § 2.111, the PSC shall either withdraw the proposed rule or reconvene the rule hearing. Provided however, in the event the PSC takes the action discussed in paragraph 5 above, IT IS HEREBY ORDERED, that the Minnesota Public Service Commission may proceed to adopt Rule 299 and that it file the rule and all records as required by the rules of the Attorney General, with the Attorney General for his review on form and legality and that, pursuant to Minn. Stat. § 15.0412, subd. 4, at the time the rule and the record is filed with the Attorney General, that the PSC notify all persons who requested to be informed that the hearing record has been submitted to the Attorney General.

Dated: December 28, 1979.

DUANE R. HARVES
Chief Hearing Examiner

MEMORANDUM

The rule which is the subject matter of this proceeding has been the subject of much discussion by all citizens of the State of Minnesota for the past one and one half years. As in most instances where the Minnesota Public Service Commission is involved in setting rates or rules relating to services of regulated utilities, depending upon which segment of the population you hear from, the Commission is either praised or criticized. Because the Commission is placed in the position of attempting to ensure adequate service to the consuming public while at the same time, attempting to preserve the financial integrity of the regulated utilities, it cannot avoid being the subject of praise or criticism in nearly every action it takes.

In this instance, the Commission has taken on an issue of great controversy which it knew would generate much discussion and ultimately, both praise and criticism. It proceeded to present its proposal to the public in a series of public hearings around the state. Instead of merely sending its staff to these hearings, as is normal practice for state agencies, Commission members themselves attended these hearings and thus subjected themselves to public scrutiny and criticism from those who felt the rule either did not go far enough, or had gone too far.

Following the public hearings and the receipt of written comments, the hearing examiner issued a report containing recommendations based upn the public testimony and comment. At that point, the Commission, in its response to the public comments (and criticisms) and the recommendations of the hearing examiner, proposed to adopt the rule a now before the chief hearing examiner. As should be obvious to those who review the proposed rule with the rule as proposed for final adoption, the final rule is, of necessity, a compromise between the various groups and of course, a result of compromise between the members of the Commission itself, who are five independent individuals of varying backgrounds.

As chief hearing examiner, I believe that it is appropriate to point out that this proceeding is one of the best examples, in the four years of existence of the Office, of how the rulemaking process was intended to work when the legislature amended the Minnesota Administrative Procedure Act in 1975. A rule was proposed, hearings were conducted not just in the metropolitan area, public response was presented to an impartial hearing examiner who made recommendations based on the public comments, and the Commission responded. Through this proceeding, the Commission has shown that the public hearing process in Minnesota does work, and that in this instance, the Commission not only listened to the concerns of all interested persons, but heard what these persons said.

D.R.H.

BEFORE THE MINNESOTA PUBLIC SERVICE COMMISSION

Katherine E. Sasseville	Chairman
Roger L. Hanson	Commissioner
Lillian Warren-Lazenberry	Commissioner
Richard J. Parish	Commissioner
Juanita R. Satterlee	Commissioner

In the Matter of the Adoption of a rule of the Public Service Commission governing disconnection of service to gas and electric utility customers during periods of cold weather and repeal of PSC 299 Cold Weather Rule.	DOCKET NO. A-8117-27 REVISED FINDINGS OF FACT, CONCLUSIONS AND ORDER ADOPTING RULE

The above entitled matter came on for hearings before Hearing Examiner Richard DeLong on October 18, 19, 22 and 23, 1979. The record was closed on October 30, 1979.

FINDINGS OF FACT

1. Upon receipt of the existing record in this matter, including the Conclusions and Order Adopting Rule dated December 28, 1979, the Chief Hearing Examiner issued his Report, Order and Memorandum dated December 28, 1979. The Commission finds the report and recommendations contained therein meritorious, necessary and reasonable and therefore has incorporated them into the final rule, a copy of which is attached hereto.

2. The Chief Hearing Examiner concluded in Section 1 of his report that Minn. Stat. Chapter 216B in its entirety and in particular Sections 216B.01, 216B.08 and 216B.09 and 216B.23, provides the Public Service Commission with the statutory authority to adopt the proposed rules. The Commission agrees with this conclusion, finds it necessary and reasonable and incorporated this language into the final rule.

3. The recommendation contained in Section 2 of the Chief Hearing Examiner's report is found to be necessary and reasonable. The use of the word "residential" will help clarify the intent of the rule. The Commission has incorporated this recommendation into the final rule.

4. The Commission concurs with the Chief Hearing Examiner on the issue of substantial change.

5. The Commission agrees with the Chief Hearing Examiner on the issues raised in Section 5 of his report. The recommendations concerning service and receipt of notice have been addressed by the Commission. Provisions dealing with notice by first class mail and extending the time for notice to ten days have been incorporated into the final rule, and the Commission finds them necessary and reasonable. The Commission finds that it is without authority to adopt the confidentiality requirement contained in the proposed rule and therefore withdraws it.

ORDER

1. The Findings of the Report of the Hearing Examiner dated November 21, 1979, relating to the proposed rule, are adopted as the Commission's own, except as they are modified by the Commission's Findings as set forth above.

2. The Conclusions of the Report of the Hearing Examiner dated November 21, 1979, relating to the proposed rule, are adopted as the Commission's own, except as they are modified by the Commission's Conclusions as set forth above.

3. The Commission expressly adopts the Findings of Fact 1 through 23 and Conclusions 1 through 3 of the original Findings of Fact and Conclusions filed December 28, 1979, except as set forth in the Revised Findings of Fact contained herein. The attached Rule as Adopted supercedes Conclusion number 5 of the original Conclusions.

4. The proposed rule is hereby modified to implement the Commission's Findings and Conclusions, and as modified, the rule is hereby adopted by the Commission.

5. This Order shall be effective immediately.

BY ORDER OF THE COMMISSION

Mary L Harty ckS

MARY L. HARTY
Executive Secretary

SERVICE DATE: JAN 4 1980

(S E A L)

RULE AS ADOPTED
IN FINAL FORM

~~4 MCAR § 3.0299 (PSC-299) Cold weather rule.~~

~~A. Notwithstanding the provisions of PSC-298-A. and B., no utility shall disconnect residential service, if said disconnection effects the primary heat source of the premises.~~

~~1. If the predicted 24-hour (12 a.m. to 12 p.m.) temperature as reported by the National Weather Service at its first order station nearest the residence is to be zero degrees fahrenheit (-18 degrees celsius) or lower; nor~~

~~2. On a Friday or a day before a legal holiday if the predicted 24-hour (12 a.m. to 12 p.m.) temperature as recorded by the National Weather Service at its first order station nearest the residence is to be 32 degrees fahrenheit (0 degrees celsius) or lower.~~

~~B. If a residential service has been disconnected and not restored to service by the close of business on the disconnect date when the predicted 24-hour (12 a.m. to 12 p.m.) temperature as reported by the National Weather Service at its first order station nearest the residence is to be 32 degrees fahrenheit (0 degrees celsius) or lower, the utility shall inform the customer that the appropriate local welfare department has emergency services and may provide financial assistance; in addition, the utility shall notify the local law enforcement department and the appropriate county welfare department. In these instances, the utility shall provide the name, address and telephone number at which the service was disconnected.~~

A. Purpose and Authority.

This rule is prescribed by the Commission pursuant to Minn. Stat. Chapter 216B, in its entirety and in particular §§ 216B.01, 216B.08, 216B.09 and 216B.23, and the Public Utilities Regulatory Policies Act of 1978, 15 U.S.C. §§ 3201 et seq. and 16 U.S.C. §§ 2601 et seq. to prohibit disconnection of a residential utility customer who is unable to pay for utility service during cold weather months.

B. Definitions.

For the purposes of this rule, the following definitions shall apply:

1. "Cold weather months" means the period beginning October 15 and continuing through April 15 of the following year.

2. "Residential unit" means a primary dwelling which receives gas and/or electric service and is occupied by its owner or tenant, whether or not the occupant is the residential customer of the utility, during cold weather months.

3. "Third party notice" means a Commission approved notice containing, at a minimum, the following information:

a. A statement that the notice is not a disconnect notice (stated in block letters at the top of the first page);

b. A statement that the utility will send a copy of any future Notice of Proposed Disconnection of utility service to a third party designated by the residential customer;

c. Instructions on how to request this service;

d. A statement that the residential customer should contact the person he or she intends to designate as the third party contact before providing the utility with the party's name and

e. A list of public agencies and community organizations which may be able to provide the residential customer with financial assistance.

4. "Notice of Residential Customer Rights and Possible Assistance" means a Commission approved easy-to-understand explanation of the residential customer's rights and responsibilities under this rule. It shall also include a list of organizations (with addresses and phone numbers) which may provide financial aid to the residential customer. At a minimum this list shall include the local welfare agency, and the local community action program which disperses emergency fuel assistance.

5. "Payment schedule" means any mutually acceptable agreement between the residential customer and utility that provides for the payment of the balance of any outstanding bills and future bills for estimated usage during the period covered by the payment schedule. The following guidelines shall apply to payment schedules:

a. The payment schedule may extend from the date of the schedule to the following October 15, or any other period agreed upon by the residential customer and utility;

b. The residential customer may make payments to the utility in installments which need not be equal but may be based on factors such as lump sum payments or additional income reasonably expected to be received by the residential customer during the payment period;

c. At the termination of the payment schedule, there shall be a true-up to reconcile actual and estimated usage during the schedule period.

6. "Working days" means Mondays through Fridays excluding legal holidays. The day of receipt of any notice shall not be counted in calculating a period of time under this rule.

C. Early Notification of Rights and Third Party Notice Option.

All utilities shall include a "third party notice" and a Commission approved easy-to-understand general statement of the protections of this rule annually in the monthly billing mailed to residential customers immediately prior to the commencement of the billing cycle which includes October 15. These notices shall also be provided to all new residential customers when they are first provided service by the utility.

D. Disconnection Restriction for Occupied Residential Units.

No utility shall disconnect the service of any residential unit during "cold weather months," notwithstanding any other customer service rule, except 4 MCAR § 3.298 B., if the disconnection would affect in any way the primary heat source of the residential unit and:

1. The residential customer, or any designated third party, has declared his or her inability to pay, as provided in 4 MCAR § 3.299E.; or, if appealed, the Commission has determined the residential customer is unable to pay. To declare his or her inability, the residential customer must meet the following requirements:

a. The residential customer expresses willingness to enter into a mutually acceptable payment schedule for the current cold weather months, pursuant to 4 MCAR § 3.299G2; and

b. The residential customer was fully paid up or was reasonably on time with his or her payments under a payment schedule as of the billing cycle immediately preceding the start of the current cold weather months. (This provision becomes effective as of October 15, 1980.)

or;

2. Where a residential customer has not declared his or her inability to pay or where the Commission has determined that the residential customer is able to pay and, in either case, the residential customer has entered into a payment schedule and is reasonably on time with his or her payments under the schedule.

E. Declaration of Inability to Pay.

1. Prior to disconnecting the service affecting the primary heat source of any residential unit for failure to make payment for such service, the utility shall serve, personally or by first class mail, the following upon the residential customer and any designated third party:

a. A Commission approved Notice of Proposed Disconnection;

b. A Notice of Residential Customer Rights and Possible Assistance; and

c. A Commission approved, addressed, postage prepaid form on which a residential customer, or any designated third party, may declare his or her inability to pay.

2. The utility shall not disconnect the service for seven working days after the residential customer's receipt of personally served notice, or for ten working days after the utility has deposited first class mail notice in the United States mail. If the utility has not received a response from the residential customer or any designated third party within the appropriate period, the service may be disconnected, pursuant to section 4 MCAR §§ 3.298, 3.299H., 3.300 and 3.301.

3. The utility may accept the residential customer's declaration of inability to pay or appeal the residential customer's declaration of inability to pay to the Commission in writing, on forms prescribed by the Commission, within seven working days after receipt. The utility shall not prevent any residential customer or designated third party from making a declaration.

4. If it appeals, a copy of the appeal, and a Commission approved letter explaining that the residential customer may have his service terminated, shall be mailed by the utility to the local welfare agency and any local community organization responsible for dispersing fuel emergency assistance on the same day as the utility files its appeal.

F. Commission Determination of Inability to Pay

1. All appeals of declarations of inability to pay shall be determined on an informal basis by the Commission within thirty days after receipt of the utility's written appeal.

2. The Commission shall determine the residential customer's inability to pay based upon the following:

a. A finding that the residential customer is in compliance with 4 MCAR § 3.299 D.1.; and

b. A finding of "lower budget", as defined in the Bureau of Labor Statistics Guidelines, which are those applicable on the effective date of this rule.

3. In making its determination, the Commission shall consider one or more of the following:

a. The most recent income tax return(s) filed by members of the residential customer's household; or

b. For each employed member of the residential customer's household, either paycheck stubs for the last two months or a written statement from the employer of wages earned during the preceding two months; or

c. A medicaid card or food stamps eligibility document; or

d. Documentation that the residential customer is on a pension from the Department of Public Welfare, the Social Security Administration, the Veterans Administration or other pension providers; or

e. A letter showing the residential customer's dismissal from a job or other documentation of unemployment; or

f. Other documentation which supports the residential customer's declaration of inability to pay.

4. The utility shall not disconnect the service until expiration of the 30 day appeal period. If the Commission determines that the residential customer is able to pay, the utility may disconnect the service, pursuant to 4 MCAR §§ 3.298, 3.299 G., 3.300 and 3.301.

G. Payment Schedule.

1. Every residential customer, without regard to his or her ability to pay who receives a notice of proposed disconnection during cold weather months, shall have the right to a payment schedule. A designated third party may request and negotiate a payment schedule on behalf of a residential customer.

2. It shall not be necessary to establish a payment schedule until the utility has accepted the residential customer's declaration of inability to pay, or the residential customer has refused to sign the declaration of inability to pay, or the Commission has determined an appeal of a residential customer declaration of inability to pay.

3. The utility and residential customer or any designated third party shall attempt in good faith to arrange a payment schedule, which shall take into consideration the residential customer's economic situation and any extenuating circumstances.

4. The residential customer or third party should notify the utility immediately of any circumstances making it impossible for the residential customer to comply with the payment schedule and should propose specific modifications to the payment schedule. Upon receipt of a request for modification of a payment schedule, the utility shall consider changes in the residential customer's consumption pattern, utility rate increases effective since the date of the original schedule and changes in the residential customer's financial circumstances.

5. No residential customer who has declared his or her inability to pay, or if appealed, has been determined to be unable to pay, shall be disconnected during cold weather months for failure to make payments under a payment schedule which applies to that period of time.

6. The utility shall provide the residential customer and any designated third party with a Commission approved written notice of the right to appeal to the Commission when the utility and residential customer are unable to agree on the establishment, reasonableness or modification of a payment schedule, or on the reasonable timeliness of the payments under a payment schedule. Any appeal must be made within seven working days of the receipt of notice by the residential customer.

7. In determining an appeal, the procedures set forth in 4 MCAR § 3.299 F. shall apply. The determination shall be based upon the criteria set forth in the Bureau of Labor Statistics Guidelines.

8. The utility shall not disconnect service while a payment schedule is pending appeal, or until any appeal involving payment schedules has been determined by the Commission. If no appeal is made by the residential customer or designated third party and the residential customer has been determined to have the ability to pay his or her utility bill pursuant to 4 MCAR § 3.299 F., the utility may disconnect service pursuant to the procedures and requirements of 4 MCAR §§ 3.298, 3.300, and 3.301.

H. Disconnection of Potentially Unoccupied Units

1. Prior to disconnecting any service affecting the primary heat source of any residential unit, when the utility has received no response to the Notice of Proposed Disconnection within ten working days after the utility has deposited first class mail notice in the United States mail, the utility shall investigate whether the unit is occupied or unoccupied, which at a minimum shall include:

a. One visit by the utility to the unit during normal working hours;

b. If personal contact is not made, and there is reason to believe that the unit is occupied, the utility shall make another on-site visit during non-business hours.

2. If contact is made with the residential customer, the utility shall provide the residential customer with the Notice of Residential Customer Rights and Possible Assistance and an Addressed, postage prepaid form with which the residential customer may make a statement of inability to pay for the service, in which case sections 4 MCAR § 3.299 E. and F. shall apply. At least seven working days before disconnecting the residential customer, the utility shall notify by telephone and a Commission approved letter the local welfare office and any local community organization responsible for dispersing fuel emergency assistance of the proposed disconnection.

3. If the utility is unable to contact the residential customer, and it reasonably appears from the on-site inspections that the unit is unoccupied, the utility shall provide notice by first class mail to the recorded billing address of the residential customer. Such notice shall include an easy-to-understand explanation of the protections of this rule, Notice of Residential Customer Rights and Possible Assistance, and an addressed, postage prepaid form with which the residential customer may make a declaration of inability to pay. If no response has been received by the utility after ten working days after the utility has deposited first class mail notice in the United States mail, the service may be disconnected, pursuant to 4 MCAR §§ 3.298, 3.300 and 3.301.

4. If, following disconnection, the residential unit is found to be occupied, the utility must reconnect service if the residential customer or designated third party:

a. Agrees to pay the outstanding balance owed the utility, or

b. Agrees to enter a payment schedule with the utility, or

c. Asserts his or her rights under 4 MCAR §§ 3.299 E. and 3.299 F.

I. Reconnection at Beginning of Cold Weather Months.

The utility shall reinstate service which in any way affects the primary heat source of a residential unit if such service remains disconnected as of October 15 if the residential customer makes application for reinstatement and is reasonably on time with his or her payments under a payment schedule. Any residential customer disconnected as of October 15 shall have the same rights as provided in 4 MCAR § 3.299 G.

STATEMENT OF NEED AND REASONABLENESS

Proposed Rule Governing Disconnection of Service to Gas and Electric Utility Customers During Periods of Cold Weather

1. Introduction

This proposed rule replaces an existing rule and is promulgated to protect gas and electric customers from shutoff during heating seasons.

The United States government has asked the Minnesota Public Service Commission (hereinafter "Commission") to cooperate in a national effort to minimize hardship resulting from the inability to pay utility bills over the winter months. In a letter dated October 1978, (Exhibit 1) David J. Bardin, Administrator of Economic Regulatory Administration of the Department of Energy, said that he hoped the Commission had already completed or would make an expedited effort to adopt rules precluding termination of service during winter months solely on the basis of inability to pay. The difficulty of low and fixed income persons to pay winter utility bills and the potential health and safety risks that accompany termination necessitate promulgation of a rule which protects against shutoffs and which also provides for payment plans.

The existing cold weather rule, PSC 299, is inadequate to provide adequate protection for Minnesota utility customers. First, it fails to provide any protection for utility customers when the temperature exceeds 0° Fahrenheit. The Commission has determined that the freezing point is a more reasonable guideline and that customers should be protected when temperatures fall below 32°. Accordingly,

the proposed rule raises the minimum temperature below which shut-offs may not take place from 0° to 32°. Secondly, the existing rule does not provide any protection when the minimum temperature exceeds 32° even though a threat to health and safety may still exist during the coldest months of the year. The proposed rule requires that a utility may not shut off the service of a customer under such conditions unless it has first offered the customer the opportunity to pay off his outstanding bill over a reasonable period of time and the customer either refuses to agree to such a plan or fails to comply with the plan. The proposed rule also contains new safeguards to guard against shut-offs of premises which the utility mistakenly believes to be unoccupied which are not contained in the present rule.

Although the Commission proposes to revoke present rule PSC 299 and to adopt proposed rule PSC 299, the revocation of the present rule will not become effective unless proposed rule PSC 299 becomes legally effective.

Utility bills are rising geometrically. From 1973 through 1978 gas and electricity costs have increased 87 percent. (Exhibit 2). These skyrocketing costs, when coupled with inflation, place a crippling financial burden on many Minnesota citizens. In the Minneapolis-St. Paul area alone, an estimated 64,000 families and individuals have incomes just above the federal poverty level and are therefore ineligible for federal assistance (Exhibit 3). Even though other emergency funding may be available through Community Action Programs, income guidelines are so low that many families and individuals are again ineligible. Three programs were available through Community Action Program (CAP) Agencies last year. The Governor's Fuel Assistance Program allocated $175,454 a month to 1,168 households. The maximum grant allowable for the heating season was $250. A

household of four was ineligible if earnings exceed $7,750 and a single person household was ineligible if earnings exceeded $3,929 (Exhibit 4). Monthly income in excess of $327 would deny a grant to a single person household. Two other programs were available to help lower income citizens: the Emergency Assistance Program and the Crisis Intervention Program. Both programs were subject to income guidelines of 125% of poverty or $4,250 for one person; 5,625 for two; $7,000 for three; and $8,375 for four (Exhibit 4). The Emergency Assistance Program distributed $91,705 and the Crisis Intervention Program distributed $804,830 . Federal law limited the distribution per household to $250 even though 734 of the 3,086 households recipients had utility bills in excess of $250 (Exhibit 4). The guidelines for these two programs are higher than the Governor's Fuel Assistance Program but monthly incomes in excess of $354 would disqualify individuals.* According to a Minneapolis Star article on utility costs, dated December 11, 1978, (Exhibit 3) people with incomes which don't keep up with these rising costs are forced to make a decision between eating or paying utility bills.

Testimony in the Northern States Power rate case Docket No. G 002 / GR-1052 in March of 1979, demonstrated the effects of rising utility costs. Testimony given by Mr. Albert Johnson showed that his annual income was $7,662. His thermostat was set at 77 degrees because of circulatory health problems which become more frequent when temperatures are lower. In 1978 Johnson paid $640, including taxes, for natural gas. He had used 8.4 percent of his income for gas utilities alone. Federal programs indicate that a crisis situation is present when low income persons spend 5 percent of their income on utility bills (Exhibit 3). Mr. Johnson was well beyond this 5 percent level, but his income was too high to qualify him for any of the special relief programs. If relief is unavailable in the form of assistance, some other method must be used to help people pay their utility bills and be assured of continued utility service.

*See Addendum

Weather conditions are also important in assessing human needs. The harshness of Minnesota winters should not be underestimated. National weather bureau statistics compiled for a 30 year statewide average show a November average temperature of 31 degrees fahrenheit, a December average temperature of 16 degrees fahrenheit, a January average temperature of 10 degrees fahrenheit, a February average temperature of 14 degrees fahrenheit, and a March average temperature of 26 degrees fahrenheit. These five months of intensely cold weather precludes survival without heat.

Some Minnesotans, particularily senior citizens, are too proud to accept public assistance (Exhibit 3). They must make cutbacks to remain self sufficient on fixed incomes in this inflationary period. Lowering temperatures which decreases gas or electric consumption can accomplish some savings. But lowering temperatures may be harmful. Some citizens need higher temperatures for survival because their bodies no longer regulate temperatures properly. Higher blood pressure can result because surface arteries shut off to combat the lower temperatures. Stress may also increase. The body attempts to compensate for colder temperatures by increased caloric utilization. Increased caloric utilization requires increased consumption of nutritious foods (Exhibit 6). But an elderly person who lowers their thermostats to pay enormous utility bills often cut back on food purchases thus lowering the number of calories available and generally causing their health to deteriorate. This produces a vicious cycle which could result in disaster.

Anxiety concerning the threat of shutoff is not an imaginary fear. For example, a Minnesota utility company shut off electricity even though a child was seriously ill with a heart problem. The delinquency amount was only $40 (Exhibit 5). On November 21, 1978, another Minnesota utility shut off a family's gas even though the mother was seriously ill and the father unemployed. The overdue bill was only $73.77 (Exhibit 5). The problems and situations make apparent the need for a rule protecting people from winter shut offs.

2. Legal Authority to Adopt the Rule

The authority for the Commission to establish a legislative rule relating to cold weather shutoffs is granted by the Minnesota Public Utilities Act, Minn. Stat. Chapter 216B (1978). Minn. Stat. § 216B.09 provides in relevant part that the Commission may "ascertain and fix just and reasonable standards, classifications, regulations or practices, to be observed and followed by any or all public utilities with respect to the service to be furnished." Minn. Stat. § 216B.08 grants the Commission the authority to prescribe rules and regulations in furtherance of the purpose of the Public Utilities Act. When the Commission determines that the present practices are "unjust, unreasonable, insufficient, preferential, unjustly discriminatory or otherwise unreasonable or unlawful", (Minn. Stat. § 216B.23 subd. 2) it may "determine and by order fix reasonable measurements, regulations, acts, practices, or services to be furnished and imposed." Minn. Stat. § 216B.04 requires every utility to furnish "safe, adequate, efficient and reasonable service." These statutory sections grant the Minnesota Public Service Commission the authority to determine the reasonableness of the present standard and to prescribe new standards through the enactment of a legislative rule.

3. Federal Requirements

By November 1980, the Commission is required to consider the standards of the Public Utilities Regulatory Policy Act of 1978 (hereinafter "PURPA") 16 USC 2601, for electric and gas utilities of specified size within its jurisdiction. The subject of this rule, procedures for termination of both gas and electric service, is one of the regulatory standards prescribed in PURPA § 115(g) and 304(a). Section 115(g) provides guidelines for electric service termination.

It states:

> The procedures for termination of service referred to in section 113(b)(4) are procedures prescribed by the State regulatory authority (with respect to electric utilities for which it has ratemaking authority) or by the non-regulated electric utility which provide that-
>
> (1) no electric service to an electric consumer may be terminated unless reasonable prior notice (including notice of rights and remedies) is given to such consumer and such consumer has a reasonable opportunity to dispute the reasons for such termination; and
>
> (2) during any period when termination of service to an electric consumer would be especially dangerous to health, as determined by the State regulatory authority (with respect to an electric utility for which it has ratemaking authority) or nonregulated electric utility, and such consumer establishes that-
>
> (A) he is unable to pay for such service in accordance with the requirements of the requirements of the utility's billing, or
>
> (B) he is able to pay for such service but only in installments,
>
> such service may not be terminated.
>
> Such procedures shall take in account the need to include reasonable provisions for elderly and handicapped consumers.

Section 304(a) provides guidelines for gas service termination and it states:

> The procedures for termination of service referred to in Section 303(b)(1) are procedures prescribed by the State regulatory authority (with respect to gas utilities for which it has ratemaking authority) or the nonregulated gas utility which provide that-
>
> (1) no gas service to a gas consumer may be terminated unless reasonable prior notice (including notice of rights and remedies) is given to such consumer and such consumer has a reasonable opportunity to dispute the reasons for such termination; and
>
> (2) during any period when termination of service to a gas consumer would be especially dangerous to health, as determined by the State regulatory authority (with respect to each gas utility for which it has ratemaking authority) or nonregulated gas utility, and such consumer establishes that-
>
> (A) he is unable to pay for such service in accordance with the requirements of the utility's billing, or

(B) has is able to pay for such service but only in installments,
such service may not be terminated.

Such procedures shall take into account the need to include reasonable provisions for elderly and handicapped consumers.

The Commission has given consideration to the foregoing PURPA standards on procedures for termination and has determined that the standard is appropriate for adoption in Minnesota with certain modifications. The modifications of PURPA standards are necessary if the proposed rule is to be made consistent with state law and public policy needs in Minnesota.

The PURPA standard for termination applies to all electric and gas service. The proposed rule restricts disconnection only if it affects the primary heat source of a residential unit. The Commission restricted disconnection in such manner because public policy is not served by prohibiting disconnection when life and health are not in danger.

PURPA also requires reasonable prior notice, including notice of rights and remedies. The proposed rule notice requirement is the same as Rule PSC 300 which requires that notice shall contain the date on or after which disconnection will occur, reason for disconnection, and methods of avoiding disconnection in normal easy-to-understand language. The Commission has determined that this notice is adequate and no additional notice of rights and remedies is necessary. Additionally, the proposed rule requires utilities to provide customers with a copy of the Commission's customer service rules when there is a dispute involving deferred payment agreements. This requirement provides additional notice of rights and remedies to customers in those circumstances.

The PURPA standards require that customers have a reasonable opportunity to dispute the reasons for termination. Under the proposed rule disputes involving a payment agreement may be resolved through the assistance of the Department of Public Service, with alternate resolution by the Commission where informal efforts

at resolution fail. Disputes not involving a payment agreement are governed by PSC 303, which provides for investigation by the utility prior to disconnection, escrow payment of disputed bills, and informal complaint procedures under the Commission's Rules of Practice (PSC 500-521).

The Commission is also required to determine the period when termination of service is especially dangerous to health. The Commission determined that termination would be especially dangerous when the temperature is 32 degrees or less; and all terminations during such periods have been banned. The Commission also determined it was appropriate to provide certain protections during the entire period from October 15 to April 15 and included a deferred payment agreement restriction as such protection.

PURPA restricts service termination in two circumstances: (1) the customer is unable to pay; or (2) the customer is able to pay only in installments. The proposed rule provides for installment payment through deferred payment agreements or alternative payment agreements. The inability to pay standard was determined to be too cumbersome and therefore was not adopted. Rather, protection for those unable to pay is provided through the minimum temperature restriction and the notice to local welfare agencies prior to termination.

Procedures to take into account reasonable provisions for elderly and handicapped customers are also required by PURPA and the Commission determined that minimum temperature restrictions and deferred payment restrictions are adequate to reasonably provide protection for such persons. The use of on-site visits and notice to local welfare agencies would provide additional protection for the elderly and handicapped.

4. Discussion of Proposed Rule

The definitions in proposed rule PSC 299 are necessary and reasonable in order to clarify terminology and avoid confusion.

PSC 299
B. 2. "Cold weather months" means the period of time beginning on October 15 and terminating on April 15 following. The Commission shall vary the period for a given year if the National Weather Service reports temperature variation of extreme amounts.

Cold weather months are defined as beginning on October 15 and terminating on April 15. This time period has been selected because of the National Weather Service statistics on average statewide temperatures. November through March average temperatures are lower than 32 degrees fahrenheit. November averages 31 degrees fahrenheit, December averages 16 degrees fahrenheit, January is even colder with an average of 10 degrees fahrenheit, February has a slight increase to 14 degrees fahrenheit, and March averages 26 degrees fahrenheit. The last 15 days of October and the first 15 days of April are included in this definition as necessary margins of protection. Both time periods are reasonably proximate to those months with temperatures of 32 degrees fahrenheit or less and are likely to have temperature fluctuations of a dangerous level. Outside temperatures of 32 degrees or lower would create low temperatures inside the dwelling unit within a short period of time and endanger the life and health of the customer. The 32 degree temperature also has physical properties (water freezes at 32 degrees) which could cause extensive property damage.

PSC 299

B. 3. "Deferred payment agreement" means a plan providing installment payment of amounts which the customer owes the utility at the beginning of the deferred payment period and for estimated usage during the deferred payment period, wherein payment shall be made by:

a. Payment of a reasonable amount of the outstanding bill at the time the agreement is entered into; and

b. Payment of the following amount in equal monthly installments:

1. the balance of the outstanding bill; and

2. bills for estimated usage during the remaining months of the deferred payment period; and

3. a true-up to reconcile actual and estimated usage in the final months.

The Deferred Payment Agreement of proposed rule PSC 299 B 3 is necessary and reasonable to protect customers from ending up with an unmanageable bill at the close of the heating season if no payments have been made. Compelling payment in installments increases the likelihood of payment and decreases the likelihod of eventual shutoff. If deliquent customers are not compelled to pay, all ratepayers would have to bear the burden. An initial payment followed by equal monthly installments of the outstanding bill will start the customer on a more affordable payment schedule. Inclusion of estimated usage for the deferred payment period would be more likely to ensure "catching up" during the deferred payment period.

PSC 299

B. 1. "Alternative payment agreement" means a plan providing for deferred payment of bills for usage which does not meet the definition of "deferred payment agreement."

The Alternative Payment Agreement of definition one is a plan providing for the deferred payment of bills other than a plan which meets the criteria of the defined payment plan (Deferred Payment Agreement). This is necessary and reasonable because there are situations in which the inability to pay is only temporary. For example, contractors, farmers, or certain salespersons who receive lump sum payments may not have the cash available at the time of delinquency, but would be able to pay their bill in full at a later date when the money becomes available. Such persons might not be able to pay even a reasonable amount of the outstanding bill initially as is required in the Deferred Payment Agreement. This provision provides the flexibility necessary to meet the needs of people while still assuring the utility company of payment.

PSC 299
B. 4. "Deferred payment period" means the 12-month period commencing with the first day of the period covered by an outstanding bill.

The deferred payment period of proposed rule 299 B 4 is the 12 month period commencing with the first day of the period covered by an outstanding bill. Most residential customers' utility bills fluctuate on a seasonal basis. Averaging the bills over a 12 month period will better enable the customers to make the monthly payments. Many utilities currently have "budget helper" payment plans in which they pay for an estimated 12 months usage in equal monthly installments. Payments under the proposed rule will usually be made in less than a 12 month period. For example, a customer would receive a bill for December's service in January. The

bill would not become delinquent until February and a payment agreement may not be entered into until March. The rule's deferred payment period means the 12 month period which commences with the first day of the period covered by an outstanding bill. In this example, the 12 month period would range from December through November but the time for repayment would be March through November or a 9 month period.

PSC 299
B. 6. "Residential" means pertaining to a dwelling unit receiving gas and/or electric service which is occupied by its owner or tenant whether or not the occupant is the customer of the utility.

Residential as defined in proposed rule PSC 299 B 6 is necessary and reasonable because it includes protection for those occupants who are not the customers of the utility. Buildings which are master metered will likely have utilities paid by the landlord. This situation could result in tenants being current in rent and utilities (since a portion of rent would be allocated to utility costs) and yet be subject to termination of service if the landlord is delinquent. Inclusions of such persons in the definition lessen the likelihood of that occurring.

PSC 299
C. Disconnection restriction for occupied residential units.

Notwithstanding the provisions of any other customer service rule, no utility shall disconnect service to an occupied residential unit for any reason, except the safety of the occupants or the public as provided in PSC Rule 298 B 2, if the disconnection affects the primary heat source of the residential unit and if the minimum temperature restriction or the payment agreement restriction set forth below applies.

Proposed rule PSC 299 C relates to disconnection restrictions for occupied residential units. Disconnection is allowed when the safety of the occupants or the public is jeopardized. This could occur if a gas main were to leak and it was necessary to protect people or buildings from explosion. Similarly, if an electrical fire would occur the utility would have the authority to disconnect service. However, this rule also states that if the occupants or public are not in danger, then disconnection cannot occur if the primary heat source is affected and if the minimum temperature restriction or the payment agreement restriction is applicable. This provision would include those situations where a gas furnace has an electric thermostat and the electric bill is delinquent. The electric utility may not terminate service because the primary heating source would be affected. If this primary heating source was not affected and life and health was not put in danger, there would be no public policy served by prohibiting the disconnection.

PSC 299
C. 1. Minimum temperature restriction.

Disconnection shall not take place if the predicted 24 hour (12 AM to 12 PM) temperature as reported by the National Weather Service at its first order station nearest the dwelling unit is to be 32 degrees fahrenheit (0 degrees celcius) or lower.

The minimum temperature restriction of 32 degrees fahrenheit, proposed rule PSC 299 C 1, as recorded by the National Weather Station at its first order station nearest the dwelling unit, is necessary to establish a point below which shutoffs

cannot be made. There is no single temperature below which there is danger and above which there is no danger. However, the Commission believes that the freezing point is a reasonable figure to adopt for this purpose. If outside temperatures fall to 32 degrees or lower inside temperature will quickly decrease endangering the life or health of the customer. This election of 32 degrees is also justified because it is the freezing point for water. The National Weather Service information is universally accepted as reliable. The use of data from the station nearest the dwelling is necessary to minimize the impact of temperature variation within an area.

PSC 299
C. 2. Payment agreement restriction.

No utility shall terminate residential service during cold weather months unless:

a. The utility has made a written offer, or an oral offer confirmed in writing within 72 hours, for a deferred payment agreement; and

b. The customer has failed to enter into or comply with such an agreement or an alternative payment agreement. The customer shall have five days after receipt of the utility's written offer:

1. to deposit in the mail, or otherwise deliver to the utility or its agent, written acceptance of the offer; or

2. to enter into an alternative payment agreement.

The payment agreement restrictions of proposed rule PSC 299 C 2, limit termination unless a written offer has been made or oral offer confirmed in writing within 72 hours for a deferred payment agreement and the customers have not entered into the agreement or have failed to comply with such an agreement. The customers have five days, after receipt of the written offer, to mail or deliver written acceptance or enter into an alternative payment agreement. If utilities are denied termination rights, there must be a guarantee of payment for past due bills. Termination cannot be allowed unless attempts are made to secure an agreement. The agreement must be in writing so disputes will be less likely to arise and confusion lessened. The 72 hours given to utilities to confirm oral offers in writing allows utilities a reasonable period of time to process the necessary paper work and transmit offers to supervisors and receive notice of acceptance back, to prepare the documents and place them in the mail. The customers will then be given additional time to consider the proposed agreement. Customers are given an additional five days to accept the offer, enter into an alternative payment agreement, or contact the Department of Public Service if they have questions. This provides sufficient opportunities for counter proposals or payment arrangements with third parties such as local welfare agencies, the Red Cross or churches.

PSC 299
C. 2. c. For purposes of determining the reasonableness of the amount of the initial payment under a payment agreement, the parties shall consider:

1. The size of the delinquent account;

2. The customer's ability to pay (if the customer is a landord and the service is to a tenant, the landlord shall be presumed to be able to pay the bill);

3. The customer's payment history;

4. The length of time that the debt has been outstanding;

5. The reasons why the debt is outstanding;

6. Any other relevant factors concerning the cirsumstances of the customer.

Various criteria are listed to determine the reasonableness of the initial payment necessary in a deferred payment agreement (proposed rule PSC 299 C 2 c). They include size of deliquent account, ability to pay, payment history, length of time the debt is outstanding, reason why the debt is outstanding and any other relevant factors. These factors were considered by the Commission to be most reasonable in making such a determination because they take into consideration many relevant financial factors. Such criteria are necessary to assure fair and uniform treatment of utility customers throughout the state. The second criterion on determining reasonableness -- the ability to pay -- is also subject to a special presumption. If the customer of a utility is a landlord and the tenant receives the service it is presumed that the landlord can pay. This presumption is reasonable because a tenant may have already paid rent which includes utilities.

PSC 299
C. 2. d. Billing statements to customers receiving service under payment agreements shall contain, in addition to the information required by PSC Rule 313, the following information:

1. The actual charges incurred for usage during the billing periods; and

2. The billing amount due and payable for the billing period pursuant to the terms of the payment agreement.

The additional billing information required by proposed rule PSC 299 C 2 d, includes actual charges incurred for usage during the billing period and the billing amount due and payable for the billing period pursuant to the terms of the agreement. Actual charges for usage are necessary because the payment agreement is based on estimated usage. Utilities will know the actual usage and its relationship to estimated usage. Customers should be notified of actual usage so they can adjust their payment agreement if necessary. The amount due under the payment agreement obviously needs to be known.

PSC 299
D. Disconnection restriction for unoccupied residential units.

1. No utility shall disconnect service to the primary heat source of a residential dwelling unit during cold weather months, which it believes to be unoccupied, prior to conducting an on-site inspection of such residential unit and attempting to make direct personal contact with any occupants therein. Such inspection shall include at least one visit to the residential unit by field personnel during normal working hours; and in the event that personal contact is not achieved, another on-site visit during non-business hours.

Utilities are required to conduct an on-site inspection and attempt to make contact with possible occupants inside before disconnecting a residence they believe to be unoccupied (proposed rule 299 D 1). Field personnel must visit at least once during normal working hours and if contact is not made revisit during non-business hours. This procedure is necessary in order to protect possible occupants from injury because of the utility's mistaken belief that the premises are unoccupied. A utility's belief that a residence is unoccupied may be incorrect and failure to

require such inspection could result in death. There have been no known deaths in Minnesota for such reasons. However, that is not true of neighboring states with similiar climates. In Wisconsin, a 71 year old man froze to death for non-payment of a $128.99 bill. The Wisconsin man died less than one week after his natural gas was cut off. (See Exhibit 12.) Tragedies such as this cannot be allowed to occur.

PSC 299
D. 2. If the field personnel are unable to make direct personal contact with any occupants, and if it reasonably appears from the on-site inspection the residential unit is unoccupied, then service may be disconnected pursuant to the procedures and requirements of PSC Rule 298, 300 and 301.

If utility personnel are unable to make direct personal contact with any occupants and it reasonably appears from the on-site inspection that the dwelling unit is unoccupied, then service may be disconnected pursuant to rules PSC 298, 300, and 301. The rules (298, 300, and 301) prescribe acceptable methods for termination of service of residences that are unoccupied and notice is given by mail and an additional attempt is made at personal contact. It is reasonable to allow utilities to disconnect services to unoccupied residential units because health and safety are not at stake.

PSC 299
D. 3. The utility shall follow-up termination of service to an unoccupied residential unit be conducting an additional on-site inspection of the premises and attempting to make direct personal contact with any occupants therein on the day immediately following termination of service, including Sundays and holidays. If such residential unit is then found to be occupied, service must be reconnected:

a. If the minimum temperature restriction applies; or

b. If the utility has not satisfied the requirements and procedures of the payment agreement restriction.

The utility shall not charge the customer for reconnection of service pursuant to this subsection.

If service is terminated as prescribed above, an additional attempt must be made to contact any occupants on the day following termination of service, including Sundays and holidays. This provides additional assurance that no one will be injured by the disconnection. If inspection reveals that a dwelling is occupied, service must be reconnected if either the temperature restriction applies or the utility has not met the requirement and procedures of the payment agreement restriction. No reconnection fee may be charged because there was no opportunity to enter into an agreement and prevent disconnection.

PSC 299
E. Payment agreements.

1. A deferred payment agreement or an alternative payment agreement shall state immediately preceding the space provided for the customer's signature and in bold face print at least two sizes larger than any other used thereon: "IF YOU ARE NOT SATISFIED WITH THIS AGREEMENT, DO NOT SIGN. IF YOU DO SIGN THIS AGREEMENT, YOU AGREE THAT YOU OWE THE AMOUNT STATED TO BE YOUR OUTSTANDING BILL AND YOU AGREE TO MAKE PAYMENTS IN ACCORDANCE WITH THIS PLAN."

Payment agreements must include warnings (proposed rule 299 E 1). The bold face warning printed on the Deferred Payment Agreement and Alternative Payment Agreement cautions against signing the agreement if dissatisfied. By signing, the

customer has agreed the amount due is correct and payment will be made according to the agreement. This is necessary and reasonable because many customers would not take care to read the entire agreement and might later attempt to contest the amount stated to be owed. The type and size of print should put the customer on notice.

PSC 299
E. 2. If during the term of a payment agreement consumption of rates are substantially greater than estimated, the difference shall be amortized over subsequent months for a reasonable time, and the required payments shall be adjusted accordingly. At least 30 days prior to billing the customer such an adjusted amount, the utility shall send written notice of the reasons for the adjustment and the amount of the adjusted monthly installment.

If the consumption or rates are substantially greater than estimated, utilities must amortize the amount over subsequent months and adjust accordingly (proposed rule PSC 299 E 2). A 30-day written notice to inform customers of the increase is also required. This is reasonable because utilities must be able to receive payment for actual usage or increased costs for fuel. These increased costs or usage must be paid by the utility and should be passed on to the customer. The rule's purpose includes helping customers become current in utility bills within one year. Failure to amortize increased costs might result in a substantial outstanding balance remaining after expiration of the Deferred Payment Period. The 30-day period is necessary because customers need at least one month to rebudget if an increase in payment is required. Written notice is necessary to document the notification.

PSC 299
E. 3. If during the term of a payment agreement the consumption or rates are substantially less than estimated, the utility shall refund any excess payments as soon as possible and shall adjust future billings under the agreement accordingly. The utility may, with express consent of the customer, credit excess payments to future bills. Such consent must be given in writing, and signed after the amount of any excess payments has been determined and reported to the customer.

If payments are substantially in excess of usage, future billing would need to be adjusted and the excess payment returned to the customer (proposed rule PSC 299 E 3). This is particularly reasonable in light of the adjustment that is allowed if costs increase. Payment agreements are based on estimated usage and if actual usage is less, the difference should be reflected in smaller monthly payments. Crediting of future bills is allowed only if expressed written consent is given and signed after excess payments have been determined and reported to the customer (proposed rule PSC 299 E 3). Customers should be able to choose whether to credit excess payments to future bills. There need not be a modification of monthly payments upward or downward due to changes in usage or rates unless the changes are "substantial." The Commission has been unable to formulate precise percentage or dollar figures to define "substantial" change and, therefore, the facts and circumstances of each case will be used to determine "substantial" amounts. The required billing format will give customers the information they need to compare estimated and actual billings. If they believe that their usage or rates vary substantially from the estimated amounts they may request the utility to alter their payment agreement accordingly. Unresolved disputes over proposals to change payment agreement may be resolved by the Commission.

PSC 299
E. 4. The terms of a payment agreement may be modified because of a change in a customer's circumstances if it would be reasonable to do so. Reasonableness shall be determined under the criteria set forth in this rule for determination of the initial payment.

If the customers' economic situation were to improve or worsen, modification of the payment agreement may be reasonable (proposed rule PSC 299 E 4). The reasonableness criteria of the initial payment would be used for determining modification. Reasonable changes in the payment agreement should still facilitate the dual goals of helping utilities collect delinquent bills and the discharge of customer indebtedness.

5. Any payments made by a customer in compliance with a payment agreement or otherwise, shall first be considered made in payment of the previous account balance with any remainder credited to the current bill.

Finally, payments made by customers are considered to be a payment on the previous account balance (proposed rule 299 E 5). This forces a reduction of indebtedness before the next heating season. Various consequences concerning termination of service and other matters flow from whether a particular payment is determined to be toward a current bill or a bill in arrears. The proposed rule eliminates problems concerning payments by providing that payments will first be applied to the amount in arrears with any balance applied to the current account.

PSC 299

F. Termination for failure to enter into or comply with payment agreement.

If a customer has failed to enter into or comply with the terms of a payment agreement, the utility shall have the right to disconnect pursuant to the procedures and requirements of PSC 298, 300 and 301, but subject to the restrictions contained in the minimum temperature restriction. If the utility has offered a deferred payment agreement and the customer has failed to enter into such agreement within the time provided herein, or if the customer has failed to comply with a payment agreement, then the utility shall notify the local welfare agency orally, followed by a written notice within five days, of their intent to discontinue service; the name and address of the customer, and telephone number if known; the name and address of any tenant occupying the residential unit if such tenant is not the customer of the utility, and telephone number of the tenant if know; and a statement of the amount then due and payable. The utility shall not terminate service until 10 days after the written notice is given to the local welfare agency.

Failure to enter into or comply with the payment agreement is considered in proposed rule PSC 229 F. This states that utilities have the right to disconnect pursuant to the procedures and requirements of rules PSC 298, 300, and 301. If the minimum temperature requirement is not met, however, they still may not terminate. This is necessary because life and health must be protected. If a utility has followed all the provisions of this rule and there is still non-payment, they may disconnect. If this is done verbal notice must be given to the local welfare agency followed by written notice within five days of intent to discontinue service and the name, address, and telephone number of the customer or name, address, and telephone number of the occupanying tenant in a statement of the amount due and payable. This will alert local welfare agencies to delinquent customers that may need assistance. The ten day period between verbal notice and termination of service allows welfare agencies to determine need, contact customers, arrange payment or perform other such duties as may be necessary to prevent termination of service.

PSC 299
G. Disputes.

If a dispute arises concerning the reasonableness, application or performance of any payment agreement or modification of a payment agreement under this rule, the utility shall provide the customer with a copy of the Commission's customer service rules and the telephone number of the Department of Public Service together with a statement that the customer may call the Department for information and assistance. The Commission may resolve any such dispute which cannot be resolved by the Department on an informal basis.

Disputes not involving a payment agreement shall be governed by PSC 303.

Dispute procedures concerning payment agreements are explained in proposed rule PSC 299 G, and require utilities, when a dispute arises, to provide customers with the Commission's customer service rules and the Department of Public Service's telephone number. Failure to resolve the issue through an informal department action may result in Commission action. This provides a safety valve when independent action is required and department rules are ineffective.

PSC 299
H. Exemptions.

The Commission may grant variances from this rule upon a showing of good cause, and may suspend part or all this rule in order to comply with federal regulations.

The final provision of proposed rule PSC 299 reserves to the Commission the power to grant variances from this rule upon showing good cause or to suspend part or all of the rule in order to comply with federal regulations. This is necessary to prevent undue hardship or avoid lengthly rules hearings when unexpected situations require rule modifications. The federal regulations enacted during last year's heating season make obvious the need for flexibility. The Commission issued its moratorium order, in part, because of the directive of Mr. Bardin, of the Department of Energy, urging moratoriums. Another branch of the federal government, the Community Services Administration, issued regulations which stated that "payment of outstanding bills of regulated utilities is allowable only in those areas where shutoffs are not legally prohibited and where the applicant for assistance can produce a notice to disconnect." (46 CFR § 1061.523(c)). These two federal government regulations conflict and the intended beneficiaries will be ineligible to receive funds. Conflicts could be avoided if the Commission were given flexibility to act in compliance with federal regulations and laws not yet enacted at the time the rule was promulgated.

CERTIFICATE OF COMMISSION'S
ADOPTION OF REVISIONS

I, Christopher K. Sandberg, do hereby certify that I am Acting Executive Secretary to the Public Service Commission, a commission duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and accurate copy of a resolution adopted at a meeting of the Public Service Commission, duly and properly called and held on the 31st day of December, 1979; that a quorum was present at said meeting, that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> Resolved, that the Findings of Fact, Conclusions, and Order Adopting Rule relating to the proposed Cold Weather Rule, 4MCAR Sec. 3.299, be and they hereby are approved and adopted, as revised in accordance with the Report, Order, and Memorandum of the Chief Hearing Examiner, dated December 28, 1979, and that the revised Order together with the necessary supporting documents, be submitted to the Attorney General for review under M.S. § 15.0412, Subd. 4, pursuant to authority vested in us by M.S. Chapter 216B.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 31st day of December, 1979.

Juanita R. Patterlee

Christopher K. Sandberg
Acting Executive Secretary

CERTIFICATE OF COMMISSION'S
ADOPTION OF RULES RESOLUTION

I, Mary L. Harty, do hereby certify that I am Executive Secretary to the Public Service Commission, a commission duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and accurate copy of a resolution adopted at a meeting of the Public Service Commission, duly and properly called and held on the 27th day of December, 1979; that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> Resolved, that the Findings of Fact, Conclusions, and Order Adopting Rule relating to the proposed Cold Weather Rule, 4MCAR Sec. 3.299, be and they hereby are approved and adopted, pursuant to authority vested in us by M.S. Secs. 216B.04, 216B.08, 216B.09, and 216B.23, Subd. 2, and that Mary L. Harty, Executive Secretary to the Commission, be and hereby is authorized to sign an Order adopting this rule.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 27th day of December, 1979.

Katherine D. Laverille

M. L. Harty
Mary L. Harty
Executive Secretary

CERTIFICATE OF COMMISSION'S
ADOPTION OF REVISIONS

I, Christopher K. Sandberg, do hereby certify that I am Acting Executive Secretary to the Public Service Commission, a commission duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and accurate copy of a resolution adopted at a meeting of the Public Service Commission, duly and properly called and held on the 31st day of December, 1979; that a quorum was present at said meeting, that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> Resolved, that the Findings of Fact, Conclusions, and Order Adopting Rule relating to the proposed Cold Weather Rule, 4MCAR Sec. 3.299, be and they hereby are approved and adopted, as revised in accordance with the Report, Order, and Memorandum of the Chief Hearing Examiner, dated December 28, 1979, and that the revised Order together with the necessary supporting documents, be submitted to the Attorney General for review under M.S. § 15.0412, Subd. 4, pursuant to authority vested in us by M.S. Chapter 216B.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 31st day of December, 1979.

Jeanita R. Patterlee

Christopher K. Sandberg
Acting Executive Secretary

CERTIFICATE OF COMMISSION'S
ADOPTION OF RULES RESOLUTION

I, Mary L. Harty, do hereby certify that I am Executive Secretary to the Public Service Commission, a commission duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and accurate copy of a resolution adopted at a meeting of the Public Service Commission, duly and properly called and held on the 27th day of December, 1979; that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> Resolved, that the Findings of Fact, Conclusions, and Order Adopting Rule relating to the proposed Cold Weather Rule, 4MCAR Sec. 3.299, be and they hereby are approved and adopted, pursuant to authority vested in us by M.S. Secs. 216B.04, 216B.08, 216B.09, and 216B.23, Subd. 2, and that Mary L. Harty, Executive Secretary to the Commission, be and hereby is authorized to sign an Order adopting this rule.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 27th day of December, 1979.

Katherine Lavenille

M. L. Harty
Mary L. Harty
Executive Secretary

Minnesota Sentencing Guidelines Commission

Notice of Regional Public Meetings

The Minnesota Sentencing Guidelines Commission is pleased to announce the following schedule for regional public meetings it will be conducting around the state over the next five months. The purpose of these meetings is to provide a forum for exchange of information about the work of the Commission. Specifically, we are concerned about the potential impact which a new system of sentencing may have on all aspects of the criminal justice system, and we want to ensure that everyone has an opportunity to voice their feelings and comment on the issues prior to development of the actual guidelines.

March 22	Minneapolis	Hennepin Gov't Center Auditorium
April 19	Detroit Lakes	Court House (Commissioners Mtg. Rm)
May 10	Albert Lea	City Hall, Multi-Purpose Room
June 14	Duluth	Normandy Inn
July 10	St. Paul	Metro Council Chambers

The locations for these meetings were selected based on the responses we received to a questionnaire sent to over sixty organizations representing various aspects of the judicial, correctional and law enforcement fields, as well as academic, minority and special interest groups.

Persons desiring additional information about these meetings, or who would like to be placed on our mailing list, should contact Linda K. Anderson, Program Coordinator, Suite 284 Metro Square Bldg., St. Paul, MN 55101 (612) 296-7508.

Public Service Commission

Notice of Intent to Solicit Outside Opinion Concerning Rules Governing Interruptions of Utility Service During Winter Months

Notice is hereby given that the Public Service Commission is considering amending its present cold weather rule (4 MCAR § 3.0299) to preclude public utilities from discontinuing utility service of any residential utility customer during the winter months without the customer's consent unless permitted to do so by the Commission upon a showing of good cause. The proposed rule may also include requirements for customers to make minimum payments based upon financial ability.

Other issues which will be considered include:

a. definition of "residential customer" (space-heating only, single family only, apartments, number of units, etc.)

b. definition of "termination" or "disconnection" (curtailment for supply or operational reasons excluded, etc.)

c. conflict with other rules (e.g. landlord-tenant rule)

d. impact on collection procedures or costs

e. impact on bad debt losses

f. impact on working capital requirements

g. coordination with disconnect-reconnect charges

h. coordination with appropriate late payment penalty provisions

i. impact of uncollected revenues on other customers

j. how to deal with customers disconnected after April 1 who are still delinquent on November 1

k. standards to determine ability to pay as a criterion for disconnection

l. provision for variances or suspension of the rule or portions thereof in order to comply with federal requirements for emergency assistance

All statements and information received will be included in the public record of any rules hearing held on this subject. Information should be addressed to:

Stephen A. Finn, Acting Secretary
Minnesota Public Service Commission
Seventh Floor, American Center Building
160 East Kellogg Boulevard
St. Paul, Minnesota 55101

and should be received no later than April 13, 1979.

March 5, 1979

Stephen A. Finn
Acting Secretary

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General, Lee E. Shechy, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

Special Assistant Attorney General

Dated: 12-31-79

PROPOSED RULES

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new rule or amendment. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Public Hearings on Agency Rules September 20-24, 1979

Date	Agency & Rule Matter	Time & Place
Sept. 20	Dept. of Public Welfare Administration of Specified Therapies to State Hospital Patients Hearing Examiner: Steven Mihalchick	9:00 a.m., MN Veterans Home, Building 15, Auditorium Chapel, East 51st St. at Minnehaha, Minneapolis, MN
Sept. 21	Dept. of Public Welfare Dept. of Public Safety Dept. of Health Merit System Rules Hearing Examiner: Harry Seymour Crump	9:30 a.m., Rm. 116, Administration Bldg., 50 Sherburne Avenue, St. Paul, MN
Sept. 24	Energy Agency Application for a Certificate of Need for a 25-Megawatt Electric Generating Facility Hearing Examiner: Allan W. Klein	7:00 p.m., City Council Chambers 540 West Hills Circle, Owatonna, MN

Department of Public Service
Public Service Commission

Proposed Rule Governing Disconnection of Service to Gas and Electric Utility Customers During Periods of Cold Weather and Repeal of Cold Weather Rule

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the following locations:

Thur., October 18, 1979, 1:30 p.m. and 7:30 p.m., Southwest Junior High School Little Theatre, Highway 69 South, Albert Lea: (Hearing Examiner Richard DeLong 612/296-8117).

Fri., October 19, 1979, 1:30 p.m., Hennepin County Govt. Center Auditorium, 300 S. 6th St., Minneapolis: (Hearing Examiner Richard DeLong 612/296-8117).

Fri., October 19, 1979, 7:30 p.m., State Office Building Auditorium, Ground Floor (use north door entrance) St. Paul: (Hearing Examiner Richard DeLong 612/296-8117).

Mon., October 22, 1979, 1:30 p.m. and 7:30 p.m., Rainbow Inn, Garland Room, Highway 169 East, Grand Rapids: (Hearing Examiner Richard DeLong 612/296-8117).

Tues., October 23, 1979, 1:30 p.m. and 7:30 p.m., Little Falls Community School, 109 N.E. 2nd Avenue, Little Falls: (Hearing Examiner Richard DeLong 612/296-8117).

These hearings shall continue until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Hearing Examiner Richard DeLong, Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota 55104, telephone (612) 296-8111, 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.

If adopted, the proposed rule would result in: repeal of PSC 299 Cold Weather Rule; establishment of a uniform minimum temperature below which utility service may not be disconnected, except for safety reasons; requirements that govern disconnection of utility service during cold weather months; requirements governing payment agreements between utilities and their customers; and requirements for determining whether a residential unit is unoccupied. The Agency's authority to promulgate the proposed rule is contained in Minn. Stat. §§ 216B.05, subd. 1; 216B.09; and 216B.23, subd. 2.

The Minnesota Public Service Commission has considered the requirements as set out in sections 115(g) and 304(a) of the Public Utilities Regulatory Policies Act of 1978 (PURPA), as they relate to this proposed rule, and will make a final determination thereof based upon the hearings.

Copies of the proposed rules are now available and one free copy may be obtained by writing to, or calling the Minnesota Public Service Commission, Attention Mary L. Harty, Secretary, 7th Floor, American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesota 55101, Telephone (612) 296-8994. Copies will also be available at the door on the date of the hearing.

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 rules 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).

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 the evidence which will be presented by the agency at the hearing justifying both the need and the reasonableness of the proposed rules. 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 pursuant to Minn. Stat. § 10A.01, subd. 11, (1978) any individual: (a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or (b) who spends more than $150, not including *his own* traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials must register with the State Ethical Practices Board as a lobbyist within five days of the commencement of such activity by the individual. The statute provides certain exceptions. Questions should be directed to the State Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

Mary L. Harty
Executive Secretary

Amendment as Proposed

~~**PSC 299 Cold weather rule.**~~

A. ~~Notwithstanding the provisions of PSC 298 A. and B., no utility shall disconnect residential service, if said disconnection effects the primary heat source of the premises.~~

1. ~~If the predicted 24 hour (12 a.m. to 12 p.m.) temperature as reported by the National Weather Service at its first order station nearest the residence is to be zero degrees fahrenheit (18 degrees celsius) or lower; nor~~

2. ~~On a Friday or a day before a legal holiday if the predicted 24 hour (12 a.m. to 12 p.m.) temperature as recorded by the National Weather Service at its first order station nearest the residence is to be 32 degrees Fahrenheit (0 degrees celsius) or lower.~~

B. ~~If a residential service has been disconnected and not restored to service by the close of business on the disconnect date when the predicted 24 hour (12 a.m. to 12 p.m.) temperature as reported by the National Weather Service at its first order station nearest the residence is to be 32 degrees fahrenheit (0 degrees celsius) or lower, the utility shall inform the customer that the appropriate local welfare department has emergency services and may provide financial assistance; in addition, the utility shall notify the local law enforcement department and the appropriate county welfare department. In these instances, the utility shall provide the name, address and telephone number at which the service was disconnected.~~

Rule as Proposed (all new material)

PSC 299 Disconnection of service during periods of cold weather.

A. Purpose and authority. The rule contained herein is prescribed by the Commission pursuant to Minn. Stat. § 216B.05, subd. 1, to prohibit disconnection to an occupied residential unit if the temperature is reported to be at 32 degrees Fahrenheit or lower or the payment agreement procedure applies.

B. Definitions. For the purpose of this rule, the following definitions shall apply:

1. "Alternative payment agreement" means a plan providing for deferred payment of bills for usage which does not meet the definition of "deferred payment agreement."

2. "Cold weather months" means the period of time beginning on October 15 and terminating on April 15 following. The Commission shall vary the period for a given year if the National Weather Service reports temperature variation of extreme amounts.

3. "Deferred payment agreement" means a plan providing installment payment of amounts which the customer owes the utility at the beginning of the deferred payment period and for estimated usage during the deferred payment period, wherein payment shall be made by:

a. Payment of a reasonable amount of the outstanding bill at the time the agreement is entered into; and

b. Payment of the following amount in equal monthly installments:

(1) the balance of the outstanding bill; and

(2) bills for estimated usage during the remaining months of the deferred payment period.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

(3) a true-up to reconcile actual and estimated usage in the final months.

4. "Deferred payment period" means the 12-month period commencing with the first day of the period covered by an outstanding bill.

5. "Payment agreement" means a "deferred payment agreement" proposed by the utility or an "alternative payment agreement" agreed upon by the utility and the customer.

6. "Residential" means pertaining to a dwelling unit receiving gas and/or electric service which is occupied by its owner or tenant whether or not the occupant is the customer of the utility.

B. Disconnection restrictions for occupied residential units. Notwithstanding the provisions of any other customer service rule, no utility shall disconnect service to an occupied residential unit for any reason, except the safety of the occupants or the public as provided in PSC 298 B.2, if the disconnection affects the primary heat source of the residential unit and if the minimum temperature restriction or the payment agreement restriction set forth below applies.

1. Minimum temperature restriction. Disconnection shall not take place if the predicted 24 hour (12 a.m. to 12 p.m.) temperature as reported by the National Weather Service at its first order station nearest the dwelling unit is to be 32 degrees Fahrenheit (0 degrees Celsius) or lower.

2. Payment agreement restriction. No utility shall terminate residential service during cold weather months unless:

a. the utility has made a written offer, or an oral offer confirmed in writing within 72 hours, for a deferred payment agreement; and

b. the customer has failed to enter into or comply with such an agreement or an alternative payment agreement. The customer shall have five days after receipt of the utility's written offer:

(1) to deposit in the mail, or otherwise deliver to the utility or its agent, written acceptance of the offer; or

(2) to enter into an alternative payment agreement.

c. For purposes of determining the reasonableness of the amount of the initial payment under a payment agreement, the parties shall consider:

(1) The size of the delinquent account;

(2) The customer's ability to pay (if the customer is a landlord and the service is to a tenant, the landlord shall be presumed to be able to pay the bill);

(3) The customer's payment history;

(4) The length of time that the debt has been outstanding;

(5) The reasons why the debt is outstanding;

(6) Any other relevant factors concerning the circumstances of the customer.

d. Billing statements to customers receiving service under payment agreements shall contain, in addition to the information required by PSC 313, the following information:

(1) The actual charges incurred for usage during the billing period; and

(2) The billing amount due and payable for the billing period pursuant to the terms of the payment agreement.

D. Disconnection restriction for unoccupied residential units.

1. No utility shall disconnect service to the primary heat source of a residential dwelling unit during cold weather months, which it believes to be unoccupied, prior to conducting an on-site inspection of such residential unit and attempting to make direct personal contact with any occupants therein. Such inspection shall include at least one visit to the residential unit by field personnel during normal working hours; and in the event that personal contact is not achieved, another on-site visit during non-business hours.

2. If the field personnel are unable to make direct personal contact with any occupants, and if it reasonably appears from the on-site inspection the residential unit is unoccupied, then service may be disconnected pursuant to the procedures and requirements of PSC 298, 300 and 301.

3. The utility shall follow up termination of service to an unoccupied residential unit by conducting an additional on-site inspection of the premises and attempting to make direct personal contact with any occupants therein on the day immediately following termination of service, including Sundays and holidays. If such residential unit is then found to be occupied, service must be reconnected:

a. If the minimum temperature restriction applies; or

b. If the utility has not satisfied the requirements and procedures of the payment agreement restriction.

The utility shall not charge the customer for reconnection of service pursuant to this subsection.

E. Payment agreements.

1. A deferred payment agreement or an alternative payment agreement shall state immediately preceding the space provided for the customer's signature and in bold face print at least two sizes larger than any other used thereon: "IF YOU ARE NOT SATISFIED WITH THIS AGREEMENT, DO NOT SIGN. IF YOU DO SIGN THIS AGREEMENT, YOU AGREE THAT YOU OWE THE AMOUNT STATED TO BE YOUR OUTSTANDING BILL AND YOU AGREE TO MAKE PAYMENTS IN ACCORDANCE WITH THIS PLAN."

2. If during the term of a payment agreement consumption or rates are substantially greater than estimated, the difference shall be amortized over subsequent months for a

reasonable time, and the required payments shall be adjusted accordingly. At least 30 days prior to billing the customer such an adjusted amount, the utility shall send written notice of the reasons for the adjustment and the amount of the adjusted monthly installment.

3. If during the term of a payment agreement the consumption or rates are substantially less than estimated, the utility shall refund any excess payments as soon as possible and shall adjust future billings under the agreement accordingly. The utility may, with express consent of the customer, credit excess payments to future bills. Such consent must be given in writing, and signed after the amount of any excess payments has been determined and reported to the customer.

4. The terms of a payment agreement may be modified because of a change in a customer's circumstances if it would be reasonable to do so. Reasonableness shall be determined under the criteria set forth in this rule for determination of the initial payment.

5. Any payments made by a customer in compliance with a payment agreement or otherwise shall first be considered made in payment of the previous account balance with any remainder credited to the current bill.

F. Termination for failure to enter into or comply with payment agreement. If a customer has failed to enter into or comply with the terms of a payment agreement, the utility shall have the right to disconnect pursuant to the procedures and requirements of PSC 298, 300, and 301, but subject to the restrictions contained in the minimum temperature restriction. If the utility has offered a deferred payment agreement and the customer has failed to enter into such agreement within the time provided herein, or if the customer has failed to comply with a payment agreement, then the utility shall notify the local welfare agency orally, followed by a written notice within five days, of their intent to discontinue service; the name and address of the customer, and telephone number if known; the name and address of any tenant occupying the residential unit if such tenant is not the customer of the utility, and telephone number of the tenant if known; and a statement of the amount then due and payable. The utility shall not terminate service until 10 days after the written notice is given to the local welfare agency.

G. Disputes. If a dispute arises concerning the reasonableness, application or performance of any payment agreement or modification of a payment agreement under this rule, the utility shall provide the customer with a copy of the Commission's customer service rules and the telephone number of the Department of Public Service together with a statement that the customer may call the Department for information and assistance. The Commission may resolve any such dispute which cannot be resolved by the Department on an informal basis.

Disputes not involving a payment agreement shall be governed by PSC 303.

H. Exemptions. The Commission may grant variances from this rule upon a showing of good cause, and may suspend part or all of this rule in order to comply with federal regulations.

State Board for Vocational Education
Department of Education

Proposed Rules Governing Licensure of Vocational Education Personnel and the Repeal of Rule 5 MCAR § 1.0074

Notice of Hearing

Notice is hereby given that a public hearing will be held in the above-entitled matter in the State Office Building, Auditorium Room 83, Wabasha Street (between Aurora and Fuller), St. Paul, Minnesota 55155, on Friday, October 26 and Saturday, October 27, 1979, commencing at 9:00 a.m. and continuing until all interested or affected persons have had an opportunity to participate.

All representatives of associations or other interested groups and all interested or affected persons will have an opportunity to be heard concerning the adoption of the proposed rules captioned above by submitting either oral or written data, statements or arguments. Statements or briefs may be submitted by mail, without personally appearing at the hearing, to Mr. Peter C. Erickson, Office of Hearing Examiners, at Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone (612) 296-8118. For those wishing to submit written statements or exhibits, it is requested that at least three (3) copies be furnished. In addition, it is suggested to save time and avoid duplication, that those persons, organizations or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement on behalf of such interests. All such statements will be entered into and become part of the record. The conduct of the hearing will be governed by the rules of the Office of Hearing Examiners.

Notice is hereby given that 25 days prior to the hearing a Statement of Need and Reasonableness will be available for

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

BEFORE THE MINNESOTA PUBLIC SERVICE COMMISSION

Approved of Record
8-30 19 79
M L Harty
Secretary

Katherine E. Sasseville	Chairperson
Roger L. Hanson	Commissioner
Richard J. Parish	Commissioner
Juanita R. Satterlee	Commissioner
Lillian Warren-Lazenberry	Commissioner

In the Matter of the Proposed Rules Governing Disconnection of Service to Gas and Electric Utility Customers During Periods of Cold Weather and Repeal of PSC 299 Cold Weather Rule.

RECEIVED
SEP 4 1979
OFFICE OF HEARING EXAMINERS

IT IS HEREBY ORDERED that public hearings on the above captioned rules be held at the following locations:

THUR., OCTOBER 18, 1979, 1:30 p.m. AND 7:30 p.m., SOUTHWEST JUNIOR HIGH SCHOOL LITTLE THEATRE, HIGHWAY 69 SOUTH, ALBERT LEA: (Hearing Examiner Richard DeLong 612/296-8117)

FRI., OCTOBER 19, 1979, 1:30 p.m., HENNEPIN COUNTY GOV'T. CENTER AUDITORIUM, 300 S. 6TH ST., MINNEAPOLIS: (Hearing Examiner Richard DeLong 612/296-8117)

FRI., OCTOBER 19, 1979, 7:30 p.m., STATE OFFICE BUILDING AUDITORIUM, GROUND FLOOR (USE NORTH DOOR ENTRANCE) ST. PAUL: (Hearing Examiner Richard DeLong 612/296-8117)

MON., OCTOBER 22, 1979, 1:30 p.m. AND 7:30 p.m., RAINBOW INN, GARLAND ROOM, HIGHWAY 169 EAST, GRAND RAPIDS: (Hearing Examiner Richard DeLong 612/296-8117)

TUES., OCTOBER 23, 1979, 1:30 p.m. AND 7:30 p.m., LITTLE FALLS COMMUNITY SCHOOL, 109 NE 2ND AVENUE, LITTLE FALLS: (Hearing Examiner Richard DeLong 612/296-8117)

These hearings shall continue until all persons have had an opportunity to be heard.

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

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

BY ORDER OF THE COMMISSION

M L Harty

/s/ MARY L. HARTY
Executive Secretary

SERVICE DATE: AUG 30 1979

(S E A L)

/jg

STATE'S EXHIBIT 2 10/15/79

BEFORE THE MINNESOTA PUBLIC SERVICE COMMISSION

Katherine E. Sasseville	Chairperson
Roger L. Hanson	Commissioner
Richard J. Parish	Commissioner
Juanita R. Satterlee	Commissioner
Lillian Warren-Lazenberry	Commissioner

Public Service Commission Proposed Rules Governing Disconnection of Service to Gas and Electric Utility Customers During Periods of Cold Weather and Repeal of PSC 299 Cold Weather Rule.

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If adopted, the proposed rule would result in: repeal of PSC 299 Cold Weather Rule; establishment of a uniform minimum temperature below which utility service may not be disconnected, except for safety reasons; requirements that govern disconnection of utility service during cold weather months; requirements governing payment agreements between utilities and their customers; and requirements for determining whether a residential unit is unoccupied. The Agency's authority to promulgate the proposed rule is contained in Minn. Stat. § 216B.05, Subd. 1; 216B.09; and 216B.23 Subd. 2.



The Minnesota Public Service Commission has considered the requirements as set out in sections 115(g) and 304(a) of the Public Utilities Regulatory Policies Act of 1978 (PURPA), as they relate to this proposed rule, and will make a final determination thereof based upon the hearings.

Copies of the proposed rules are now available and one free copy may be obtained by writing to, or calling the Minnesota Public Service Commission, Attention Mary L. Harty, Secretary, 7th Floor, American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesota 55101, Telephone (612) 296-8994. Copies will also be available at the door on the date of the hearing.

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 rules 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).

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BY ORDER OF THE COMMISSION

M L Harty

Mary L. Harty
Executive Secretary

STATE OF MINNESOTA
COUNTY OF RAMSEY

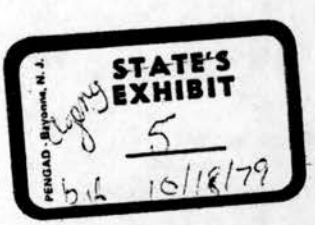
CERTIFICATE

In the matter of the Proposed Adoption
of Rules of Public Service Division
Governing Disconnection of Utility Service

I hereby certify that the attached 326 labels 3 sheets constitute the complete list of persons, associations, and other interested groups who as of 9:25 o'clock A .M, this 10th day of September, 1979, have requested pursuant to M.S. 1974, 15.0412, 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.

Secretary of State
Joan Anderson Growe

By Donna Scott



AFFIDAVIT

Ted Sullivan, being duly sworn on oath deposes and says:

1) That he is an employee of the Commission Support Division of the State of Minnesota.

2) That on the 10th day of September, he went to the Secretary of State's office for the State of Minnesota and was provided 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 M.S. 15.0412.

Further affiant sayeth not.

Ted Sullivan

Subscribed and sworn to before me
this 19th day of September 1979.
Mary E. Swanson

Notary Public,
Ramsey County, Minnesota
My Commission expires 2-8-83.

MARY E. SWANSON
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES FEB. 8, 1983

PENGAD - Bayonne, N.J.
STATE'S EXHIBIT
4
10/18/79

Affidavit of Mailing

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

TED E. SULLIVAN, being first duly sworn, deposes and says:

That on the 14th day of SEPT., 1979, (XX)he served the attached NOTICE OF HEARING REGARDING PROPOSED COLD WEATHER RULE

Docket No. A-8117-27 PSC 299

[XXX] by depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid.

[ ] by personal service

to all persons at the addresses indicated below or on the attached list:

SEE ATTACHED LISTING

Ted Sullivan

Subscribed and sworn to before me

this 31st day of DECEMBER, 1979

Mary E. Swanson

MARY E. SWANSON
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES FEB. 6, 1982

TEST PATTERN TEST PATTERN
ADDRESS TEST ADDRESS
CITY TESTCITY MN
55555

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ACKLAND, K. CRIM JUST COUN.
1422 CITY HALL ANNEX
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55102

ALLERS JOHN
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AMERICAN CAMPING ASSN
4132 88TH LANE
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ANDERSON HERBERT
418 8TH ST. SO.
VIRGINIA MN
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ANDERSON JAMES
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MPLS MN
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ANTHONY DICK WDSM RADIO
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DULUTH, MN
55802

ARNOLD ROBERT MESPA
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ST PAUL, MN
55103

ARROWHEAD REG. DEV COMM.
211 W 2ND ST
DULUTH MN
55802

ARROWHEAD REGIONAL DEV COMM
200 ARROWHEAD PLACE
DULUTH MN
55802

ASSOCIATED GEN CONTR.OF M
111 E. KELLOGG BLVD.
ST. PAUL, MN
55101

ASSN OF MINN COUNTIES
2305 FORD PKWY
ST PAUL MN
55116

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1192 BUSH ST
ST PAUL MN
55106

BEGALKA D REV
212 N ELK ST
BELLE PLAINE MN
56011

BEST FLANAGAN ET AL
4040 IDS CENTER
MPLS MN
55402

BLADIN PAPER CO W J LICKE
115 1ST ST SW
GRAND RAPIDS MN
55744

BLAHA GERALD
457 GOODHUE ST
ST PAUL MN
55102

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BOX 1065
MARSHALL, MN
56258

BOYUM BURDETTE
250 SO 4TH ST
MPLS MN
55415

BRICK PHILIP D
807 SELLWOOD BLDG
DULUTH MN
55802

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W2200 1ST.NATL.BK.BLDG.
ST. PAUL, MN
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BROEKER JOHN
2850METRO DR. SUITE 504
BLOOMINGTON MN
55420

BROOKS WILLIAM F JR.
900 MIDLAND BK. BLDG.
MPLS., MN

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ST PAUL MN
55155

CITIZENS LEAGUE
530 SYNDICATE BLDG
MPLS MN
55402

CITY CLERKS OFFICE
126 NO. MARSHALL
LITCHFIELD, MN
55355

CITY OF ALBERT LEA
221 E CLARK ST
ALBERT LEA MN
56007

CITY OF ALEXANDRIA
114 7TH AVE W BOX 231
ALEXANDRIA MN
56308

CITY OF ANOKA
CITY HALL 2015 1ST AVE
ANOKA MN
55303

CITY OF APPLE VALLEY
14200 CEDAR AVE SO
APPLE VALLEY MN
55124

CITY OF BLAINE
9150 CENTRAL AVE NE
BLAINE MN
55434

CITY OF BRAINERD
CITY HALL
BRAINERD MN
56401

CITY OF BRECKENRIDGE
CITY HALL
BRECKENRIDGE MN
56520

CITY OF BROOKLYN CENTER
6301 SHINGLE CREEK PKWY
BROOKLYN CTR MN
55430

CITY OF BROOKLYN PARK
5800 85TH AVE NO
BROOKLYN PARK MN
55443

CITY OF BURNSVILLE
1313 E HWY 13
BURNSVILLE MN
55337

CITY OF CAMBRIDGE
139 E FIRST AVE
CAMBRIDGE MN
55008

CITY OF CHAMPLIN
12001 HWY 52
CHAMPLIN MN
55316

CITY OF CHANHASSEN
7610 LAREDO
CHANHASSEN MN
55317

CITY OF CHASKA
205 E 4TH ST
CHASKA MN
55318

CITY OF COTTAGE GROVE
7516 80TH ST SO
COTTAGE GROVE MN
55016

CITY OF CRYSTAL
4141 DOUGLAS DRIVE NO
CRYSTAL MN
55422

CITY OF DETROIT LAKES
106 E HOLMES ST
DETROIT LAKES MN
56501

CITY OF DULUTH
CITY HALL
DULUTH MN
55802

CITY OF EAGAN
3795 PILOT KNOB ROAD
EAGAN MN
55122

CITY OF EAST BETHEL
2751 VIKING BLVD NE
WYOMING MN
55092

CITY OF E GRAND FORKS
P O BOX 453
E GRAND FORKS MN
46721

CITY OF EDEN PRAIRIE
8950 EDEN PRAIRIE RD
EDEN PRAIRIE MN
55343

CITY OF EDINA
4801 W 50TH ST
EDINA MN
55424

CITY OF GOLDEN VALLEY
7800 GOLDEN VALLEY RD
GOLDEN VALLEY MN
55427

CITY OF HASTINGS
100 SIBLEY ST
HASTINGS MN
55033

CITY OF HUTCHINSON
37 WASHINGTON AVE WEST
HUTCHINSON MN
55350

CITY OF JORDAN FRANK HOUSER2
10 E 1ST
JORDAN MN
55352

CITY OF LAKE INDEPENDENCE
RT 1 BOX 123A
MAPLE PLAIN MN
55359

CITY OF MAPLE GROVE
9401 FERNBROOK LANE
MAPLE GROVE MN

CITY OF MAPLEWOOD
1380 FROST AVE
MAPLEWOOD MN
55109

CITY OF MINNEPOLIS
3801 66TH AVE NO
BROOKLYN CTR MN
55429

CITY OF MINNETONKA
74600 MINNETONKA BLVD
MINNETONKA MN
55343

CITY OF MORRIS
CITY HALL
MORRIS MN
56244

CITY OF MOUNDSVIEW
2401 HWY 10
ST PAUL MN
55113

CITY OF NEW HOPE
4401 XYLON AVE NO
NEW HOPE MN
55428

CITY OF ORONO
PO BOX 66
CRYSTAL BAY MN
55323

CITY OF ROCHESTER
1421 3RD AVE SE
ROCHESTER MN
55901

CITY OF ROSEMOUNT
BOX 455
ROSEMOUNT MN
55068

CITY OF SHAKOPEE
129 E 1ST AVE
SHAKOPEE MN
55379

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

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

DAILEY THOMAS ECONOMICS LAB
370 WABASHA ST
ST PAUL MN
55102

DAYTON, HERMAN, ET AL
800 MIDLAND BANK BLDG.
MPLS., MN
55401

DZUGAN KEN ST.PAUL PLANNING
25 W. 4TH. ST.
ST PAUL, MN
55102

ECKLUND WM EELLHABER-LARSON
W 1080 1ST NATL BANK
ST PAUL MN
55101

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

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

FITZGERALD DR BOB
3007 LYNDALE AVE SO
MPLS MN
55408

FURSCHLER RICHARD
7900 XERXES AVE. SO.
BLOOMINGTON, MN
55431

CITY OF SHOREVIEW
4665 NO VICTORIA ST
SHOREVIEW MN
55112

CLAUSEN PHILLIP
2307 STANDISH ST
ST PAUL MN
55108

COUNTY ATTYS COUNCIL
40 NO MILTON ST STE 106
ST PAUL MN
55104

DAKOTA CO MENTAL HEALTH CTR
744 19THAVE NO
SO ST PAUL MN
55075

DEVELOP DISABILITIES PROG
STATE PLAN 200 CAP SQ.
ST. PAUL, MN
55155

EDINA HEALTH DEPT
4801 W 50TH ST
EDINA MN
55424

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

FARSETH PAUL FOOD STAMPS PRO
WELFARE DEPT 690 N ROBT
ST PAUL MN

FITZPATRICK LEO
8138 HENSLOWE AVE S
COTTAGE GROVE MN
55016

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

CITY OF WAYZATA
600 RICE STREET
WAYZATA MN
55391

COHEN LAWRENCE
1291 1 APPLETREE SOU
MPLS MN
55420

DANIELSON RODNEY L.
411 MAIN ST. SU 210
ST. PAUL, MN
55102

DICKSON GARY L
4665 NO VICTORIA ST
SHOREVIEW MN
55112

E CENTRAL REG. DEV. COMM
COURTHOUSE 18 N VINE ST
MORA MN
55051

ELMER EDWIN W
2901 PLEASANT AVE
MPLS MN
55408

FED-ST REPORTS INC.
5203 LEESBURGPIKE S1201
FALLS CHURCH, VA
22041

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

FREDIN CONRAD M
811 FIRST NATL BK BLDG
DULUTH MN
55802

CITY OF WHITE BEAR LAKE
250 MILLER AVE
WHITE BEAR LK MN
55110

CONCORDIA COLLEGE
DEAN
MOORHEAD MN
56560

DAWSON JEAN MN GOV'T REP
ROOM 812 CAPITOL
ST PAUL MN
55155

DUPONT MIKE
5720 EXCELSIOR BLVD
MPLS MN
55416

EBELING EDWARD H.
161 W. MAIN
PERHAM MN
56573

ENDERSON WILLIAM
3644 NICOLLET AVE
MINNEAPOLIS MN
55409

FARMERS ELEVATOR ASSN
852 GRAIN EXCH BLDG
MPLS MN
55415

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

FORSBERG AGR SERV
518 SUMMIT AVE
NEW ULM MN
56073

FRIESEN MILLER A
RAHR BD 624 13TH ST S
VIRIGINIA MN
55792

GREEN GARY J
41 SHERBURNE AVE
ST PAUL MN
55102

GRUMMERT REV DONALD
1435 ADAMS ST
MPLS MN
55413

H B FULLER CO
2400 KASOTA AVE
ST PAUL MN
55108

HAIK RAYMOND A
4344 IDS CENTER
MPLS MN
55402

HALVERSON SUE R
720 AMERICAN CENTER BLD
ST PAUL MN
55101

HARRY, RICK
1000 LAKESHORE DR.
MOOSE LAKE, MN
55767

HARTFELDT WILL
2850 METRO DRIVE STE800
BLOOMINGTON MN
55420

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

HAYES,THOMAS W
700 SELLWOOD BLG
DULUTH MN
55812

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

HEAD & TRUHN
1007 SOO LINE BLDG
MPLS MN
55402

HEADWATERS REG DEV. COMM
BOX 584 MENTAL HEALTH
BEMIDJI MN
56601

HEALTH CENTRAL
2810 57TH. AVE. NO.
MINNEAPOLIS, MN
55430

HEALTH MANPOWER C LARSON
717 DELAWARE ST SE
MPLS MN
55440

HEANEY BILL
30 W SUPERIOR ST
DULUTH MN
55802

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

HEIM, PAUL M.
5501 NORMAN CENTER DR.
MPLS., MN
55437

HELTZER JAMES DAYTON HUDSON
777 NICOLLET MALL
MPLS MN
55402

HINIKER JAMES COMM OF ADM
200 ADMIN BLDG
ST PAUL MN

HOGLUND RICHARD C
BOX 755
WILLMAR MN
56201

HOLEY GEORGE
1509 SW SIXTH STREET
FARIBAULT MN
55021

HOLMES EUSTIS ET AL
4610 IDS CENTER
MPLS MN
55402

HORNER WALDORF - KAZIUKEW
PO BOX 3260
ST PAUL MN
55165

HULSTRAND ANDERSON & LARSON
PO BOX 130
WILLMAR MN
56201

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

IMS PAUL

ECHO MN

INGRAM ALAN NASW MN CH
22 NO DALE ST
ST PAUL MN

INGVALSON VERN MN.FARM BU
1976 WOODDALE BOX 43370
ST PAUL MN
55164

INTERSTATE POWER RW STEELE
1000 MAIN ST
DUBUQUE IA
52001

IVERSON DR JOS DEPT ED
ST OLAF COLLEGE
NORTHFIELD MN
55057

JAIN NIRMAL ENIV PROCESS
1220 GLENWOOD AVE
MPLS MN
55405

JENOS INC
525 LAKE AVE SO
DULUTH MN
55801

JENSEN MRS GAYNOLD
111 WEST 107TH ST
MPLS MN
55420

JOHANSEN BUS SERV INC.
11911 HWY. 52
CHAMPLIN, MN
55316

JOHNSON & SANDERSON
ST MARYS HOSPITAL
ROCHESTER MN
55901

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

JOHNSON G ROBERT
4344 IDS CENTER
MPLS MN
55402

JOHNSON KEL MACI
HANOVER BLDG
ST PAUL MN
55101

JOHNSON LEROY
1207 98TH LANE NW
COON RAPIDS MN
55433

JOHNSON M.D. FRUNDT & FRUNDT

BLUE EARTH MN
56013

JOHNSON LANCE J
265 S LAFAYETTE RD
ST PAUL MN
55107

KJERVIK DIANE
4302 POWEL HALL U OF M
MPLS MN

KRONLOKKEN J E
10048 NORD RD
BLOOMINGTON MN
55437

LEAGUE WOMEN VOTERS OF MINN
555 WABASHA
ST PAUL MN
55102

LOCH DAVID REG 5 REG DEV COG
11 IOWA AVE
STAPLES MN
56479

MANTHEY T J PICKANDS MATHER
1100 SUPERIOR AVE
CLEVELAND OH
44114

MAUL WARREN E.
605 4TH. AVE. SO.
MPLS., MN
55415

METROPOLITAN COUNCIL LIBRARY
300 METRO SQUARE
ST PAUL MN
55155

MILLER TOM
2311 PILLSBURY AVE S
MPLS MN
55404

MINN ASSN VOL SOC SERVICE
1821 UNIV SUITE 389
ST PAUL MN
55114

KAVANEY RICHARD
1220 NORTHERN FED BLDG
ST PAUL MN
55102

KNOPP TIMOTHY
COLLEGE FORESTRY U OF M
ST PAUL MN
55108

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

LOEFFLER DOROTHY MRS
U OF M 101 EDDY HALL
MPLS MN
55455

MAHCF RICK CARTER
2850 METRO DR SUITE 431
BLOOMINGTON MN
55420

MARLATT RALPH J
1320 SOO LINE BLDG
MPLS MN
55402

MCDONALD PHILIP M
2077 SELBY AVE
ST PAUL MN
55104

MEYER HERBERT
10824 ZENITH AVE S
BLOOMINGTON MN
55431

MILLER THOMAS F
1628 IDS CENTER
MPLS MN
55402

MINN CHAP ASSOC BLDRS-CONTRS
7204 W 27TH ST
MPLS MN
55426

KEENAN RICHARD J
4444 IDS BLDG
MPLS MN
55402

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

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

LEG REPORT SERV-P STURDEVANT
PO BOX 3259
ANNAPOLIS MD
2140

LUTH SOC SERVICE OF MN
2414 PARK AVE
MPLS MN
55404

MALECKI JAMES
1 SO STATE ST
NEW ULM MN
56073

MARQUARDT PHILIP
RTE 2 BOX 209
JANESVILLE MN
56048

MCNEILLY GREG MNDSVIEW ED AS
41 SHERBURNE AVE
ST PAUL MN
55103

MIDLAND GLASS-BARTO R.J.
P.O. BOX 69
SHAKOPEE, MN
55379

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

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

KELLY BARBARA SOLID WASTE
4001 PEBBLEBROOK DR
BLOOMINGTON MN
55437

KRAMER ERNEST W
717 DELAWARE ST SE
MPLS MN
55440

LANGEVIN, DAVID P.
8748 IDEN AVE, SO.
COTTAGE GROVE MN
55016

LEWIS DR.G.M JR.
ABBOTT 110 E 18TH ST
MPLS MN
55403

MANKATO STAT STUDENT SENA
CENTENNIAL STUDENT UN
MANKATO MN
56001

MASTOR & BALE, LTD.
315 PEAVEY BLDG.
MPLS. MN
55402

MET. WASTE CONTOL COMM.
350 METRO SQ BLG
ST PAUL MN
55101

MILLER PAUL J PHARMACY SE
ST MARYS HOSP
ROCHESTER MN
55901

MINN ASSN COOPERATIVES
55 SHERBURNE AVE
ST PAUL MN
55103

MINN GOV ENG COUNCIL
2400 SHERWOOD HILL RD
MINNETONKA MN
55343

MINN PCA WATER QUALITY
1935 W CO RD B 2
ROSEVILLE MN
55113

MINN PETROLEUM COUNCIL
1020 NORTHERN FED BLDG
ST PAUL MN
55102

MINN POLLUTION CONTROL AGCY
1935 W CO RD B2
ROSEVILLE MN
55113

MINN RETAIL FEDERATION
180 METRO SQUARE BLDG
ST PAUL MN
55101

MINN RETAIL HARDWARE ASSN
3033 EXCELSIOR BLVD 313
MPLS MN
55416

MINN RURAL ELECTRIC ASSN
4901 W 77TH ST
MPLS MN
55435

MINN. SERV. STA. ASSN.
1115 2ND. AVE. SO.
MPLS., MN
55403

MINN STATE BAR ASSN
100 MINN FED BLDG
MPLS MN
55402

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

MINN STATE MEDICAL ASSOC
STE 900 AM NATL BK BLDG
STPAUL MN
55101

MINN TEAMSTERS CREDIT UNION
2021 HENN AVE E
MPLS MN
55413

MINN. TBR. PRODUCERS ASSN
333 W. SUPERIOR ST.
DULUTH, MN
55802

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

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

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

MINNESOTA AFL-CIO
175 AURORA AVE
ST PAUL MN
55103

MIXA FRANK LK MNTKA CONS DIS
402 E LAKE ST
WAYZATA MN
55391

MN AUTOMOBILE DEALERS ASSN
277 UNIV AVE
ST PAUL MN
55103

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

MN ELECTRICAL ASSN
3100 HUMBOLT SO
MPLS MN
55408

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

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

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

MN ST COUNCIL FOR HANDICA
METRO SQ 7TH & ROBERT
ST PAUL MN
55101

MN ST PHARMACEUTICAL ASSN
2469 UNIVERSITY AVE
ST PAUL MN
55114

MOFFITT R C
RM 301 M MPLS CITYHALL
MPLS MN
55415

MOSS DR JEROME
125 PEIK 159 PILLSBURY
MPLS MN
55455

MOSTCA
PO BOX J
PERHAM MN
56573

MOTOR VEHICLE MFRS ASSN
411 MAIN ST (215)
ST PAUL MN
55102

MPLS ASSN RETARDED CITIZENS
2344 NICOLLET AVE. SO.
MPLS., MN
55404

MPLS TRIBUNE CITY DESK
425 PORTLAND AVE
MPLS MN
55415

MT OLIVET ROLLING ACRES
R 1 BOX 576
EXCELSIOR MN
55331

MURPHY PATRICK FSR INC
BOX 586 COURTHOUSE STA
ARLINGTON VA
22216

NATL FAMILY INS CO
2147 UNIV AVE
ST PAUL MN
55114

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

NELSON HOWARD I

LINDSROM MN
55045

NOZISKA HOWARD
7851 METRO PKWY S 103
MPLS MN
55420

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

NURSING HOME RES ADV CO.
111 E FRANKLIN S210
MPLS MN
55404

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

NW COUNTRY ELEVATOR ASSN
P.O.BOX.15004COMM.STAT
MPLS., MN

NW REG. DEV. COMM
425 WOODLAND AVE
CROOKSTON MN

OTTER TAIL POWER CO.
215 S. CASCADE ST.
FERGUS FALLS MN
56537

PETERSON, H. COMM LABOR&IND.
444 LAFAYETTE RD.5TH FL
ST. PAUL, MN
55101

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

PRAUSE J.C.
1313 COON RAPIDS BLVD,
COON RAPIDS, MN
55433

RADMAN RICHARD-LABOR TEMPLE
411 MAIN STREET
ST. PAUL, MN
55102

REAGAN MICHAEL
% MINN LEARNING CTR
BRAINERD MN
56401

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

ROSS ALFRED
6356 WARE RD
LINO LAKES MN
55014

SANFORD S M
7000 PORTLAND AVE
RICHFIELD MN
55423

SCHNEIDER MAHLON
GREEN GIANT
LESUEUR MN
56058

SHABATURA EUGENE H
2833 LAKE AVE. SO.
DULUTH, MN
55802

PHAR MFGRS ASSN GROSSMAN S.
1155 15TH. ST. N.W.
WASHINGTON,DC
20005

POPOVICH PETER S
314 MINN BLDG
ST PAUL MN
55101

PRICE WALT C REISS COAL CO
1011 SO 8TH ST
SHEBOYGAN WI
53081

RALPH BURKE ASSOCIATES
5200 W 73RD ST
MPLS MN
55435

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

RICHARDS MONTGOMERY ET AL
1430 RAND TOWER
MPLS MN
55402

ROYAL ESQUIRE REALTY INC
1612 PIONEER BLDG
ST PAUL MN
55101

SAX DOVE & STENSON
310 ENDICOTT BLDG
ST PAUL MN
55101

SCHUTZ LINDA
RM 328 CAPITOL BLDG
ST PAUL MN
55155

SHEEHY LEE E
625 ADMIN BLDG
ST PAUL MN
55155

PAYNE COL ALVIN

DEGRAFF MN
56233

PHILLIPS LEGISLATIVE SERVICE
459 RICE ST
ST PAUL MN
55103

PORTER DAVID
3002 27 AVE S
MPLS MN
55406

RAMSEY CO MEDICAL SOC
908 AM NATL BK BLDG
ST PAUL MN
55101

RED OWL STORES INC
215 E EXCELSIOR AVE
HOPKINS MN
55343

RIEKE, DAVID
SCORPION IND. INC.
CROSBY, MN
56441

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

SCHWINN, ROBT. P.
1830 SOO LINE BLDG.
MPLS., MN
55402

SIX EAST REG. DEV. COMM.
311 W 6TH ST
WILLMAR MN
56201

PETERSON DOUG AM RED CROS
11 DELL PLACE
MPLS MN
55403

PIDGEON, JOHN G. CITY MGR
BLOOMINGTON CITY HALL
BLOOMINGTON, MN
55431

POYZER ROBT
BOX 675
FERGUS FALLS MN
56357

RAUENHORSTCORP-RONALD G K
7900 XERXES S S-2200
MPLS MN
55431

REGION NINE DEV. COMM.
120 S. BROAD ST.
MANKATO, MN
56001

RITTER, JERRY
1011 NICOLLET MALL
MPLS., MN
55403

SCHMIDT WARREN WELLCOME M
GARDEN CITY
MN
56034

SE MN REG DEV COMM
301 MARQ BK BLDG
ROCHESTER MN
55901

SMITH BOB III
PIONEER BLDG
ST PAUL MN
55101

ST. PAUL FOOD RETAILERS ASSN
555 WABASHA ST. STE.204
ST. PAUL, MN
55102

STONE JOHN F MOSS FLAHERTY
2350 IDS CENTER
MPLS MN
55402

THORNTON, P.J.
107 SO. 15TH. AVE. W.
VIRGINIA, MN
55792

US DEPT OF AGRICULTURE
252 FEDERAL BLDG
ST PAUL MN
55101

VOS LEROY
2137 BURNS AVE
ST PAUL MN
55119

WAMPLER LINUS DIR USW OF AM
609 PROVIDENCE BLDG
DULUTH MN

WEST CENTRAL REG. DEV.
ADM BLDG,COMMUNITY COLL
FERGUS FALLS MN
56537

WIS FEEDER PIG MARKET CO-OP

FRANCIS CREEK WI

STATE & FEDERAL AGENCIES
1101-15TH NW
WASHINGTON DC
20005

SULLIVAN J KIRK
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BOISE, IDAHO
83728

TOWNSHIP OF WHITE BEAR
1281 HAMMOND RD
WHITE BEAR LK MN
55110

WASHINGTON COUNTY
14900 61ST ST NO
STILLWATER MN
55082

WHITLOCK A G
ECON LAB OSBORN BLDG
ST PAUL MN
55102

WOZNIAK D D
401 FIRST FED BLDG
ST PAUL MN
55101

STD AM LIFE & ANNUITY CO
3801 W 50TH ST
MPLS MN
55410

SULLIVAN JEANETTE
CDIC SW STATE UNIV
MARSHALL MN
56258

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

VALLY CENTER DRUG
4827 W 124TH ST
SAVAGE MN
55378

WALTERS THOMAS MN MFG HOUSE
4530 W 77TH ST STE 227
MPLS MN
55435

WATERS, DONNA M.
110506 WINDMILL COURT
CHASKA MN
55318

WHITLOCK MARSHALL LCRAR
RM.44 ST. OFF. BLDG.
ST. PAUL, MN
55155

WRIGHT CO COMMUNITY SERVICES
7NW 1ST ST
BUFFALO MN
55313

STEELWORKERS CREDIT UNION
BOX 250
BABBITT MN
55706

SWANSON DALE
1068 SO LAKE ST
FOREST LAKE MN
55025

TENNESSEN SEN ROBERT J
RM 309 STATE CAPITOL
ST PAUL MN
55165

UNION STOCK YARDS
ATTN PRES
SO ST PAUL MN
55075

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

WALZ SAM CO ADMINISTRATIO
ANOKA CTY COURTHOUSE
ANOKA MN
55303

WELK G V NORTHERN STATES
414 NICOLLET MALL
MPLS MN
55401

WM. MITCHELL LAW LIB.
875 SUMMIT AVE.
ST. PAUL, MN
55105

PUBLIC SERVICE

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Cassidy, Adrian, C., NW Bell Telephone Co., 224 South 5th Street, Mpls 55402

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Updated: 1/11/79 - md

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Mr. A. L. Larson, Controller
Rainy River Improvement Company
International Falls, MN 56649
File No. 018

MPSC

Minnesota Public Service Commission

January 16, 1980

To: Joanne Hinderaker
Special Assistant Attorney General
G-25 Administration Building

From: Mary Harty, Executive Secretary
Minnesota Public Service Commission
7th Floor, American Center Building

M L Harty

Telephone: 296-8994

Re: In the Matter of the Proposed Adoption of a Rule of the Public Service Commission Governing Disconnection of Service to Gas and Electric Utility Customers During Periods of Cold Weather and Repeal of PSC 299

Enclosed, please find the Response of the Minnesota Public Service Commission to comments submitted by the Minnesota Gas Company, Minnesota Power and Light Co. and North Central Public Service Company.

If you have any questions, do not hesitate to contact me.

MLH:lp

Enc.

7TH FLOOR • AMERICAN CENTER BUILDING • KELLOGG & ROBERT STREETS • ST. PAUL, MINNESOTA 55101

BEFORE THE MINNESOTA PUBLIC SERVICE COMMISSION

Roger L. Hanson	Chairman
Katherine E. Sasseville	Commissioner
Lillian Warren Lazenberry	Commissioner
Richard J. Parish	Commissioner
Juanita R. Satterlee	Commissioner

In the Matter of the Adoption of A Rule of the Public Service Commission Governing Disconnection of Service to Gas and Electric Utility Customers During Periods of Cold Weather and Repeal of PSC 299.	PSC Docket No. A-8117-27 HE Docket No. PSC-80-020-RD AG Rules File No. 570

RESPONSE TO COMMENTS SUBMITTED BY THE MINNESOTA GAS CO., MINNESOTA POWER AND LIGHT CO., AND NORTH CENTRAL PUBLIC SERVICE CO.

INTRODUCTION

These comments submitted on behalf of the Public Service Commission respond to issues raised by certain utilities' 1/ filings with the Office of the Attorney General regarding the Commission's adoption of a rule governing disconnection of service to gas and electric residential utility customers during periods of cold weather (hereinafter "Cold Weather rule"). The utilities' comments fall into two general categories, namely, comments relating to the technical drafting of the rule and comments raising a limited number of legal issues.

It is the Commission's position that the technical suggestions raised by the utilities do not rise to the level of legal deficiencies. In light of the rule's importance to the health, safety, and welfare of the public, technical drafting suggestions should be left to a subsequent amendatory proceeding or to a proceeding initiated by interested persons pursuant to petition rights established by Minn. Stat. § 15.0415. The

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1/ Comments filed within the permissible period of time set forth in ATTYGEN 305(c) include those filed by the Minnesota Gas Company, North Central Public Service Company, and Minnesota Power & Light Company. Comments submitted by Otter Tail Power Company were not timely and therefore should not be considered. However, since the matters raised by Otter Tail's comments parallel comments made by other utilities, this response should address those issues as well. Finally, comments in support of the Rule were received from the Legal Services Advocacy Project and are incorporated by reference herein.

legal matters will be addressed individually below.

I. NO FUNDAMENTAL OR SUBSTANTIAL CHANGE NECESSITATING A REHEARING EXISTS IN THE RULE AS ADOPTED.

Several comments were received alleging that the rule contains substantial or fundamental changes and, thus, should be remanded for rehearing. The Commission disagrees.

The threshold question which must be addressed in reviewing the substantial or fundamental change issue is what legal standard applies. The Rules of the Office of the Attorney General adopted approximately ten years ago require rehearing if the "change . . . made . . . goes either to another subject matter or results in a rule fundamentally different from that contained in the notice of hearing . . . ." Subsequent legislative codification of this concept in Minn. Stat. § 15.052 establishes a similar standard which requires rehearing if a rule is "substantially different from that which was proposed at the public hearing." Arguable conflict between the two standards and the possible disposition of the argument need not be discussed here. Both standards have one purpose which is to prohibit adoption of a rule so different from those proposed by the agency that their adoption results in the denial of a person's right of participation in the promulgation proceedings. Given that safeguard, however, it must be remembered that the promulgation process is a legislative function. See Minn. Stat. § 216A.02, subd. 2 (1978). The substantial or fundamental change standard should not be inconsistent with a notion of a legislative "working hearing" concept.

The "working hearing" concept permits the agency to be responsive to comments and criticisms made by members of the public regarding the rule which the agency has noticed for hearing. It permits the agency to consider and adopt, where appropriate, suggestions from the public. If this working hearing concept was restricted through a rigid application of the substantial charge doctrine so as to prohibit such "give-and-take," it would promote an unhealthy inflexibility on the part of the agency at the public hearing. The agency would merely defend its rule, despite any meritorious criticism by members of the public, so

despite any meritorious criticism by members of the public, so as to avoid rehearing arising from a restrictive interpretation of fundamental or substantial change.

With this legal framework in mind, the comments raised by the utilities must be considered. All utility comments should be reviewed in light of the conclusions of the Report, Order and Memorandum of Chief Hearing Examiner dated December 28, 1979, wherein the Chief Hearing Examiner finds that no substantial change necessitating rehearing in this matter occurred. The Chief Hearing Examiner continues in an attached Memorandum to praise the Commission for its conduct in these proceedings saying "it is appropriate to point out that this proceeding is one of the best examples, in the four years of the existence of the office, of how the rulemaking process was intended to work . . . ."

Utility comments imply that important provisions existing in the adopted rule were never discussed at public hearing. For example, Minnesota Power & Light (hereinafter "MP&L") states: "Neither the PSC nor the Chief Hearing Examiner should be allowed to use the free exchange of ideas as justification for approving of a rule which contains substantive changes which were neither discussed nor anticipated by the affected parties." The brief of the Minnesota Gas Company (hereinafter "Minnegasco") similarly states: ". . . No party was able to comment, however, on the new provisions added <u>after</u> the close of the record. For example, an October 15 reconnection requirement for summertime disconnects was not incorporated into the Rule until Examiner DeLong's report <u>after</u> the record was closed." (Emphasis in the original.) Both comments are important for what they say and what they do not say. MP&L's comment agrees with the legal standard discussed above wherein a judgment of substantial change is made by contrasting the rule as adopted with the matters discussed at public hearing. That MP&L fails to point out any important substantive provision which fails to meet this test is similarly significant. Further, Minnegasco's comments are simply incorrect. It implies that the October 15 reconnection requirement for summertime disconnections was not discussed at public hearing; and, thus, no party was

able to comment on the new provision until after the close of the record. The record indicates otherwise. See Transcripts of proceeding dated October 19, 22, and 23.[2/] While specific language may not have appeared until the issuance of Examiner DeLong's report or final language until final Commission action, the concept was certainly deliberated at public hearing.

The legislative dimensions of rulemaking must not be ignored. Further, establishment of an independent Office of Hearing Examiners to guide this legislative activity and insure the rights of the public to participation in the promulgation process is a significant legal safeguard. Minnegasco itself concedes that "all interested parties were aware of the rulemaking and able to comment on the proposed Rule at all stages prior to the close of the record." While a rehearing to address certain technical nuances of the rule which emerged from public hearing might in other circumstances be commendable, the health, safety and welfare imperative underlying this regulatory scheme of the rule mandates its approval. No substantial or fundamental change exists which necessitates the reconvening of a hearing.[3/]

II. TECHNICAL CORRECTIONS OR IMPROVEMENTS IN DRAFTING RAISED BY THE UTILITIES WHICH DO NOT ADDRESS LEGAL DEFICIENCIES ARE NOT GROUNDS FOR DISAPPROVAL OF THE RULE.

Prior to consideration of the utilities' comments on drafting deficiencies, one must look briefly at the scope of administrative review by the Office of the Attorney General. Like courts,[4/] administrative review of agency rulemaking is limited. ATTYGEN 305(b) sets forth the standards of administrative review which are identical to standards of judicial review. These standards, then, can be read in the context mandated by courts for review

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2/ October 19, 1979, 1:30 p.m. at Minneapolis at p. 21:
October 19, 1979, 7:30 p.m. at Saint Paul at p. 10;
October 22, 1979, 1:45 p.m. at Grand Rapids at p. 15;
October 22, 1979, 7:45 p.m. at Grand Rapids at p. 13;
October 23, 1979, 1:47 p.m. at Little Falls at pp. 15-16;
October 23, 1979, 8:00 p.m. at Little Falls at pp. 15-16.

3/ For further arguments in this regard, see "Memorandum to the Attorney General Re: Form and Legality" filed with the Office of the Attorney General by the Legal Services Advocacy Project in this matter.

4/ See Can Manufacturers Institute, Inc. et al. v. State of Minnesota, ____ N.W.2d ____, 13 ERC 1689 (1979).

of any agency action. For example, reviewing bodies must give deference to agency expertise. Review of a rule must be on its face, not as hypothetically applied. The Minnesota Supreme Court recently set forth standards regarding the scope of judicial review of prospective administrative rules. This decision may well imply similar guidelines for administrative review. In Minnesota-Dakotas Retail Hardware Association, et al v. State of Minnesota, 279 N.W.2d 360 (1979), the Court stated that judicial review was limited to a determination of whether a rule violates constitutional provisions, exceeds statutory authority, or is adopted without compliance with statutory rulemaking procedures. Such principles should guide administrative review of proposed agency rulemaking as well.

The majority of all utility comments relates to alleged "defective drafting." One utility did cite to a recent scholarly review of rulemaking in Minnesota which noted that the Office of the Attorney General had disapproved rules for "defective drafting." The utility failed to specifically refer in detail to any finding presented in the scholarly review which would require disapproval in this matter, however. The concerns raised regarding the instant rule do not rise to the level of legal deficiencies which necessitates disapproval of the rule.[5/] In light of the jeopardy to the health, safety and welfare of citizens which may arise if adoption of this rule is delayed, any alleged drafting deficiencies must be left to a subsequent amendatory proceeding or to individual action under petition rights established pursuant to Minn. Stat. § 15.0415.

The catalog of utility nitpicking is huge. Given the standard of administrative review and the importance of expediting this matter, many of the comments do not even merit response. However, to assist the Office of the Attorney General in its review, a brief response to this catalog of technical criticisms will be provided.

5/ Interestingly, North Central's comments admit that the issues which they raise do not "speak to the legality of the Commission's proposed Cold Weather Rule."

The comments shall proceed sequentially beginning with the first section discussed by the utilities.

(i) Section B of the Rule

Several utilities objected to the second sentence of section B(6) regarding the relationship of "day of receipt" to the computation of certain periods of time under the rule. Utilities objected apparently because they believed the sentence to be unnecessary given the changes adopted by the Commission pursuant to the Chief Hearing Examiner's concerns about calculation of time commencing with the customer's receipt of notice. Other suggestions were made to add sections or rewrite sections to address issues addressed in Section B(6). See page 8 of the submittal of Minnegasco. Numerous criticisms raised by the utilities to the section are inappropriate for administrative review for the reasons discussed above. The second sentence of Section B(6) is necessary and reasonable in establishing the beginning date of calculating the period of time in which the Commission must act. E.g., Section F(1).

Comments were also received regarding Section B(3). MP&L objected to the different notices required by Sections B(3) and (4). Such criticism neglects the fact that only one form or another may be sent out in any specific situation. The forms serve different functions and contain different information. Compare, for example, Sections C and E(1). The overlapping is therefore necessary and reasonable. North Central's comments raised questions regarding Sections (3)(d), (5)(a), and (5)(c). Minnegasco suggested new sections. None of these comments rise to the level of legal deficiencies, but are merely suggested alternative approaches.

(ii) Section C of the Rule

Comments[6/] were received suggesting changes which were supposedly a mere rewriting of the Commission's adopted rule.

6/ See, for example, Minnegasco Comments, Section 3.2.

These comments reflect a failure to understand that the two phrases discussed in the rule are different notices or documents. A "Commission approved easy-to-understand general statement of the protections of this rule" and a "Notice of Customer Rights and Possible Assistance" serve different purposes and are amply established as needed and reasonable by the record. Compare, for example, requirements under Section C and the requirements under Section B(4). See also Commission original Finding Nos. 7, 8, and 11. Finally, Section C notice requirements were intentionally separated from PSC 281 notices because of the importance of the rights and procedures established under the rule.

(iii) Section D of the Rule

Several comments regarding this section were made. Criticism that reference to 4 MCAR § 3.0299 G(2) in Section D(1)(a) is unnecessary ignores the record, including confusion exhibited over this issue in MP&L's submittal to the Attorney General. It is necessary to make clear the procedure governing the implementation and the protection against premature negotiations in a coercive atmosphere provided by the rule. Criticism that the form by which the customer declares his rights under Section D lacks clarity is similarly unfounded. The Commission's creation of a postage prepaid appeal form in Section E(1)(c) and its numerous references to that form make it clear that any customer appeal must ultimately be contained on such a form. The form also provides adequate "evidence" of the customer's action. Criticisms that the rule does not require customer visits to the office fail to consider the record in this matter. The impossibility of customers in outstate regions to visit utility offices under winter weather conditions within the time constraints in the rule cannot be ignored. Similarly, office visits for the handicapped would be difficult at best. Further, the coercive atmosphere of an office visit was found by the Commission to be a reasonable basis, together with the things discussed above, to require only a declaration of "willingness to enter into a payment schedule" on the forms to be provided and to permit negotiation of specific payment schedule at a later date. Other comments raised the need for the right established under Section D(2). For example,

MP&L attempts to interpret this section to limit payment schedules to individuals who are not in arrearage. Such interpretation flies in the face of the clear findings of the Commission and the rule adopted in this matter. See the Commission's original Findings of Fact, Conclusions and Order Adopting Rule dated 12/28/79, Finding No. 12. In effect, this section expands the utilities' already existing "budget plan" concept to those who would not otherwise qualify.

Other criticisms of Section D are equally misdirected. For example, Minnegasco raises certain undefined conflicts and objects to the Commission's failure to incorporate the disconnection provisions of 4 MCAR § 3.0298 A. However, no specific reason is given why the provisions of Section 3.0298 A should be made to supersede the Cold Weather rule. Conclusory allegations of vagueness and unreasonableness are offered. The Commission's decision to supersede the Cold Weather rule only in instances of life-safety issues raised in Section 3.0299 B is needed and reasonable with ample justification in the record. Utilities' arguments to the Office of the Attorney General have shown no reason in the record or as a matter of law mandating any other result.

(iv) Section E of the Rule

Several criticisms to this section's several subparts were made. Responses to these criticisms are as follows. First, the customer's burden to establish an inability to pay is clear throughout the rules, and particularly, in Section F(2). Similarly, all documentation required for the Commission to make its determination which is required in Section F(3) emanates from the customer.

Second, one utility objects to any role it might play in the determination of inability to pay. On the other hand, one utility believes that the "threshold decisions" regarding inability to pay should be made by the utilities. The record in this matter is clear. The utility may make a threshold decision if it chooses not to appeal the customer's initial declaration of inability to pay. The rule as written would prevent

the possibility of errors or mistakes by the utility in making the life-safety decisions required by the rule. Any utility role beyond this initial determination to appeal would subject the customer to possibly intimidating circumstances and place the utility in the difficult role of handling private financial data on individuals. The record amply supports the rule's limited role for utilities in the determination of inability to pay decision. See Commission's original Findings of Facts, Conclusions, and Order Adopting Rule dated 12/28/79, Finding No. 12.

The question of notice to the customer following a utility appeal pursuant to Section E(4) was raised. While the utility could certainly send a copy of such notice voluntarily to the customer, the Commission has the burden under the rule to notify the customer upon Commission receipt of a utility's appeal. This conclusion should give comfort to both the customer and the utility. It relieves an administrative burden on the utility, and, at the same time, assures the customer that notice of utility appeal will come from an independent source other than the utility.

Finally, one utility argues that the privacy rights of an individual would be violated by the mandatory notice of an individual's declaration of inability to pay to local welfare agencies and other local community organizations who are dispersing fuel emergency assistance. The utility neglects to recognize that the customer's initial declaration of inability to pay, coupled with the customer's knowledge that a utility appeal of that declaration will activate mandatory notices to local governmental agencies, constitutes consent by the individual to the disclosure by notice to local units of government.

Finally, MP&L argues that the interrelationship of Sections E(2) and H creates "a merry-go-round [sic] that never stops." The utility clearly is confused or wishes to appear confused. Section E(2) incorporates the disconnection provisions of Section H as a reasonable safeguard. If, during implementation of Section H, contact is made with a residential customer, the utility is correct that one returns to Sections E and F to govern the parties' conduct. The utility finds a supposed "Catch-22"

situation when one returns to Section E(2). What the utility fails to realize is that Section E(2) only requires a return to Section H if the utility has not received a response from the residential customer or any designated third party. However, one would not need to return to Section H since such contact had been made. Of course, if the customer has not responded under the notice sent pursuant to Section H(2), there would be no need to return to Sections E and F.

(v) Section F of the Rule

Several utilities commented on Section F(4)'s prohibition on any disconnection until expiration of 30 day appeal period. Suggestions were made to permit disconnection if the Commission's appeal was decided in less than 30 days. However, such a suggestion negates any opportunity for the individual to work out a payment plan within the period of time subsequent to the Commission ruling on the declaration of inability to pay and the expiration of the 30 days.

Some comments incorrectly interpreted the Chief Hearing Examiner's ruling found in paragraph No. 5 of his Order to prohibit reference to "receipt of the utility's written appeal" found in Section F(1). The Hearing Examiner's Order only discussed use of the receipt by a customer as an improper benchmark from which to compute time.

One utility suggested that the Bureau of Labor Statistics Guidelines incorporated by reference in Section F(2)(b) be adopted in futuro. The Commission does not at this time wish to delegate control over such changes. Finally, the burden of proof is, as discussed above, placed on the customer to establish a basis for the determination of inability to pay.

(vi) Section G of the Rule

Any argument that Section G, and the procedures therein, are unnecessary is a transparent attempt to ignore the provision's significance. Section G(2), coupled with other sections, permits a customer to assert the right to declare an inability to pay without the coercive process of simultaneously negotiating a reasonable payment schedule. Further, regardless of an inability

to pay, Section G gives any residential customer a right to a reasonable payment schedule and a reasonable opportunity to comply with said schedule. Comments by utilities opposing bifurcation of the inability to pay decision and the reasonable payment schedule decision ignores the Commission's original Findings Nos. 12 and 17-19, among others.

Section G(7) incorporates the appellate provisions of Section F. One utility argued that inconsistencies among the two provisions create impermissible vagueness in the rule. First, it must be noted that Section G(7) says that the appellate provisions of Section F merely "apply." It does not say "govern." As such, canons of construction would easily permit resolution of any existing conflict. Rather than duplicate the entirety of the procedures, the Commission's decision to generally incorporate by reference the appellate provisions contained in Section F was needed and reasonable.

North Central submitted several comments regarding Section G. In response to those comments, it must be noted that Section G(5) does not undermine the enforcement of payment schedules, nor does it permit "pyramiding" which is discussed throughout the record. Any absolute prohibition to shut off is limited to the winter months. Section G(6) requires further notice of customer rights and possible assistance because the secondary issue relating to establishment of a reasonable payment schedule is now being considered. It must be recalled that this right extends to individuals who did not declare an inability to pay. As such, any duplication would be needed and reasonable because of the life-safety basis of this rule. Further, there may be no duplication in certain instances, especially those in which an individual wishes to exercise the right to a payment schedule without exercising the right to declare an inability to pay.

Finally, other criticisms of the rule as "cumbersome" and technical changes suggested for Section G do not merit administrative review as they present no issue of legal deficiencies.

(vii) Section H of the Rule

Several utilities object to the supposedly unnecessary duplication of both mailing of notices relating to disconnection and personal visits required under Section H. Finding No. 20 of the Commisssion's original Findings of Fact, Conclusions and Order Adopting Rule and the record underlying this Finding amply demonstrate the need for and reasonableness of the Commission's requirements relating to both mailings and personal visit. Deference to agency expertise in this area must be granted. As previously discussed above, utility criticisms of the notice requirements in Section H(2) fail to distinguish the differentiation between the required documents.

Minnegasco criticized the reasonableness of the reconnection provisions of Section H(4). Commission Findings Nos. 20-22 summarize the ample support in the record for the agency's decision. Deference to agency discretion and establishment of the need for and reasonableness of the provision in the record mandate its approval.

(viii) Section I of the Rule

The utility comments regarding Section I attempt to characterize it as either unnecessary or a confiscation of utility's property. Commission's original Finding No. 22 demonstrates that neither argument is true. The rule merely provided greater flexibility for the customer in times of rapidly rising utility and energy cost. As discussed below, the standards used to govern the conduct of both the customer and the utility are legally sufficient.

III. NO PROVISION OF THE RULE IS UNCONSTITUTIONALLY VAGUE.

Claims of "vagueness" fill the pages of comments submitted by the utilities. In one case, a utility argues (without supporting case law) that the rule is "illegal" because of such vagueness. Many of the "vagueness" claims have been addressed and dismissed above. Only one vagueness claim remains to be addressed.

"Reasonableness" standards are used in the rule. Section D(1)(b) discusses the residential customers' history of being "reasonably on time" in making payments under a payment schedule. So does Section D(2). Similarly, Section G(6) discusses the reasonable-

ness of a payment schedule. Section I also discusses a customer being reasonably on time with payments under a payment schedule. The legal sufficiency of this standard is brought into question by the utilities.

"Reasonableness" standards appear throughout Minnesota law, both statutory and common. In the regulatory process, the Minnesota Supreme Court has recognized that rules may provide the agency decision maker with discretion and flexibility.[7/] The reasonableness standards confer nothing more than such discretion and flexibility. The legal sufficiency of the rule and the "reasonableness" standards are clearly established.

IV. THE RULE DOES NOT CREATE AN UNREASONABLE PREFERENCE FOR ONE CLASS OF CUSTOMERS OR DISCRIMINATE WITHIN A CLASS.

Utilities' comments argue (again without supporting case law) that the rule violates provisions of Minn. Stat. §§ 216B.06 and 216B.07 in that it creates an unreasonable preference to some customers or, in the alternative, provides for different compensation among the classes of customers.

The rule does neither. It creates only a different rate of collection. Identical compensation is paid by each residential consumer. It is merely collected at a different rate. In fact, one could argue that the rule eliminates a class which previously received different compensation alternatives. Under utilities' "budget planning" offerings, a creditworthy person could obtain a different rate of collection. This rule merely extends that opportunity to all such customers.

Secondly, it is argued that the rule extends an unreasonable preference to some customers. No preference of legal significance is given. As argued above, an existing preference for creditworthy customers is eliminated. Even if a preference existed, it could not be considered unreasonable in light of analogous state and federal policy such as the Public Utilities' Regulatory Policy Act of 1978. State programs have a corresponding effect in providing relief to customers unable to deal with the rapidly increasing cost of energy and utility services.

7/ See Can Manufacturers Institute, et al. v. State of Minnesota, _____ N.W.2d _____, 13 ERC 1689 (1979)

V. THE ROLE OF THE "THIRD PARTY" IS SUFFICIENTLY CLEAR WITHOUT ELIMINATING THE FLEXIBILITY NECESSARY FOR THE IMPLEMENTATION OF THIS CONCEPT IN THE RULE.

The Commission's original Finding No. 7 adequately sets forth the need for and reasonableness of the "third party" concept. See also Hearing Examiner Finding No. 24.

One utility apparently argues that the rule delegates the right of the customer to a third party without the customer's consent. Section B(3)(b) clearly delineates the relationship between the customer and the third party, namely, the third party is the designated representative of the customer. The mechanism for designation will also resolve any concerns about the legal agency relationship which a utility may have.

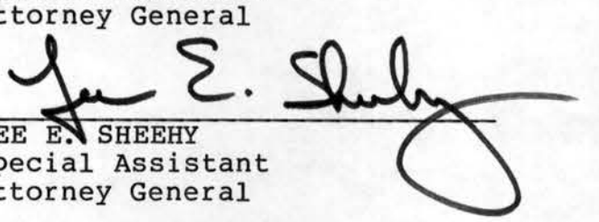
For the foregoing reasons, no grounds for disapproval of the rule exist. The Commission respectfully requests immediate approval by the Office of the Attorney General of this important rule.

Dated: January 16, 1980

Respectfully submitted,

JEAN E. HEILMAN
Assistant Attorney General

JAMES E. LACKNER
Special Assistant
Attorney General

By 
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KIRK O. KUWITZKY
ATTORNEY

January 10, 1980

Ms. Joanne Hinderracker
Office of the Attorney General
Room G25 - State Administration Bldg.
50 Sherberne Avenue
St. Paul, MN 55155

Re: Docket No. PSC-80-020-RD
A-8117-27

Dear Ms. Hinderracker:

I have attached for your consideration Minnesota Power & Light Company's comments on the Public Service Commission's proposed cold weather disconnection rule.

If you have any questions at all, please feel free to contact me.

Very truly yours,

Kirk O. Kuwitzky

KOK:mp
Enclosure

COMMENTS OF MINNESOTA POWER & LIGHT COMPANY

Upon review of the Cold Weather Rule (4 MCAR 3.299) proposed for adoption by the Minnesota Public Service Commission, Minnesota Power & Light Company feels compelled to submit the following comments and questions regarding the application and administration of the proposed rule. MP&L requests the Attorney General to give due weight and consideration to these comments in conjunction with review of the proposed rule for form and legality. The primary thrust of MP&L's comments are directed at what it perceives to be the ambiguity and vagueness of the language used in the rule and internal inconsistencies found in various sections of the rule.

AMBIGUITY AND VAGUENESS OF LANGUAGE

Section B.6.

This section states that "the day of receipt of any notice shall not be counted in calculating a period of time under this rule." This sentence may be satisfactory for the required notices which are delivered personally to customers by utility personnel, however, it does not adequately deal with delivery of notices by mail as allowed by the rule. The rule does not define what the day of receipt is to be if a notice is mailed to a customer. It makes little sense that the day a notice is actually delivered by mail to the customer would not be counted because a problem of verifying delivery to the customer would arise. This problem was raised by the Chief Hearing Examiner in section 5.A. of his Report (CHE section 5.A.) The Chief Hearing Examiner, upon review of PSC 299 E, concluded that the rule "(d)oes not contain any direction to the public or, more importantly, to utilities, as to what is needed to prove "receipt" of the notice by the customer. As such, the rule is vague in the sense that it does not provide

an understandable rule of conduct so that persons may know how to comply with the rule . . ." The same logic would seem applicable to section B.6. of the rule.

At the direction of the Chief Hearing Examiner, the PSC amended section E.2. to allow disconnect notices to be mailed to the customer by the utility. Neither section B.6. nor many other sections of the rule, which will be addressed later, referencing receipt of notices were amended. If this amendment did indeed eliminate the vagueness of the particular section referred to by the Chief Hearing Examiner, it certainly means that section B.6. and other sections containing the word "receipt" remain vague and ambiguous as to the course of conduct to be followed by utilities.

Section D.1.

This section sets forth the procedure to be followed for a customer to declare an inability to pay to a utility bill. Subsection a. states that to declare an inability to pay the customer must express a willingness to enter into a mutually acceptable payment schedule. The problem that is foreseen is twofold. One concern is that the rule as written does not require any identifiable action to be taken by the customer in order to express a willingness to enter a payment agreement. Apparently the intent of the rule is to allow the customer to telephone the utility that he will, may, might or shall take under consideration the possibility of entering into an agreement. The rule does not even require that the customer come into the utility office to negotiate an agreement.

The second concern is the anticipated administrative nightmare of not only recording "expressions of willingness" received from customers, but

also proving the context of any telephone conversations relating to "expressions of willingness." If the customer was required to at least come into the office to declare an inability to pay and begin negotiating an agreement, the confusion which will likely be caused by section D.1.a. would be mitigated.

Section E.2.

This section permits the utility to disconnect service "if the utility has not received a response" from the customer or third party designate within the allotted time. As used in this section, the word "response" does not detail what permissable action a customer may take in order to short circuit disconnection. It does not even require that the declaration of inability to pay be returned to the utility.

Section F.1.

The same criticisms of the use of the word "receipt" apply to this section are outlined in the discussion of section B.6. above.

Section F.2.b.

MP&L does not object to the use of the Bureau of Labor Statistics Guidelines. However, this subsection does not provide for updating these Guidelines as used to administer this rule. Certainly the Bureau of Labor Statistics periodically updates the Guidelines to reflect the current socio-economic status of the country. The information contained in the Guidelines available as of the date of this rule will eventually become stale as the economic and labor trends of the country continue to change. Additionally, as years pass copies of the Guidelines dated the same year as the rule may become increasingly difficult to obtain.

Section F.3.

In making a determination regarding a customer's ability to pay, the Commission shall consider the items contained in this section. However, the rule does not establish a presumption that if no documentation is provided the customer will be deemed to have the ability to pay. In fact, it is quite conceivable that the customer submitting no documentation whatsoever will be deemed unable to pay a utility bill. Furthermore, the rule fails to address the situation where the customer chooses to document his claim of inability to pay, but only on a selective basis. In other words, the customer submits only documentation favorable to his position to the Commission while omitting less favorable documents.

Section F.4.

This section conclusively prohibits disconnection prior to the expiration of the Commission's 30 day review period even if the appeal is decided by the Commission prior to such time. MP&L believes that it should more correctly be allowed to enforce whatever rights it has under the rule upon the occurrence of either receipt of a decision of the appeal by the PSC or expiration of the 30 day period, which ever occurs first.

INTERNAL INCONSISTENCIES

This portion of the comments will address those sections of the proposed rule which MP&L believes to be contradictory, inconsistent and circumlocutory. By necessity, these comments relate to the confusion and uncertainty caused by the vague and ambiguous language used in the rule as discussed earlier.

Sections D.1.a. and G.2.

As discussed before, section D.1.a. is a prerequisite to declaring an inability to pay. The reader is referred to section G.2. purportedly to receive some guidance regarding the "expresses willingness to pay" clause, however, this referenced section apparently has nothing in common with section G.2. MP&L fails to see the nexus or any logical relationship between these two sections.

Section D.2.

MP&L's interpretation of this section is that it could not disconnect electricity where it affected the primary heat source of a customer's primary residence if the customer was able to pay his bills and had been paying them. The question is, why would a utility disconnect a customer who was not delinquent in paying his bills? There would be no threat of disconnection in such a situation. This section would appear to be superfluous and should be eliminated.

Sections B.3.e. and B.4.

These sections define the contents of two different notices to be given to the customer at the same time. Both notices would require information regarding financial assistance agencies to be contained therein. Furthermore, these notices do not even require the same information to be contained in the notices. Consequently, these sections are redundant and inconsistent and should be rejected as such.

Section E.3.

In its Findings of Fact (no. 13) the Commission interprets the last sentence of this section to preclude utilities from requiring the customer to fulfill the section D.1.a. and b. prior to or concurrently with declaring an inability to pay on the prescribed form. However, when both sections are read, together the rule would seem to say that a utility cannot prevent a customer from declaring an inability to pay provided the customer expressed a willingness to enter into a payment schedule and was not delinquent on his monthly bills or periodic installments. It is the utility with which the customer makes an initial contact regarding this rule, an agreement need not be negotiated during such contact and the utility has available the customer's account information. It not only makes sense that a utility should be allowed to make these threshold decisions, and Section D. clearly prescribes such authority. For the Commission to attempt to usurp the authority of the utility in its Findings of Fact, when on its face the rule does not, is a misleading and unwarranted interpretation of the rule.

Section E.4.

If the utility appeals a customer's declaration of inability to pay, it is required to notify both the local welfare and community action agencies, but nowhere in this section must the utility notify the customer of such an appeal. One can only assume that the customer would like to be notified.

Section F.2.a.

If section D.1.a. and b. are not to be applied by the utilities then why are these subsections not located in section F.2.a. rather than only being referenced. Instead, subsections a. and b. of D.1. are located in a section of the rule prescribing a course of conduct by the utility.

It can only be concluded that these subsections are to be applied as thresholds to the customer declaring to the utility an inability to pay. Section F.2.a. would require only that the Commission confirm satisfactory completion of these requirements by the utility. If a contrary interpretation was intended, section F.2.a. should contain in full subsections a. and b. of D.1. rather than referencing them.

Section G.7.

This section prescribes the procedure to be followed where there is an inability to reach a mutually agreeable payment schedule. It does so by referencing section F. The effective result is to create an additional 30 day Commission review period where both the ability of the customer to pay and the failure to reach a payment agreement are appealed. The lengthy delay inherent in taking two appeals to the Commission is unnecessary and inefficient. Both matters could easily be consolidated for concurrent review and disposition.

If section G.7. incorporates section F. in toto, then the second sentence of the former section is surplusage.

Section G.8.

The first sentence prohibits disconnection pending resolution of an appeal regarding a payment schedule. However, section G.7. references section F. regarding the appellate procedure to be followed. As mentioned earlier, section F.4. prohibits disconnection before expiration of the 30 day review period even if an appeal is resolved prior to the end of the period. MP&L views these sections and the procedures to be followed regarding disconnections as totally inconsistent in failing to prescribe a clear and concise course of conduct.

Sections E.2. and H.

The interfacing of these two sections can most aptly be described as being on a mery-go-round that never stops. Where the requirements of section E.2. are followed and no response is received from the customer the utility is then referenced to section H. which prescribes a series of on-site visits. The problem arises in section H.2. If customer contact is made, this section references sections E. and F. to be followed by the utility. By following section E.2. and the customer once again failing to respond to the utility, the utility once again is referenced to section H. This interpretation is not a limited or hypothetical possibility, but exactly what is required on the face of the rule. Obviously, the best course of action for a delinquent customer to take is to neither acknowledge nor respond to contacts by or notices delivered by the utility. It may be possible to presume that only one working hour visit and one non-business hour visit is necessary, but the rule can readily be read to require the course action outlined above.

LEGAL REQUIREMENTS

In several sections of the proposed rule third party designates are purportedly granted authority to declare the customer's inability to pay and negotiate a payment schedule. MP&L cannot accept as being legally binding anything less than the customer's consent and execution of a payment schedule. Proof of authority to contract for the benefit of another, such as a power of attorney or guardianship papers, will, of course, be satisfactory proof. MP&L will also disclaim liability for inadvertent and eroneous third party designations and declarations of inability to pay filed by third parties.

SUBSTANTIAL CHANGE

The Chief Hearing Examiner concluded in his report that the rule as finally proposed by the PSC was not substantially different from the rule proposed at the public hearing. He bases his conclusion on the novel theory that the basic or primary thrust of the rule had not changed. If this decision is to be taken as precedent, then it appears extremely remote that any proposed rule will be rejected for substantial change. The primary thrust of a proposed rule will never change or if it does the responsible agency would surely be expected to voluntarily withdraw the proposed rule and initiate a new rules hearing. According to the Chief Hearing Examiner, if adequate notice was given so that all interested persons could participate and the agency staff raised a sufficient number of issues, even though such issues were not detailed in the proposed rule, 9 MCAR $\S$2.111 would never operate to cause a rule to be rejected for substantial change.

MP&L submits that it is the language of the rule which is at least equally as important as the purpose of the rule. Admittedly, a wide range of issues affecting a cold weather disconnection rule were debated, discussed, criticized and praised at the hearings and during the comment period. Neither the PSC nor the Chief Hearing Examiner should be allowed to use the free exchange of ideas as justification for approving of a rule which contains substantive changes which were neither discussed nor anticipated by the affected parties. The newly created obligations, restrictions and procedures found in the final proposed rule has resulted in a rule which is fundamentally different from the originally proposed rule.

The best proof of these allegations is found in the first two sections of these Comments, which in MP&L's opinion contains a laundry list of inconsistent and ambiguous terms, time periods and sections. MP&L assures the Attorney General that if the original rule was vaguely similar or if there had been any warning that a final rule in the present form might be proposed, these questions would have been raised long ago.

As further evidence of substantial change, the proposed rule would now require a utility to submit a minimum of six different easy-to-understand forms, notices and letters for Commission approval. Rather than prescribe the contents and format of such notices, the Commission concluded that the utilities should be allowed the flexibility to tailor such notices to best meet the needs of their customers.

A utility would be required to deliver to the delinquent customer on at least two separate occasions a "Notice of Customer Rights and Possible Assistance". To provide an adequate notice detailing all of the customer's rights under this rule would necessitate delivering the rule in toto to the customer. If this was all that was required to satisfy this requirement MP&L would not object so strenuously. However, it seems unlikely that a rule as complex and inconsistent as that submitted to the Attorney General would pass Commission review. MP&L estimates that an easy-to-understand version of a customer's rights, without allowing for references, would result in a notice twice as long as the rule. At the public hearings held on this rule, it took a staff member approximately 15-20 minutes to briefly explain the original rule. It is no wonder that the Commission does not wish to reconvene the hearings or draft the Notice of Customers' Rights. To explain this rule to the general public and the utilities is a task very few would do willingly.

For the aforementioned reasons Minnesota Power & Light Company respectfully requests that the cold weather disconnection rule be disapproved and returned to the agency. MP&L will extend its voluntary disconnection moratorium so that if this rule should be disapproved and returned to the PSC for further modification no customer will be disconnected pending adoption of such a rule.

MINNESOTA POWER & LIGHT COMPANY

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BEFORE THE MINNESOTA PUBLIC SERVICE COMMISSION

Katherine E. Sasseville	Chairperson
Roger L. Hanson	Commissioner
Richard J. Parish	Commissioner
Juanita R. Satterlee	Commissioner
Lillian Warren-Lazenberry	Commissioner

In the matter of the adoption of a rule of the Public Service Commission governing disconnection of service to gas and electric utility customers during periods of cold weather and repeal of PSC 299 cold weather rule

DOCKET NO. A-8117-27

MEMORANDUM TO ATTORNEY GENERAL
RE: FORM AND LEGALITY

The Minnesota Recipients Alliance has been an active participant in the above-entitled rulemaking proceeding on behalf of its members, who are present and former welfare recipients. The importance of this proceeding to many Minnesotans can be seen by the large number of persons attending and testifying at the public hearings. Representatives of utility companies were also present to listen to the testimony and to testify themselves. Additionally, citizen groups and utilities submitted written comments for the record. All of this has combined to form a very large record, in which the positions of all interested persons have been extensively and thoroughly developed. It is difficult to imagine a more exhaustive record than the one in this case.

The Commission has spent a great deal of time and effort in analyzing the record and in balancing the various interests presented. The result is reflected in this rule. This rule represents a compromise between the positions taken by utilities and by organized citizen groups, with neither side being totally satisfied. However, this is the nature of the rulemaking process. The process has worked well, and has produced a good, workable compromise rule which fairly balances the various interests involved. This rule should be approved, so that the utility consumers of Minnesota will have the protection shown by the record to be need so desperately.

NEED FOR FURTHER HEARINGS

The rules of the Attorney General, Atty Gen 304, provide that a further hearing must be held if the rule as adopted by the agency goes to another subject matter or is fundamentally different than the proposed rule on which hearings were held. This review is similar to that done by the Chief Hearing Examiner.

This rule clearly does not go to a new subject matter. The proposed rule set out a scheme to insure that customers are protected against terminations of necessary utility service during the winter months. The rule as adopted goes to exactly the same subject matter.

Although a number of changes have been made, the rule as adopted is not fundamentally different than the proposed rule. The basic framework of the rule remains the same as the proposed rule. The protection against shutoffs and the payment plan provisions are the two major provisions. Within this framework, many details have been changed. The protection is now based upon the time of the year instead of upon predicted temperature on a given day, PSC 299 D. The rule was narrowed to give protection only to those unable to pay, PSC 299 D (1), or those current on payment plans, PSC 299 D (2). Payment plans were made more flexible, PSC 299 G. A provision was added dealing with reconnections of service to customers whose service remains disconnected on October 15, PSC 299 I. And, other changes were also made. But, with all of these changes, the basic framework and intention of the rule remains the same; to protect people from life threatening terminations of utility service during cold weather.

The Chief Hearing Examiner, in his review, reached the conclusion that new hearings should not be required, and that the rule as adopted does not go to a new subject matter, nor is the rule fundamentally different than the proposed rule.

It would be contrary to the policy behind the public hearing requirement of the APA and Atty Gen 304 to require additional hearings in this case. The reason for requiring additional hearings if a rule goes to a new subject matter or is fundamentally different than the proposed rule is to prevent an agency from circumventing the public comment requirement by making substantial changes after the record has been closed. The situation here is quite different. The changes made in this rule were the result of public comment, and were not made to avoid public comment. The change to a time-based rule rather than a temperature-based rule,

PSC 299 D, to increased flexibility of payment plans, PSC 299 I, and to deal with customers whose service remains disconnected as of October 15, PSC 299 I, all resulted from testimony of citizens. The inclusion of the ability to pay standard, PSC 299 D (1), having the Commission be responsible for the actual determination of ability to pay, PSC 299 F, and limitation of the options available to customers who are not current on a payment plan as of October 15, PSC 299 D (1) (a), all resulted from the testimony of utilities. The other changes also resulted from public testimony. To require additional hearings because of changes in a rule which resulted from testimony at previous hearings would severly diminish the effectiveness of public testimony. An agency would hesitate to adopt suggestions received at public hearings, if it would mean that the agency would have to go through the time and expense of additional hearings. This would be a serious blow to public participation in the rulemaking process.

LEGALTIY OF THE RULE

Rules of the Attorney General, Atty Gen 305 (b) (2) provide that a rule must be disapproved if it:

> (aa) Exceeds the statutory authority conferred or the required conditions have not been met.
> (bb) Conflicts with the governing statute or other revelant law.
> (cc) Has no reasonable relationship to statutory purposes.
> (dd) Is unconstitutional, arbitrary or unreasonable.

1. This rule does not exceed stautuory authority. The Commission has three broad grants of rulemaking authority, M.S.A. §216A.05 (1978 Supp.), which describes the functions and powers of the Commission, M.S.A. §216B.08 (1978 Supp.), which describes the duties of the Commission, and M.S.A. §216B.09 (1978 Supp.), which gives the Commission authority to specify standards, classifications, regulations, and practices of utilities. M.S.A. Chapter 216B (1978 Supp.) in general, and M.S.A. 216B.01 (1978 Supp.) specifically, set out the public policy behind regulation of utilities. One of the common threads running through Chapter 216B is that the Commission is supposed to consider the health and safety of customers. Given the broad grant of rulemaking authority, and the mandate to consider health and safety, there can be little doubt of the Commission's authority to promulgate this rule.

There are no conditions precedent to Commission rulemaking, so this provision is not applicable.

2. This rule does not conflict with the governing statute or other relevant law. There are no state statutes governing terminations of utility service with which the rule could conflict. There is other relevant law in the area. The Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601, §§115(g) and 304(e) require the Commission to consider the issue of utility terminations, and to prohibit them when they would be especially dangerous to health. The Commission has determined that terminations of utility service to customers unable to pay, between October 15 and April 15 are especially dangerous to health.

Minnesota Gas Company (Minnegasco) has previously argued that the proposed rule would violate statutory provisions prohibiting discriminatory rates, M.S.A. §§216B.06 and 216B.03 (1978 Supp.), because some customers would "take advantage" of the rule, while others pay in full on time. This argument was properly rejected by the Hearing Examiner. This rule will not result in one customer of a class being charged a different rate than other customers in the same class. The payment plan provisions, together with the possibility of a shutt off after April 15 combine to insure that the bills will be paid, as much as the payment of any bill can be insured.
Governing statutes and other relevant law do not conflict with this rule, rather they support it.

3. This rule definitely has a reasonable relationship to statutory purposes. Regulation of public utilities is done to benefit the customers. If it were not for customers, utilities would not be needed. Throughout Chapter 216B, two interests are balanced, the present needs of customers versus the future needs of customers (which can only be insured by giving the utilities sufficient revenue to remain operating). This rule also reflects that balance. The need of consumers to receive necessary service is protected by prohibiting shut offs to those unable to pay high winter bills, and the need of utilities for revenue is met through the payment plan provisions and through restriction on the availability

of the procedure to declare inability to pay.

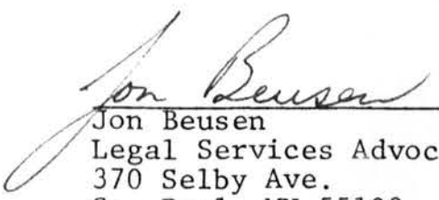
This rule bears a strong relationship to statutory purposes.

4. This rule is not unconstitutional, arbitrary, or unreasonable. The record clealy shows the necessity and reasonableness. There was extensive testimony concerning the hardships created by rising utility costs and by winter shut offs of utility service. After listening to this testimony, the Hearing Examiner and the Commission both agreed that a rule with the essential provisions of this rule is necessary and reasonable.

In the past, Minnegasco has argued that the proposed rule is unconstitutional as a confiscation of their property without compensation, and as a violation of equal protection. These arguments were properly rejected by the Hearing Examiner. In the long run , the utilities will not lose anything, as a result of this rule. The record demonstrates that any increases in arrearages or bad debts will be slight, and even these slight increases will not be lost. They will be rolled into the rates. So, nothing will be confiscated. The equal protection argument is likewise without merit. There are essential differences between the regulated utilities subject to the rule, and other businesses not subject to the rule, such as oil suppliers, nonregulated utilities, and other suppliers of necessities. Regulated utilities are profit making companies that have been granted a statutory monoply. Certain responsibilities come along with the opportunity to make a profit as a monoply, and the public must be protected from abuse of this monoply to make more profits. This rule defines one of those responsibilities, and provides one of those protections. Suppliers of oil and other necessities do not have a statutorily created monoply, and competition provides the public some protection from abuse. Nonregulated utilities (cooperatives and municipal utilities) are not profit making companies and are owned by the customers, so the incentive to abuse customers is not as strong. These differences provide a rational basis upon which to treat these businesses differently.

This rule does not meet any of the criteria which would require additional hearings, or which would require disapproval of the rule. It should be approved as soon as possible , so that the citizens of Minnesota can have the protection they have demonstrated is so badly needed.

Submitted by:



Jon Beusen
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St. Paul, MN 55102
Counsel for Minnesota Recipients Alliance

RECEIVED
JAN 1 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Otter Tail
POWER COMPANY

215 South Cascade Street
Fergus Falls, Minnesota 56537
Phone 218-736-5411

January 9, 1980

RECEIVED
JAN 1 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Ms. Jo Ann Hinderacker
Special Assistant Attorney General
Room G 2550
Sherburne Avenue
St. Paul, MN 55155

Dear Ms. Hinderacker:

Re: IN THE MATTER OF THE ADOPTION OF A RULE OF THE PUBLIC SERVICE COMMISSION GOVERNING DISCONNECTION OF SERVICE TO GAS AND ELECTRIC UTILITY CUSTOMERS DURING PERIODS OF COLD WEATHER AND REPEAL OF PSC 299 COLD WEATHER RULE

In view of the substantial changes made in the Minnesota Public Service Commission's rule, between the time of the initial rule proposal as it was presented for hearing and the rule as it has now been submitted to the Attorney General's office, we are taking this opportunity to comment upon the rule as submitted to your office. The following comments are submitted on behalf of Otter Tail Power Company for consideration in your review of the proposed Cold Weather Rule of the PSC.

1. The proposed rule change is too cumbersome and complex to be fairly administered. The present Cold Weather Rule, PSC 299, is straight forward, easily administered, and has adequately protected consumers from unreasonable disconnections.

2. The rule as developed represents substantial changes from the rule submitted for hearing. Such changes to the rule have the potential to effect a wrongful depravation of a property interest for the utilities; i.e., cash working capital; and therefore due process would provide a basic right to a hearing of some kind on the substantial changes to the rule.

3. The rule is discriminatory in that it applies to only one class of customers of a utility, while expenses of administration and resulting losses through bad debts would be spread over all classes of customers.

4. The proposed rule is for the protection of residential utility customers during periods of cold weather, and as such the Commission, through its rule, imposes duties and responsibilities upon the utility and also seeks to impose some requirements for action upon the consumer. Although the Public Service Commission has no inherent powers, it cites as its authority for imposing the proposed Cold Weather Rule several liberally construed statutory provisions; however, there does not appear to be any authority cited for those portions of the rule requiring cooperation of consumers in the Cold Weather Rule process.

Otter Tail
POWER COMPANY

5. Although the rule leaves little doubt that a cold weather moratorium will be in effect in Minnesota from October 15 to April 15, the provisions outlining procedure and administration of the rule are vague and subject to numerous interpretations and qualifications.

Your consideration in reviewing this matter of the above points and your review of the proposed rule are greatly appreciated.

Sincerely yours,

Jay D. Myster
General Attorney
jks

Mercer Bond
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CERTIFICATE OF COMMISSION'S
ADOPTION OF REVISIONS

I, Christopher K. Sandberg, do hereby certify that I am Acting Executive Secretary to the Public Service Commission, a commission duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and accurate copy of a resolution adopted at a meeting of the Public Service Commission, duly and properly called and held on the 31st day of December, 1979; that a quorum was present at said meeting, that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> Resolved, that the Findings of Fact, Conclusions, and Order Adopting Rule relating to the proposed Cold Weather Rule, 4MCAR Sec. 3.299, be and they hereby are approved and adopted, as revised in accordance with the Report, Order, and Memorandum of the Chief Hearing Examiner, dated December 28, 1979, and that the revised Order together with the necessary supporting documents, be submitted to the Attorney General for review under M.S. § 15.0412, Subd. 4, pursuant to authority vested in us by M.S. Chapter 216B.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 31st day of December, 1979.

Jeanita R. Patterlee

Christopher K. Sandberg
Acting Executive Secretary

CERTIFICATE OF COMMISSION'S
ADOPTION OF RULES RESOLUTION

I, Mary L. Harty, do hereby certify that I am Executive Secretary to the Public Service Commission, a commission duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and accurate copy of a resolution adopted at a meeting of the Public Service Commission, duly and properly called and held on the 27th day of December, 1979; that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> Resolved, that the Findings of Fact, Conclusions, and Order Adopting Rule relating to the proposed Cold Weather Rule, 4MCAR Sec. 3.299, be and they hereby are approved and adopted, pursuant to authority vested in us by M.S. Secs. 216B.04, 216B.08, 216B.09, and 216B.23, Subd. 2, and that Mary L. Harty, Executive Secretary to the Commission, be and hereby is authorized to sign an Order adopting this rule.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 27th day of December, 1979.

Katherine D. Sauerville

M. L. Harty
Mary L. Harty
Executive Secretary

CERTIFICATE OF COMMISSION'S

AUTHORIZING RESOLUTION

I, Mary L. Harty, do hereby certify that I am the Executive Secretary of the Minnesota Public Service Commission, a commission duly authorized under the laws of the State of Minnesota, and that at a meeting of the Public Service Commission duly and properly called and held on the 29th day of August, 1979, the Public Service Commission directed Mary L. Harty to call a hearing for the purpose of promulgating rules governing disconnection of service to gas and electric utility customers during periods of cold weather and repeal of PSC 299 Cold Weather Rule, as well as perform any and all acts incidental thereto, including but not limited to signing an Order for Hearing and Notice of Hearing.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 2nd day of January, 1980.

M. L. Harty

MARY L. HARTY
EXECUTIVE SECRETARY

COMMISSIONER