

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 798

4/5 Gorske requested to send Notice of Sub. to AG, 4/5 rec'd.

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 3-24-82
DATE FOR REVIEW 4-5-82
DATE DUE 4-10-82

Adopted w/a hearing ✓
Adopted w/o hearing
Temporary rule

Approved ____ Disapproved ____ Returned to Agency ____

Resubmitted ____ Due ____
Approved ____ Disapproved ____ Returned to Agency ____

Date filed w/Secretary of State ____ Revisor approved 3/29/82 disapproved ____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 3.16.82 Date combined with F. of F

✓ Notice of Intent to Solicit Outside Opinion SR. 11.10.80 + comments

✓ Order for rulemaking
11.4.81 date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
10.1.81 At least 30 days prior to hearing/~~adoption~~

✓ Mailing list Certificate

✓ Publication in State Register
10.5.81 At least 30 days prior to hearing/~~adoption~~

✓ Hearing Examiner's Report 1.11.82

✓ Chief Hearing Examiner's Report(s)
1.13.82 Approving H.E.'s Report
3.23.82 Approving agency action

✓ Agency's Findings of Fact combined with Order Adopting

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

✓ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

? Notice of Submission to the Attorney General
contains mistatement re review period

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : CLYDE E. ALLEN, JR.
Commissioner of Revenue

DATE: 4/9/82

ATTN : DOROTHY A. McCLUNG, Legal Research Div. Director

FROM : TED A. MARTINEZ
Special Assistant
Attorney General

PHONE: 296-0315

SUBJECT: In the Matter of the Proposed Adoption of Rules of the State Department of Revenue Governing the Valuation and Assessment of Electric, Gas Distribution, and Pipeline Companies (Utility Companies)

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. Please 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 stamps of the Attorney General and Secretary of State;

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

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

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

TAM:drw
Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

DORSEY, WINDHORST, HANNAFORD, WHITNEY & HALLADAY

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March 26, 1982

JOHN W. WINDHORST, JR. , P.A.
(612) 340-2645

RECEIVED
MAR 29 1982
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Ms. Judith Wehrwein
Office of the Attorney General
204 State Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

Re: In the Matter of the Proposed Adoption of Rules of the State of Minnesota Department of Revenue Governing the Valuation and Assessment of Electric, Gas Distribution, and Pipeline Companies (Utility Companies)

Dear Ms. Wehrwein:

In our telephone conversation, I indicated that we represent a client with an interest in the above-entitled matter. In particular, our client is interested in the amendments of the existing regulations that appear at the following pages and lines of the proposed regulations as submitted to your office by the Department of Revenue on March 24, 1982:

Page 14, lines 15-20
Page 15, lines 19-23
Page 20, lines 16-21
Page 22, lines 25-30
Page 23, lines 10-16
Page 24, lines 7-8 & lines 33-36
Page 25, lines 7-15

In general, all of these provisions relate to the computation of the so-called "average cost per kilowatt adjustment." Our client supports the amendments as proposed by the Department of Revenue. I understand that you will notify me if any other person submits a comment to your office in which the adoption of these amendments is opposed or any modifications of these amendments are proposed.

March 26, 1982

Thank you very much for your cooperation.

Very truly yours,

John W. Windhorst, Jr.

JWW,Jr.:cb

RECEIVED
MAR 17 1982
ADMINISTRATIVE HEARINGS

Department of Revenue

AG copy

Adopted Rules Governing Valuation and Assessment of Electric, Gas Distribution, and Pipeline Companies (Utility Companies)

Rules as Adopted

Chapter One: Valuation and Assessment of Electric, Gas Distribution, and Pipeline Companies (Utility Companies)

13 MCAR S 1.0001 Introduction. On October 19, 1973, the Minnesota Supreme Court in Independent School District No. 99, et al. v. Commissioner of Taxation, 297 Minn. 378, ruled that in estimating the market value of utility properties for ad valorem tax purposes, the assessing authorities must consider every element and factor affecting market value. The assessment formula used to value operating utility property since 1962, based solely on the original cost less limited depreciation and commonly known as the "Hatfield Formula," was thus invalidated as a rule of general application.

These rules are promulgated to fill that void and reflect the manner in which the value of utility property will be estimated by utilizing data relating to the cost of the property and the earnings of the company owning or utilizing the property.

Since the Commissioner of Revenue is by statute the assessor of some of the utility property in the State of Minnesota and has supervisory powers over all assessments of property, and may raise or lower values pursuant to Minn. Stat. S 270.11, he will estimate the valuation of the entire system of a utility company operating within the state. The entire system will be valued as a unit instead of valuing the component parts, and the resulting valuation will be "allocated" or assigned to each state in which the utility company operates. Finally, by the process of apportionment, the portion allocated to Minnesota will be distributed to the various taxing districts within the state. Most of the data used in the valuation, allocation, and apportionment process will be drawn from reports submitted to

the Department of Revenue by the utility companies. These reports will include Minnesota Department of Revenue Annual Utility Reports (UTL Forms), Annual Reports to the Federal Energy Regulatory Commission and Annual Reports to the Interstate Commerce Commission. Periodic examinations of the supporting data for these reports will be made by the Department of Revenue.

The methods, procedures, indicators of value, capitalization rates, weighting percents, and allocation factors will be used as described in 13 MCAR SS 1.0003-1.0006 for 1982 and subsequent years, or until, in the opinion of the Commissioner of Revenue, different conditions justify a change.

As in all property valuations the Commissioner of Revenue reserves the right to exercise his judgment whenever the circumstances of a valuation estimate dictate the need for it.

13 MCAR S 1.0002 Definitions. As used in this chapter, the following words, terms and phrases shall have the meanings given to them by this rule, except where the context clearly indicates a different meaning.

A. Allocation. "Allocation" means the process of dividing the unit value of a utility company among the states in which the utility operates.

B. Apportionment. "Apportionment" means the process of distributing that portion of the utility company's unit value which has been allocated to Minnesota to the various taxing districts in which the utility company operates.

C. Book depreciation. "Book depreciation" means the depreciation shown by a utility company on its corporate books, and allowed the company by various regulatory agencies.

D. Capitalization rate. "Capitalization rate" means the relationship of income to capital investment or value, expressed as a percentage.

E. Electric company. "Electric company" means any company engaged in the generation, transmission, or distribution of electric power, excluding cooperatives and municipal corporations.

F. Gas distribution company. "Gas distribution company" means any company engaged in the distribution of natural or synthetic gas, excluding the cooperatives and municipal corporations.

G. Installed capacity. "Installed capacity" means the number of kilowatts a power plant is capable of producing as shown by the nameplates affixed to the generators by the manufacturer.

H. Integrated company. "Integrated company" means any company engaged in two or more utility operations within Minnesota, such as electric distribution and gas distribution, within the framework of one corporate structure.

I. Major generating plant. "Major generating plant" means any steam-electric power plant capable of generating 25,000 KW (kilowatts) or more; or any hydro-electric, internal combustion, or gas turbine power plant capable of generating 10,000 KW or more.

J. Net operating earnings. "Net operating earnings" means earnings from the system plant of the utility after the deduction of operating expenses, depreciation, and taxes, but before any deduction for interest.

K. Non-formula assessed property. "Non-formula assessed property" means property of a utility which is valued by the local or county assessor rather than by the Commissioner of Revenue.

L. Operating property. "Operating property" means any property, owned or leased, except land that is directly associated with the generation, transmission, or distribution of electricity, natural gas, gasoline, petroleum products, or crude oil. Examples of operating property include, but are not limited to, substations, transmission and distribution lines, generating plants, and pipelines. Land, garages, warehouses, office buildings, pole yards, radio communication towers, and parking lots are examples of non-operating property.

M. Pipeline company. "Pipeline company" means any company engaged in the transmission of natural gas, gasoline, petroleum

products, or crude oil via a fixed line of pipes.

~~N. Standard factor. "Standard factor" means the number used as the basis of comparison when measuring the degree or amount of obsolescence inherent in the property (generating plant) being valued.~~

~~O.~~ N. System plant. "System plant" means the total tangible property, real and personal, of a company which is used in its utility operations in all states in which it operates.

~~P.~~ O. Throughput. "Throughput" means the amount of product measured in barrels, gallons, or cubic feet which passes through a pipeline.

~~Q.~~ P. Unit value. "Unit value" means the value of the system plant of a utility company taken as a whole without any regard to the value of its component parts.

~~R.~~ Q. Weighted pipe line miles. "Weighted pipe line miles" means the product obtained by multiplying the number of miles of each size of a pipeline by the diameter in inches of each size. Example: a 6 mile pipeline 3 miles of which is 10 inches in diameter and 3 miles of which is 30 inches in diameter would have a weighted miles product of 120.

13 MCAR S 1.0003 Valuation.

A. General. Because of the unique character of public utility companies, such as being subject to stringent government regulations over operations and earnings, the traditional approaches to valuation estimates of property (cost, capitalized income and market) must be modified when utility property is valued. Consequently, for the 1982 and subsequent assessment years, until economic and technological factors dictate a change, the value of utility company property will be estimated in the manner provided in this chapter.

B. Market approach. Market value implies a price for which an entire public utility enterprise might reasonably change hands between willing and informed buyers and sellers. The term presupposes a market of normal activity, no urgency to buy or sell on the part of either the buyer or seller, and continued operation of the utility as a single entity. Public utility

property is seldom transferred as a whole unit under these circumstances. Consequently, after consideration of this approach, it has been decided that valuation of utility properties by this approach is speculative and unreliable and will not be employed as a method of valuation for utility property at this time.

C. Cost approach. The cost factor ~~that will~~ to be considered in the utility valuation formula is the original cost less depreciation of the system plant, ~~and~~ plus improvements to the system plant, plus the original cost of construction work in progress on the assessment date. The original cost of any leased operating property used by the utility must be reported to the commissioner in conjunction with the annual utility report. If the original cost of the leased operating property is not available, the commissioner shall make an estimate of the cost by capitalizing the lease payments. Depreciation will not be allowed on construction work in progress. Depreciation will be allowed as a deduction from cost in the amount allowed on the accounting records of the utility company, as such records are required to be maintained by the appropriate regulatory agency.

Depreciation, however, shall not exceed the prescribed percentage of cost: for electric companies, 19 percent; for gas distribution companies, 47.5 percent; and for pipeline companies, 47.5 percent.

A modification to the cost approach to value will be considered by the commissioner when valuing electric utility property. The original cost of an electric utility's major generating plants will be increased if the cost of the plant falls below a certain standard. The standard to be used will be a national average of the cost per kilowatt of installed capacity. The cost per kilowatt of installed capacity is the total construction cost of the generating plant divided by the number of kilowatts the plant is capable of producing. The national average to be used will be computed by totaling the construction costs, excluding the cost of land, for major generating plants within the 48 contiguous United States. The

total cost of the plants will be divided by the total generating capacity of the same plants to arrive at an average cost per kilowatt of installed capacity. A separate average will be computed for each ~~of the following types~~ type of ~~plants~~ plant: gas turbine, hydro-electric, and steam-electric. The plants used in the calculation will exclude federally constructed, multi-purpose projects, and nuclear electric generating plants.

The information used to compute the average will be drawn from the latest issues of the following United States Department of Energy publications: Hydro-Electric Plant Construction Cost and Annual Production Expenses; Steam-Electric Plant Construction Cost and Annual Production Expenses; and Gas Turbine Electric Plant Construction Cost and Annual Production Expenses. The plants which will be used in the computation of the national average will be those plants built during the most recent 15 years included in ~~the above named~~ these publications.

An example of this computation of the national average cost per kilowatt of installed capacity is as follows:

Steam-Electric Generating Plants

Plant	Plant Cost Excluding Land	Plant Capacity
A	$ 14,000,000	100,000 kw
B	13,000,000	90,000 kw
C	17,000,000	110,000 kw
D	14,500,000	80,000 kw
E	18,000,000	120,000 kw
F	10,000,000	70,000 kw
G	19,000,000	130,000 kw
H	9,000,000	60,000 kw
I	20,000,000	140,000 kw
J	8,000,000	50,000 kw
	$142,500,000	950,000 kw

Total plant cost ($142,500,000) divided by total plant capacity (950,000 kw) equals $150 average cost per kilowatt of installed capacity.

The national average cost per kilowatt of installed capacity will be compared to the specific cost per kilowatt of installed capacity for each of the major generating plants owned by the utility being valued. If the national average cost per kilowatt is greater than the subject plant cost, the subject plant will have additional dollars incorporated into its cost in order to raise its cost per kilowatt to the national average. If the subject plant's cost per kilowatt equals or exceeds the national average, no cost will be added.

The following example illustrates this procedure:

XYZ Utility

Steam-Electric Generating Plants

1.	Plant	#1	#2
2.	Installed Capacity	100,000 kw	50,000 kw
3.	Year in Service	1970	1950
4.	Cost of Plant (Exclusive of Land)	$15,200,000	$5,000,000
5.	Specific Plant Cost per kw	$152	$100
6.	National Average Cost per kw	$150	$150
7.	Deficiency	none	$ 50
8.	Additional Cost (Line 7 x Line 2)	none	$2,500,000

This additional cost to be added to the original cost of the specific plant will be reduced by ~~two factors~~ an allowance for pollution control equipment and an allowance for obsolescence.

The allowance for pollution control equipment will be computed annually by totaling the construction costs, exclusive of land, of all major generating plants within Minnesota by type of plant. A total will also be made of the cost of the equipment in these plants which has been approved for tax exempt status in accordance with Minn. Stat. S 272.02, subd. 1, clause (15). This total will also be computed by type of plant. The

total of the approved pollution control equipment will be divided by the total construction cost, exclusive of land, of the plants in order to calculate a percentage. This percentage will be the ratio of dollars spent for pollution control equipment to total dollars spent to construct a specific type of power plant. This percentage will then be used to reduce the gross additional cost to be added to the cost of the specific generating plant~~, as computed above~~. An example of this process is as follows:

Steam-Electric Plants Within Minnesota

Plant	Plant Cost Excluding Land	Cost of Approved Pollution Control Equipment
A	$15,200,000	$1,500,000
B	10,000,000	1,000,000
C	5,000,000	700,000
D	20,000,000	2,000,000
E	16,500,000	1,470,000
	$66,700,000	$6,670,000

Total cost of approved pollution control equipment ($6,670,000) divided by total plant cost ($66,700,000) equals 10% percent ratio of pollution control equipment expenditures to total expenditures for generating plant construction.

XYZ Utility

Steam-Electric Plant #2

1. Additional Cost Due to Computation of Average Cost per kw of Installed Capacity	$2,500,000
2. 10% Allowance for Pollution Control Equipment	250,000
3. Additional Cost to be Added after Adjustment for Pollution Control Equipment	$2,250,000

The allowance for obsolescence which will be applied to the additional plant construction cost will be computed annually for

hydro-electric and steam-electric generating plants. The information needed to compute the obsolescence factors will be drawn from the same publications that are used to compute the national average cost per kilowatt of installed capacity figure. Gas turbine plants will not have any obsolescence allowance applied to the additional cost added to the plants.

The obsolescence allowance for hydro-electric plants will be calculated through the use of a "plant factor." The plant factor is computed by dividing the number of kilowatt hours a generating plant actually produced in a year by the number of kilowatt hours the plant was capable of producing. The plant factor is normally expressed as a percentage. The mathematical expression of this factor is: net generation (kwh) divided by annual installed capacity (hours in a year X installed capacity (kw)). A standard plant factor will be computed for hydro-electric plants by averaging the plant factors of the ten plants ~~within~~ with the highest plant factors in the 15 year study period ~~used to compute the average cost per kilowatt of installed capacity with the highest plant factor~~. This standard will then be compared to an average of the most recent three years' plant factor of the subject plant. The amount the subject plant deviates from the standard is the amount of obsolescence which will be applied to the added cost.

HE 20 at 9.11 for F2

An example of this obsolescence allowance computation is shown below.

Hydro-Electric Plants

Plant	Net Generation kwh (000)	Plant Capability kwh (000)	Plant Factor
A	400,150	755,000	53 %
B	300,040	577,000	52 %
C	250,000	480,000	52 %
D	600,000	1,250,000	48 %
E	896,000	1,600,000	56 %
F	700,000	1,400,000	50 %
G	507,000	975,000	52 %
H	450,000	1,000,000	45 %

I	376,000	800,000	47 %
J	810,000	1,800,000	45 %
		Average	50 %

XYZ Utility

Hydro-Electric Plant #4

Year	Net Generation kwh (000)	Plant Capability kwh (000)	Plant Factor
19XX	400,000	1,000,000	40 %
19XX	500,000	1,000,000	50 %
19XX	450,000	1,000,000	45 %
		Average	45 %

Hydro-electric plant #4 plant factor (45% percent) divided by standard plant factor (50% percent) equals 90% percent. Therefore, hydro-electric plant #4 deviates from the standard by 10% percent, or is 10% percent obsolete.

The obsolescence allowance for steam-electric generating plants will be computed annually using two indicators. The first indicator will be the plant factor. The plant factor for steam-electric plants will be computed and applied in the same manner as the computation specified for hydro-electric plants above. The only difference will be that the information used for the computation will be drawn from the latest Steam-Electric Plant Construction Cost and Annual Production Expenses publication rather than the Hydro-Electric Plant publication. Plant factors of the ten best steam-electric generating plants within the 15 year study period will be averaged. This average will be compared to the most recent three year average plant factor for the subject plant. The subject plant's deviation from the standard plant factor is the amount of indicated obsolescence.

The second indicator which will be used to compute an obsolescence allowance for steam-electric generating plants will be a thermal efficiency factor. The source of information for this computation will also be the latest issue of the United States Department of Energy's publication, Steam-Electric Plant

Construction Cost and Annual Production Expenses. Thermal efficiency for a generating plant is measured by the number of British thermal units (B.T.U.) required to produce one kilowatt hour. This efficiency rating can be obtained by dividing the number of kilowatt hours produced by a generating plant by the number of B.T.U.'s needed to produce this power. The number of B.T.U.'s used can be obtained by multiplying the units of fuel burned by the generating plant - tons of coal, gallons of oil, or cubic feet of gas - by the average B.T.U. content of the fuel unit. The standard thermal efficiency factor will be computed by averaging the thermal efficiency factor of the ten most efficient steam-electric generating plants within the 15 year study period used to compute the average cost per kilowatt of installed capacity. This standard thermal efficiency factor will then be compared to the thermal efficiency factor of the subject plant. The amount the subject plant deviates from the standard is the amount of obsolescence indicated by this factor.

The two obsolescence figures for the subject plant as indicated by both the plant and thermal efficiency factors will then be averaged. This resulting average is the obsolescence allowance which will be applied to the cost added to the subject plant as a result of the average cost per kilowatt of installed capacity computation. In no instance shall the original cost of a generating plant be reduced by an allowance for obsolescence unless its cost is increased through the use of the average cost per kilowatt of installed capacity computation.

The following examples illustrate the computation of the standard thermal efficiency factor; obsolescence indicated by the application of this factor to the subject plant; average obsolescence for steam-electric generating plants; and obsolescence allowance adjustment of the added cost due to the use of the average cost per kilowatt of installed capacity for the subject plant.

Steam-Electric Generating Plants

Plant	Net Generation kwh (Millions)	BTU's Used (Millions)	BTU's per kwh

A	2,000	18,400,000	9,200
B	6,000	53,400,000	8,900
C	8,000	72,000,000	9,000
D	5,000	45,500,000	9,100
E	3,000	26,400,000	8,800
F	1,000	9,000,000	9,000
G	4,000	36,600,000	9,150
H	9,000	80,550,000	8,950
I	7,000	61,950,000	8,850
J	5,000	45,250,000	9,050
		Average	9,000

XYZ Utility Company

Steam-Electric Plant #2

Net Generations kwh (Millions)	BTU's Used (Millions)	BTU's per kwh
2,000	21,600,000	10,800

Steam-electric plant #2 thermal efficiency factor (10,800 BTU's per kwh) divided by standard thermal efficiency factor (9,000 BTU's per kwh) equals 120% ~~percent~~. Therefore, steam-electric plant #2 deviates from the standard by 20% ~~percent~~ or is 20% ~~percent~~ obsolete.

XYZ Utility Company

Steam-Electric Plant #2

1. Obsolescence Indicated by Plant Factor	10%
2. Obsolescence Indicated by Thermal Efficiency Factor	20%
3. Obsolescence Allowance (Average of 1 and 2)	15%
4. Additional Cost due to Computation of Average Cost per kw of Installed Capacity	$2,500,000
5. 15% Obsolescence Allowance	375,000
6. Additional Cost to be Added after Adjustment for Obsolescence	$2,125,000

The cost indicator of value computed in accordance with ~~this rule~~ C. will be weighted for each type of utility company

as follows: electric companies, 85 percent; gas distribution companies, 75 percent; and pipeline companies, 75 percent.

The following example illustrates how the cost indicator of value would be computed for an electric company:

1. Utility Plant (Cost).....$200,000,000
2. Construction in Progress..... 5,500,000
3. Additional Value From Average Cost per ~~K.W.~~ kw Computation..... 2,000,000
4. Total Plant..... 207,500,000
5. Non-Depreciable Plant (Land, Intangibles, C.W.I.P.).....17,500,000
6. Depreciable Plant 190,000,000
7. Depreciation (Maximum 19%)..... 36,100,000
8. Total Cost Indicator of Value.....171,400,000

Any company for which a modification is made under 13 MCAR S 1.0003 C. due to the average cost per kilowatt adjustment being made to original cost of a plant or plants located in Minnesota shall have an alternative cost indicator computation made without giving effect to the average cost per kilowatt adjustment of such plant or plants. HE 38

D. Income approach to valuation. The income indicator of value will be estimated by weighting the net operating earnings of the utility company for the most recent three years as follows: most recent year, 40 percent; previous year, 35 percent; and final year, 25 percent. After considering, as far as possible, all conditions that may exist in the future that may affect the present annual return, including risk, life expectancy of the property, and cost of money, the capitalization rates used to compute value for the assessment will be: electric companies, ~~8.5~~ 8.75 percent; gas distribution companies, ~~8.75~~ 9.0 percent; and pipeline companies 9,9.25 percent. The income indicator of value computed in accordance with ~~this rule~~ D. will be weighted for each class of utility company as follows: electric companies, 15 percent; gas distribution companies, 25 percent; and pipeline companies, 25 percent. 28, HE 29 FoF 3

The following example illustrates how the income indicator of value would be computed for a pipeline company:

	1980	1981	1982
1. Net Operating Income	$ 468,000	$ 385,700	$ 450,000
2. Capitalized Income @ 9%	5,200,000	4,285,600	5,000,000
3. Weighting Factor	25%	35%	40%
4. Weighted Capitalized Income	1,300,000	1,500,000	2,000,000
5. Total Income Indicator of Value			4,800,000

E. Unit value computation. The unit value of the utility company will be the total of the weighted indicators of value.

The following is an example of the computation of the unit value for a pipeline company:

1. Cost Indicator of Value....$5,000,000 x 75% = $3,750,000
2. Income Indicator of Value..$4,800,000 x 25% = $1,200,000
3. Unit Value of Pipeline Company 100% $4,950,000

Any company whose cost indicator was modified under 13 MCAR S 1.0003 C. to reflect the average cost per kilowatt adjustment of a plant or plants located in Minnesota shall have an alternative unit value computation made without giving effect to the modification in respect of such plant or plants. HE 38

F. Valuation of utility property of cooperatives and other non-common carrier or non-regulated utilities. Cooperative associations and other types of utilities which do not operate in the traditional profit making mode, are not common carriers, or are non-regulated, will have their utility property valued on the basis of historical cost only. Depreciation will be allowed as a deduction from the historical cost in increments of 2.5 percent per year, but the maximum depreciation allowed shall not exceed 25 percent of the cost of the utility operating property. Additions to existing utility property will be depreciated 2.5 percent per year until they reach the 25 percent maximum. Retirements of utility property will be deducted from the cost basis at the appropriate depreciation level of the

retired property.

The following example illustrates this process for an electric cooperative association:

1.	Cost of Substation	$1,000,000
2.	Value 1st year @ 97.5%	975,000
3.	Value 2nd year @ 95%	950,000
4.	Value 3rd year @ 92.5%	925,000
5.	Value 4th year @ 90%	900,000
6.	Value 5th year @ 87.5%	875,000
7.	Value 6th year @ 85%	850,000
8.	Value 7th year @ 82.5%	825,000
9.	Value 8th year @ 80%	800,000
10.	Value 9th year @ 77.5%	775,000
11.	Value 10th year @ 75%	750,000
12.	Value 11th and succeeding years at 75%	750,000

G. Obsolescence allowances. The commissioner ~~may~~ shall adjust the value calculated ~~pursuant to this rule~~ under 13 MCAR S 1.0003 through the use of an obsolescence allowance. This allowance is intended to be used in order to recognize the effect the curtailment or termination of a pipeline's source of supply may have on its value. This allowance must be applied for each year at the time the utility files its Minnesota Department of Revenue Annual Utility Report. The utility's eligibility for this allowance will be based on the relevant facts for the specific valuation year. The application of an obsolescence allowance in any previous year shall have no bearing on the use of the allowance for a subsequent year. In order for a pipeline or a gas distribution company to be eligible for ~~such an~~ this allowance ~~they~~ it must meet certain criteria or standards. ~~These standards~~ are listed below. It is mandatory that standards 1., 2., and 3. be met by the utility. It is highly desirable that standards 4. and 5. also be met.

HE 33

HE 33 FoF 6

1. The utility ~~must adequately~~ shall demonstrate, ~~to the satisfaction of the commissioner,~~ that its source of supply for gas or oil will be terminated within the next ten years.

HE 33 FoF 4

2. The utility ~~must~~ shall be at, or above, the maximum

HE 33 FoF 5

depreciation allowance ~~as~~ specified by C.

3. The utility ~~must~~ shall (HE 33) have made application to the appropriate regulatory agency for increased depreciation allowances, and the application ~~must~~ shall (HE 33) not have been denied or rejected.

4. The utility must not have made any major capital expenditures within the last three years.

5. The utility must not have sold any long term bonds or signed any long term notes within the last three years.

If the utility has made major capital expenditures or entered into long term debt obligations within the last three years, a satisfactory explanation of the rationale for these actions ~~must~~ shall (HE 33) be made to the commissioner before an allowance for obsolescence will be granted.

The obsolescence allowances which may be applied to the utility's value will be calculated in the following manner:

Method 1. A ~~5~~ five year average of the utility's annual throughput will be calculated. The throughput for the assessment year will be compared to this average and a percentage calculated. This percentage will be applied to the cost indicator of value calculated ~~pursuant to~~ under C. in order to adjust the indicator for obsolescence. The adjusted cost indicator of value will be used in the calculation of the unit value ~~pursuant to~~ under E. The following is an example of this procedure:

Year	Throughput in Barrels
1977	1,200,000
1978	1,300,000
1979	1,150,000
1980	1,100,000
1981	1,050,000
	5,800,000 Total
	1,160,000 Average Throughput

1. 1982 Throughput 1,000,000 Barrels
2. Percent of 1982 Throughput to 5 Year Average Throughput 86%

3.	Cost Indicator of Value	$6,300,000
4.	Cost Indicator Adjusted for Obsolescence	$5,418,000

Method 2: The book depreciation shown on the books and accounts of the utility will be compared to the depreciation allowed by C. If the book depreciation exceeds the maximum depreciation allowance, 50% percent of the excess depreciation will be used in the calculation of the cost indicator of value. An example of this calculation is as follows:

1.	Book Depreciation	$6,000,000
2.	Maximum Allowable Depreciation	4,750,000
3.	Excess Depreciation	1,250,000
4.	50% of Excess Depreciation	$ 625,000
5.	Utility Plant	$11,000,000
6.	Construction Work in Progress	50,000
7.	Total Plant	11,050,000
8.	Non-Depreciable Plant (Land, CWIP)	1,050,000
9.	Depreciable Plant	10,000,000
10.	Depreciation (Maximum 47.5%)	4,750,000
11.	Obsolescence Allowance	625,000
12.	Cost Indicator of Value	5,675,000

Method 3. The income indicator of value computed in accordance with D. will be calculated by capitalizing the utility's 3 three-year weighted net operating earnings for a specific term of years rather than into perpetuity. The term of years to be used will be the number of years remaining until the expected expiration of the utility's source of supply for product (oil, gas), or the number of years remaining until the utility's major assets (pipeline, pump stations, storage tanks, and similar assets) are fully depreciated, whichever is greater. An example of this capitalization process is as follows:

		1979	1980	1981
1.	Net Operating Earnings	$1,320,000	$1,000,000	$800,000

2. Weighting	25%	35%	40%
3. Weighted Net Operating Earnings	$330,000	$350,000	$320,000
4. Total Weighted Net Operating Earnings		$1,000,000	
5. Terms of years until major assets are fully depreciated			8
6. Capitalization rate pursuant to 13 MCAR S 1.0003 D.			9%
7. Capitalization rate converted to term of 8 years			18.0674%
8. Capitalized Income/Income Indicator of Value			$5,534,831

The commissioner shall apply to the valuation process whichever of the three obsolescence methods is most appropriate in order to equitably recognize the effect of obsolescence on the utility's value.

H. Retirements. Utility operating property may be retired from the utility system while still in place if certain criteria are met:

1. The property must be physically disconnected from the utility system. In the case of electrical plants, the disconnection or dismantling of wires, cables, connectors, or transformers would constitute physical disconnection. In the case of pipelines, the disconnection of pipes, valves, or fittings would be evidence of physical disconnections.

2. An affidavit of retirement should be filed by the utility with the commissioner at least 30 days prior to the assessment date. This affidavit ~~should~~ shall indicate the facility being retired and the date it was taken out of service. HE 34 FOF 7

The utility should make every effort to inform the commissioner of pending major retirements. The commissioner in turn shall notify the county assessor of impending major retirements as soon as this information becomes available to the department.

Utility property which is retired in place shall continue

to be taxed for ad valorem purposes. However, its market value shall not be determined on the basis of its value as utility operating property.

If a utility should choose to temporarily retire a facility pending the development of an alternate fuel, greater demand, increased source of supply, or ~~some other~~ another valid reason, the cost of this facility must be transferred to the appropriate regulatory agency's account entitled "Held for Future Use." Standby facilities will not be considered to be temporarily retired unless their costs are carried in this account. Temporarily retired utility facilities will be valued taking into account a number of factors including: age of the facility, type of facility, amount of maintenance and additional costs needed to restore the facility to operational status, length of retirement, and earning potential of the facility. In no instance shall a temporarily retired facility be valued lower than if the facility were considered non-operating utility property.

13 MCAR S 1.0004 Allocation.

A. General. After the unit value of the utility property has been estimated, the portion of value which is attributable to Minnesota must be determined. This process of dividing the unit value of a utility company among the states in which the utility operates is called allocation. Each of the factors in the allocation formula is assigned a weighted percentage to denote the relative importance assigned to that factor. The resulting sum of the weighted factors multiplied by the unit value yields the valuation of the utility property which will, after the adjustments described in 13 MCAR S 1.0005, be subject to ad valorem tax in the State of Minnesota.

The factors to be considered in making allocations of unit value to Minnesota for the utility companies and the weight assigned to each factor for each class are specified in this rule.

B. Electric companies. The original cost of the utility property located in Minnesota divided by the total original cost

of the property in all states of operation is weighted at 90 percent. Gross revenue derived from operations in Minnesota divided by gross operations revenue from all states is weighted at ten percent.

The following example illustrates this formula, assuming a unit value of $20,000,000.

1. Minnesota Plant Cost.....$115,000,000
2. System Plant Cost.....$205,000,000 x .90 = 50.49%

3. Minnesota Gross Revenue.....40,000,000
4. System Gross Revenue.....$105,000,000 x .10 = 3.8%

5. Total Percentage

Allocable to Minnesota..... 54.29%

6. Unit Value of System Plant..... $20,000,000

7. Amount of Value Allocable to Minnesota.... $10,858,000

If any modification has been made to the cost indicator under 13 MCAR S 1.0003 C. to reflect the average cost per kilowatt adjustment of a plant or plants located in Minnesota, an alternative computation of the Minnesota allocation shall be made without giving effect to the modification in respect of such plant or plants. HE 38

C. Gas distribution companies. The allocation of value of gas distribution companies shall be made considering the same factors as are used to determine the allocation of value of electric companies. The weight given to the original cost factor will be 75 percent, and gross revenue shall be weighted 25 percent.

D. Pipeline companies. In addition to the cost factor and the gross revenue factor, the factor of weighted pipeline miles shall be considered in allocating the value of pipeline companies. Weighted pipeline miles means the number of miles of pipeline multiplied by the diameter of the pipe, measured in inches. To illustrate, a pipeline 6 miles long has 3 miles of pipe with a diameter of 10 inches and 3 miles of pipe with a diameter of 30 inches. The weighted pipeline miles is 120.

3 miles x 10" diameter = 30

3 miles x 30" diameter = 90

Weighted pipeline miles = 120

The following example illustrates the allocation of value of property of a pipeline company and the weights given to each factor:

1.	Minnesota Plant Cost.....$13,500,000		
2.	System Plant Cost.....$39,300,000	x .75 =	25.76%
3.	Minnesota Gross Revenue....$2,980,000		
4.	System Gross Revenue.....$9,300,000	x .05 =	1.60%
5.	Minnesota Weighted Pipeline Miles.....9,500	x .20 =	7.01%
6.	System Weighted Pipeline Miles..27,100		
7.	Total Percentage Allocable to Minnesota.....		34.37%

13 MCAR S 1.0005 Adjustments for non-formula assessed or exempt property.

A. After the Minnesota portion of the unit value of the utility company is determined, any property which is non-formula assessed or which is exempt from ad valorem tax, will be deducted from the Minnesota portion of the unit value. Only that qualifying property located within the State of Minnesota may be excluded.

B. The following properties will be valued by the local or county assessor and, therefore, the formula provided herein for the valuation of utility property will not be applicable for such property:

1. Land;

2. Non-operating property;

3. Rights of way.

C. The Minnesota portion of the unit value will be reduced by the original cost of land and rights of way. In the case of non-operating property, the deduction shall be original cost, less the rate of depreciation applicable in the valuation process pursuant to 13 MCAR S 1.0003.

D. A deduction from the Minnesota portion of the unit value shall also be made for property, real or personal, which is exempt from ad valorem tax. For instance, pollution control

equipment for which an exemption has been granted is exempt. A deduction from the Minnesota portion of the unit value shall be made at original cost, less the applicable rate of depreciation used in the valuation process ~~pursuant to~~ under 13 MCAR S 1.0003. The value of personal property, such as office machinery and vehicles, which is not taxed, shall also be excluded from the Minnesota portion of the unit value. The deduction shall be at original cost less the applicable rate of depreciation utilized in the valuation process.

The following example illustrates how these items are deducted from the Minnesota portion of the unit value.

1.	Minnesota Portion of Unit Value		$5,000,000
2.	Excludable Items - Nondepreciable		
	a. Land Assessed Locally		3,000
	b. Land Rights		~~1,000~~ 2,000
3.	Excludable Items - Depreciable		
	a. General Plant Items	$10,000	
	b. Pollution Control Equipment	10,000	
	c. Gross Depreciable Items	20,000	
	d. Depreciated at 25%	5,000	
	e. Net Depreciable Excludable Items		15,000
4.	Total Excludable Items		20,000
5.	Minnesota Apportionable Value		4,980,000

If any modification has been made to the cost indicator under 13 MCAR S 1.0003 C. to reflect the average cost per kilowatt adjustment of a plant or plants located in Minnesota, an alternative computation of the Minnesota apportionable value shall be made without giving effect to the modification in respect of such plant or plants. HE 38

E. The utility company shall have the burden of proof to establish that the value of any property should be excluded from the Minnesota portion of the unit value. Accordingly, the utility company shall have the responsibility to submit, in the form required by the Commissioner of Revenue, such schedules of exempt or non-formula assessed property as he may require.

13 MCAR S 1.0006 Apportionment.

A. After the unit valuation of the utility company has been allocated to the State of Minnesota and has been adjusted ~~pursuant to~~ under 13 MCAR S 1.0005, the determined amount shall be apportioned or distributed to the taxing districts in Minnesota in which the company operates. This apportionment will be made by the Commissioner of Revenue on the basis of information submitted by the utility companies in annual reports filed with the commissioner.

If any modification has been made to the cost indicator under 13 MCAR S 1.0003 C. to reflect the average cost per kilowatt adjustment of a plant or plants located in Minnesota, the apportionment to the taxing districts made under 13 MCAR S 1.0006 C. shall be based upon the Minnesota apportionable value alternatively computed in 13 MCAR S 1.0005 D. without giving effect to the modification in respect of such plant or plants.

HE 38

B. The following information must be submitted for each taxing district:

1. The market value of the company's operating property by classification, as reflected in the last assessment, including the cost of leased taxable property.

2. The original cost of the company's operating property by classification, including the cost of leased taxable property.

3. The original cost of any new additions since the last assessment, including work in progress on the assessment date.

4. The market value of any retirements made after the last assessment, as reflected in that assessment.

5. The original cost of any retirements made after the last assessment.

6. Whenever a new taxing district is established, the information submitted by the utility companies for the taxing district must be submitted in the same form as enumerated in 1.-5. If the utility, because of administrative difficulty, is forced to make estimates of values and costs for property within new taxing districts, these estimates must be approved by the commissioner.

C. The total market value of each company's operating utility property in Minnesota shall be divided by the greater of:

1. The last market value of the company's operating utility property in each taxing district, plus original cost of new construction, reduced by the last market value of property retired since the last assessment.

2. The original cost ~~together with any additional cost computed in accordance with 13 MCAR S 1.0003 C.~~ of the company's operating utility property in each taxing district plus original cost of new construction reduced by the original cost of property retired since the last assessment multiplied by the percentage as specified below. HE 38

For the 1982 assessment year the original costs shall be multiplied by 77.5% percent.

For the 1983 assessment year the original costs shall be multiplied by 80% percent.

For the 1984 assessment year the original costs shall be multiplied by 82.5% percent.

For the 1985 assessment year the original costs shall be multiplied by 85% percent.

For the 1986 assessment year the original costs shall be multiplied by 87.5% percent.

For the 1987 assessment year the original costs shall be multiplied by 90% percent.

For the 1988 assessment year the original costs shall be multiplied by 92.5% percent.

For the 1989 assessment year the original costs shall be multiplied by 95% percent.

For the 1990 assessment year the original costs shall be multiplied by 97% percent.

For the 1991 assessment year the original costs shall be multiplied by 100% percent.

All computations made under alternative 1. or 2. shall be made without giving effect to any modification to reflect the average cost per kilowatt adjustment made under 13 MCAR S 1.0003 C. HE 38

D. For this purpose, the last market value and the last assessment shall mean the latest assessment immediately prior to the current assessment. The portion of unit value to be assigned to each taxing district will be the resulting percentage multiplied by the Minnesota portion of the unit value, as adjusted pursuant to this rule.

E. After all other computations have been made under 13 MCAR S 1.0006, there shall be added to the value of each district in which there is located a plant or plants qualifying for the average cost per kilowatt adjustment under 13 MCAR S 1.0003 C. a share of the difference between the Minnesota apportionable value computed under 13 MCAR S 1.0005 with the adjustment, and without the adjustment in respect to plants located in Minnesota, in proportion to the amount of the adjustment made with respect to the property located in each such district.

HE-38

Repealer. Rule 13 MCAR S 1.0007 is repealed.

APPROVED AS TO LEGALITY

April 9 1982

WARREN SPANNAUS, ATTORNEY GENERAL

BY Ted A. Martinez

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
APR 12 1982
Joan Anderson Growe
Secretary of State
9:50 A.M.

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of)
Rules of the State Department of Revenue)
Governing the Valuation and Assessment of)
Electric, Gas Distribution, and Pipeline)
Companies (Utility Companies).)

FINDINGS OF FACT + ORDER ADOPTING
AND CONCLUSIONS

The above-entitled matter came on for hearing before Jon L. Lunde, a hearing examiner appointed by the Chief Hearing Examiner, on the 4th day of November, 1981, at 10 a.m. in the Conference Room at 500 Rice Street, St. Paul, Minnesota, after proper notice required by Minnesota Statutes Section 15.0412 was served upon all persons, associations and other interested groups registered with the Department of Revenue for that purpose. Testimony was received that day and the hearing was continued to the 19th day of November, 1981, at the same location for additional testimony.

After affording interested persons an opportunity to present written and oral data, statements, and arguments, hearing all of the testimony, considering all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and confirming the need for and reasonableness of the above-captioned rules, and having now, therefore, reviewed the record of the hearing, including the exhibits and written materials submitted before the close of the record, the report of the hearing exaiminer and the report of the Chief Hearing Examiner, the Commissioner of Revenue does now adopt as his findings of fact in this matter, the findings of fact of the hearing examiner, with the following additions:

1. The hearing examiner's report in Finding Ten states that a definition of the term "standard factor" should not be adopted to amend rule 13 MCAR, Section 1.0002 by the addition of this term, since the term "standard factor" is not used in the Rule. I have adopted the hearing examiner's finding and have removed Section 1.0002N standard factor from the definitions. ✓ P. 4

2. Finding Twenty of the hearing examiners report states that the language of proposed rule 13 MCAR, Section 1.0003C be changed to correct an ambiquity to the rule. It is suggested that the proposed language:

> A standard plant factor will be computed for hydro-electric plants by averaging the ten plants within the fifteen year study period used to compute the average cost per kilowatt of installed capacity with the highest plant factor.

be amended to read as follows:

> A standard plant factor will be computed for hydro-electric plants by averaging the plant factors of the ten plants with the highest plant factors in the 15 year-study period.

I have adopted the hearing examiner's finding and the language is amended as recommended.

3. Finding Twenty-eight of the hearing examiner's report states that the Department did not explain why it is necessary and reasonable to change the ten-year period previously used to compute the average preferred stock yield to a twenty-year period. I adopt the finding of the hearing examiner that the ten-year period shall not be changed. I also adopt Finding Twenty-nine recomputing the capitalization rates in 13 MCAR, Section 1.0003D using the same ten-year period previously used for computing the average dividend rate for preferred stock.

4. Finding Thirty-three of the hearing examiner's report recommends that the language in proposed rule 13 MCAR Section 1.0003G.1. be amended to eliminate vague language and to use preferable mandatory langauge. The proposed language "The utility must adequately demonstrate to the satisfaction of the commissioner, that its source of supply for gas or oil will be terminated within the next ten years.", is unnecessarily vague containing mandatory language that is inconsistent with preferable statutory language. Therefore, it is necessary and reasonable to amend the language as recommended by the hearing examiner as follows:

> "The utility shall demonstrate that its source of supply for gas or oil will be terminated within the next ten years."

5. Finding Thirty-three of the hearing examiner's report also suggests that the word "must" in proposed rule 13 MCAR, Section 1.0003G.2.-G.-5., be changed to "shall". I find that is necessary and reasonable to adopt this suggestion since the word "shall" is preferable mandatory language.

6. Finding Thirty-three recommends that the Department clarify the duration of the allowance authorization in proposed rule 13 MCAR Section 1.0003G. The rule as proposed does not state whether the allowance is subject to review or when the utility must apply for the allowance. To correct this defect the rule is amended to add the following language after the second sentence in Part G.:

> This allowance must be applied for each year at the time the utility files its Minnesota Department of Revenue Annual Utility

Report. The utility's eligibility for this allowance will be based on the relevant facts for the specific valuation year. The application of an obsolescence allowance in any previous year shall have no bearing on the use of the allowance for a subsequent year.

The obsolescence allowance is granted for a one-year period and it is based on the value of the utility at the time the utility files its Annual Utility Report. The allowance is not subject to review since it is granted on the value of the utility on the date the utility applies for the allowance. The amendment proposed by the Department is necessary and reasonable because it clarifies the duration of the allowance and recognizes the value of the utility may change from one reporting period to the next due to curtainment or termination of it source of supply.

7. Finding Thirty-four of the hearing examiner's report notes that the notice requirements imposed on utilities desiring to retire operating property from the utility system are not mandatory. The Department does not intend the notice of Section 1.0003H.2. to be mandatory because the Department realizes that advance notice by the utility may not always be available. The word "should" in the second sentence of Part H.2. has been changed to "shall" since it is the intent of the rule to require the specific facility being retired to be identified in the affidavit. It is necesary and reasonable that the Department be informed of the specific facility being retired so that the commissioner can notify the county assessor of the pending retirement.

p.18

8. The Revisor of Statutes has made minor changes in language throughout the proposed rules. These changes were made to conform the rule to preferable statutory language and do not change the meaning or effect of any of the proposed rules. These changes do not result in rules that are substantially different for purposes of 9MCAR, Section 2.111 and they are necessary and reasonable as proposed.

CONCLUSIONS

The Commissioner of Revenue adopts all of the conclusions of the hearing examiner, with the following additions:

1. The Department has corrected the defects cited in Conclusions Three and Four as noted at Finding Twenty-nine and Thirty-three of the hearing examiner's report by making the changes recommended by the hearing examiner.

2. The Department has documented the need for and reasonableness of its proposed rules as amended within the meaning of Minn. Stat. Section 15.0412, subd. 4c (1980).

ORDER

NOW, THEREFORE, IT IS ORDERED that these rules identified as 13 MCAR, Sections 1.0001 through 1.0006, Department of Revenue Rules Governing the Valuation and Assessment of Electric, Gas Distribution and Pipeline Companies (Utility Companies) as published at State Register Volume 6, Number 14, pages 582 through 596, October 5, 1981 (6 S.R. 582-596) and as amended are adopted this 16th day of March, 1982, pursuant to authority vested in me by Minnesota Statutes Section 270.06.

STATE OF MINNESOTA
Department of Revenue

CLYDE E. ALLEN, JR.
Commissioner of Revenue

Ethical Practices Board

Notice of Meeting

RECEIVED
OCT 7 1981
ADMINISTRATIVE HEARINGS

Friday, November 14, 1980
Room 14
State Office Building
9:00 a.m.

Preliminary Agenda

1. Minutes (October 8, 1980)
2. Chairperson's Report
3. Legal Counsel's Report
4. Search Committee Report
5. Advisory Opinion Request #74—Richard A. Forschler, Larkin, Hoffman, Daly & Lindgren
6. Acting Director's Report
   a) Financial Report
   b) Waiver Requests
   c) Post-Election Wrap-up (outstanding reports; status of desk audits)
7. Other Business
8. Executive Session Pursuant to Minn. Stat. § 10A.02, subd. 11

Agency Exh. No. 16
File No. DR-82-004-JL
Date 11/4/81

Minnesota State Retirement System

Regular Meeting, Board of Directors

The regular quarterly meeting of the Board of Directors, Minnesota State Retirement System, will be held on Friday, November 21, 1980 at 9:00 a.m. in the office of the System, 529 Jackson Street, St. Paul, Minnesota.

Department of Revenue
Property Equalization Division

Notice of Intent to Solicit Outside Opinion Regarding the Method of Valuation to Be Applied to Utility Property

The Department of Revenue is seeking information and opinions from sources outside the department in preparing to modify or revise existing rules governing the valuation and assessment of electric, gas distribution and pipeline companies.

The Department of Revenue is currently making a determination of the fair market value of the operating property of these utility companies using the unit value method. Revision or modification to the existing rules may include such items as:

1) Increased depreciation allowance.
2) Revised capitalization rates.
3) Adjusted income streams.
4) Modifications to the "Average Cost per K.W. of Installed Capacity" Concept.
5) Obsolescence allowances.
6) Distribution of value to special taxing districts.
7) Other factors which are pertinent to the valuation of utility property.

Any interested persons may submit data or comments on this subject by writing to:

Gerald D. Garski, Manager
State Assessed Properties
Property Equalization Division

Department of Revenue
Centennial Office Building
St. Paul, Minnesota 55145

Any materials received by the department shall become a part of the hearing record at the time that revisions to the rules are promulgated. Any comments, views or data must be received by December 31, 1980 to be considered before the revised rules are drafted.

October 22, 1980

Clyde E. Allen, Jr.
Commissioner of Revenue

Office of the Secretary of State

Notice of Vacancies in Multi-member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155; (612) 296-7876. **Application deadline is November 25, 1980.**

Board on Aging has one vacancy open immediately. The board coordinates and handles federal funds for programs for the aging, and makes grants to local community service agencies. Members are appointed by the governor, and receive $35 per diem plus expenses. For specific information, contact Board on Aging, Suite 204, Metro Square Building, St. Paul 55101; (612) 296-2770.

Consumer Advisory Council on Vocational Rehabilitation has one vacancy open immediately for a business representative. The council advises the Assistant Commissioner for Vocational Rehabilitation on policy for rehabilitation services. Members are appointed by the Commissioner of Economic Security, and receive $35 per diem. For specific information, contact Consumer Advisory Council on Vocational Rehabilitation, 3rd Floor, Space Center Building, St. Paul 55101; (612) 296-1822.

Waste Management Board

Notice of Intent to Prepare Minnesota Waste Management Board List for Future Rulemaking Hearings

In accordance with Minnesota Laws of 1980, Chapter 615, the Minnesota Waste Management Board is establishing a list of persons to receive official notice of its rulemaking proceedings. That law requires each agency or department to establish and maintain such a list to replace the existing Secretary of State's list.

If you wish to receive notice of rulemaking proceedings of the Minnesota Waste Management Board, please notify the board in writing. You will then receive notice of any rulemaking proceeding initiated after that date. Please note that this procedure will put you *only* on the list of the Minnesota Waste Management Board; other agencies and departments will be establishing their own lists. Please send your written request to the following address:

Minnesota Waste Management Board
Attention: Sharon Decker
123 Thorson Building
7323 — 58th Avenue North
Crystal, Minnesota 55428

October 31, 1980

Robert G. Dunn, Chairman
Waste Management Board

(2)

RECEIVED
OCT 7 1981
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of Rules of the State of Minnesota, Department of Revenue Governing the Valuation and Assessment of Electric, Gas Distribution, and Pipeline Companies (Utility Companies)

ORDER FOR HEARING

IT IS ORDERED this 31st day of August, 1981, that a public hearing on the proposed rules captioned above be held in the Conference Room at 500 Rice Street, St. Paul, Minnesota on November 4, 1981, commencing at 10:00 A.M. and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all persons who have registered their names with the State Department of Revenue for that purpose and be published in the State Register.

STATE OF MINNESOTA

Clyde E. Allen Jr.

Commissioner of Revenue

Agency Exh. No. 10
File No. DR-82-004-JL
Date 11/4/81

(3)

RECEIVED
OCT 7 1981
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF)
THE DEPARTMENT OF REVENUE GOVERNING VALUATION AND) NOTICE OF HEARING
ASSESSMENT OF ELECTRIC, GAS DISTRIBUTION, AND)
PIPELINE COMPANIES (UTILITY COMPANIES))

NOTICE IS HEREBY GIVEN that a public hearing will be held pursuant to Minnesota Statutes, § 15.0412, Subdivision 4, in the above-entitled matter in the Conference Room, 500 Rice Street, St. Paul, Minnesota on November 4, 1981, commencing at 10 a.m. and continuing until all persons or representatives of associations or other interested groups have had an opportunity to be heard. 1

All interested or affected persons will have an opportunity to participate. 2 Statements may be made orally and written materials may be submitted at the hearing. 5a In addition, written materials may be submitted by mail to Jon Lunde, Office of Administrative Hearings, Room 300, 1745 University Avenue, Saint Paul, Minnesota, 7a 55104, telephone (612) 296-5938, either before the hearing or within five working days after the close of the hearing. The Hearing Examiner may extend this time limit for a longer period; however, the extension cannot exceed 20 7b calendar days.

The rule hearing procedure is governed by Minnesota Statutes, §§ 15.0411 to 15.0417 and 15.052, and by 9 MCAR §§ 2.101 to 2.113 (Minnesota Code of Agency 11a Rules). Any questions about procedure may be directed to the Hearing Examiner, 11b Jon Lunde.

The proposed rules if adopted will effectively amend the current rules of the Department of Revenue relating to ad valorem (property) taxes imposed on utilities. The present rules deal generally with the valuation, allocation and apportionment 3a of property of electric, gas distribution, pipeline and cooperative electric companies. The proposed rules if adopted would: define certain terms; require utilities to report the cost of leased property; modify the cost approach to value by allowing electric companies an additional 1% depreciation, and gas distribution and pipeline companies an additional 2 1/2% depreciation on the original cost of the companies' assets; increase the study period to be used when computing the "average cost per kilowatt of installed capacity" for steam and gas turbine generating plants; permit an allowance for pollution control equipment and an allowance for obsolescence to be conducted from the value added to the cost approach to value due to the computation of the "average cost per kilowatt of installed capacity" factor; detail the computation of these two allowances; modify the income approach to value by increasing the capitalization rate by 0.5%; specify the types of utilities that are to be valued on a "cost only" method; provide for the utilization of "obsolescence allowances" if a utility meets certain standards and detail the methods to be used to calculate these allowances; specify certain standards to be met by utilites in the retirement of property; require a utility to report certain information on property costs whenever a new taxing district is established; modify the base to be used for the apportionment of utility property to the various taxing districts; and eliminate the example section of the rules while incorporating the examples into the body of the rules.

OR-82-004-JL Exh. No. 11
File No. Agency
Date 11/4/81

One free copy of this Notice and the proposed rules may be obtained by writing to G. D. Garski, Manager of State Assessed Property, Property Equalization Division, Second Floor, Centennial Office Building, Saint Paul, Minnesota, 55145, telephone (612) 296-5131. Additional copies will be available at the door on the date of the hearing. 3b

The agency's authority to promulgate the proposed rules is contained in Minnesota Statutes §§ 270.06 and 270.11, Subdivisions 1 and 6. 4

NOTICE IS HEREBY GIVEN that 25 days prior to the hearing, a statement of need and reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the statement of need and reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge. 9

NOTICE: The proposed rule is subject to change as a result of the rule hearing process. The Agency therefore strongly urges those who are potentially affected in any manner by the substance of the proposed rule to participate in the rule hearing process. 5b

Please be advised that Minnesota Statutes, Chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, § 10A.01, Subdivision 11 (Supp. 1979) as 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 6

(b) Who spends more than $250, 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.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 40 State Office Building, Saint Paul, Minnesota, 55155, telephone (612) 296-5615.

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). 8

Dated: 9/18/81

Clyde E. Allen, Jr.

CLYDE E. ALLEN, JR.
Commissioner of Revenue

(5)

RECEIVED
OCT 7 1981
ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Adoption of the Rules of the Department of Revenue Governing the Valuation and Assessment of Electric, Gas Distribution and Pipeline Companies (Utility Companies)

AFFIDAVIT OF MAILING

Agency Exh. No. 13
File No. DR-82-004-JL
Date 11/4/81

State of Minnesota)
: ss
County of Ramsey)

John Meyers, being first duly sworn, deposes and says:

That on the 1st day of October, 1981, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing by depositing in the State of Minnesota Central Mail System for first class mailing a copy thereof, properly enveloped, with postage prepaid, on all persons who have requested that their names be placed on file with the State of Minnesota Department of Revenue for the purpose of receiving notice of the proposed adoption of rules by this Department.

John Meyers
Utility Valuation Examiner
Property Equalization Division
Minnesota Department of Revenue

Subscribed and sworn to before
me this 1st day of October, 1981

Patricia Zentzis

PATRICIA ZENTZIS
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Comm. Expires May 9, 1982

RECEIVED
OCT 7 1981
ADMINISTRATIVE HEARINGS

DOR:A21 (Rev. 7/77) **REVENUE MAIL SLIP** (6)

Number of Pieces: 25

Class of Postage: 1st

Section State Assessed Properties

Sub Activity	Sub Task
332	311

Signature Renee

DOR:A21 (Rev. 7/77) **REVENUE MAIL SLIP**

Number of Pieces: 25

Class of Postage: 1st

Section State Assessed Prop

Sub Activity	Sub Task
332	311

Signature Renee

DOR:A21 (Rev. 7/77) **REVENUE MAIL SLIP**

Number of Pieces: 25

Class of Postage: 1st

Section State Assessed Prop

Sub Activity	Sub Task
332	311

Signature Renee

DOR:A21 (Rev. 7/77) **REVENUE MAIL SLIP**

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Class of Postage: 1st

Section State Assessed Properties

Sub Activity	Sub Task
332	311

Signature Renee

DOR-A21
(Rev. 7/77)

REVENUE MAIL SLIP

Number of Pieces: 25

Class of Postage: 1st

Section State Assessed Properties

Sub Activity	Sub Task
332	311

Signature Renee

DOR-A21
(Rev. 7/77)

REVENUE MAIL SLIP

Number of Pieces: 25

Class of Postage: 1st

Section State Assessed Properties

Sub Activity	Sub Task
332	311

Signature Renee

DOR-A21
(Rev. 7/77)

REVENUE MAIL SLIP

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Section State Assessed Properties

Sub Activity	Sub Task
332	311

Signature Renee

DOR-A21
(Rev. 7/77)

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332	311

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DOR-A21
(Rev. 7/77)

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DOR-A21
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(Rev. 7/77)

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Sub Activity	Sub Task
332	311

Signature Renee

DOR-A21 (Rev. 7/77)

REVENUE MAIL SLIP

Number of Pieces: 25

Class of Postage: 1st

Section State Assessed Properties

Sub Activity	Sub Task
332	311

Signature Renee

DOR-A21 (Rev. 7/77)

REVENUE MAIL SLIP

Number of Pieces: 24

Class of Postage: 1st

Section State Assessed Properties

Sub Activity	Sub Task
332	311

Signature Renee

DOR-A21 (Rev. 7/77)

REVENUE MAIL SLIP

Number of Pieces: 25

Class of Postage: 1st

Section State Assessed Properties

Sub Activity	Sub Task
332	311

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REVENUE MAIL SLIP

Number of Pieces: 25

Class of Postage: 1st

Section State Assessed Properties

Sub Activity	Sub Task
332	311

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REVENUE MAIL SLIP

Number of Pieces: 25

Class of Postage: 1st

Section State Assessed Properties

Sub Activity	Sub Task
332	311

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REVENUE MAIL SLIP

Number of Pieces: 25

Class of Postage: 1st

Section State Assessed Properties

Sub Activity	Sub Task
332	311

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REVENUE MAIL SLIP

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Section State Assessed Properties

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332	311

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REVENUE MAIL SLIP

Number of Pieces: 25

Class of Postage: 1st

Section State Assessed Properties

Sub Activity	Sub Task
332	311

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REVENUE MAIL SLIP

Number of Pieces: 25

Class of Postage: 1st

Section State Assessed Properties

Sub Activity	Sub Task
332	311

Signature Renee

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Itasca County Route 2
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Mildred Van Overschelde
Supervisor
Morse Twp.
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Deer River, MN. 56636

Jeanne Bixby, Clerk
Morse Twp.
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Deer River, Minn. 56636

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GREAT LAKES GAS TRANSMISSION
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BRUCE GANGON, MGR. OF TAXES
MINNESOTA POWER & LIGHT
30 WEST SUPERIOR STREET
DULUTH, MINNESOTA 55802

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MINNESOTA POWER & LIGHT
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NORTH CENTRAL PUBLIC SERVICE
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NORTHERN STATES POWER COMPANY
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MINNEAPOLIS, MINN. 55402

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County Court House
Granite Falls, Minnesota 56241

Wright County Assessor
County Court House
Buffalo, Minnesota 55313

Winona County Assessor
County Court House
Winona, Minnesota 55987

Wilkin County Assessor
County Court House
Breckenridge, Minnesota 56520

Watonwan County Assessor
County Court House
St. James, Minnesota 56081

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County Court House
Stillwater, Minnesota 55082

Waseca County Assessor
County Court House
Waseca, Minnesota 56093

Wadena County Assessor
County Court House
Wadena, Minnesota 56482

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County Court House
Wabasha, Minnesota 55981

Todd County Assessor
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County Court House
Wheaton, Minnesota 56296

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Benson, Minnesota 56215

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Morris, Minnesota 56267

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Owatonna, Minnesota 55060

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St. Cloud, Minnesota 56301

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Gaylord, Minnesota 55334

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County Court House
Elk River, Minnesota 55330

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County Court House
Shakopee, Minnesota 55379

St. Louis County Assessor
212 County Court House
Duluth, Minnesota 55802

Mower County Assessor
County Court House
Austin, Minnesota 55912

Roseau County Assessor
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Roseau, Minnesota 56751

Rock County Assessor
County Court House
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Rice County Assessor
County Court House
Faribault, Minnesota 55021

Renville County Assessor
County Court House
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County Court House
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Red Lake County Assessor
County Court House
Red Lake Falls, Minnesota 56750

Lac Qui Parle County Assessor
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Madison, Minnesota 56256

Koochiching County Assessor
Box 139
International Falls, Minn. 56649

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County Court House
Chaska, Minnesota 56484

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County Court House
Park Rapids, Minnesota 56470

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County Court House
Caledonia, Minnesota 55921

Hennepin County Assessor
Hennepin Co. Gov. Ctr.
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Mpls., Minnesota 55487

Grant County Assessor
County Court House
Elbow Lake, Minnesota 56531

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County Court House
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Fillmore County Assessor
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County Court House
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County Court House
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County Court House
Hastings, Minnesota 55033

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County Court House
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Cottonwood County Assessor
Room 10 - County Court House
Windom, Minnesota 56101

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Clearwater County Assessor
County Court House
Bagley, Minnesota 56621

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County Court House
Moorhead, Minnesota 56560

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County Court House
Center City, Minnesota 55012

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County Court House
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Pope County Assessor
County Court House
Glenwood, Minnesota 56334

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Le Sueur County Assessor
County Court House
Le Center, Minnesota 56057

Pipestone County Assessor
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Pine County Assessor
County Court House
Pine City, Minnesota 55063

Pennington County Assessor
County Court House
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County Court House
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Rochester, Minnesota 55901

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Nobles County Assessor
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Worthington, Minnesota 56187

Nicollet County Assessor
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St. Peter, Minnesota 56082

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County Court House
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Morrison County Assessor
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Little Falls, Minnesota 56345

Mille Lacs County Assessor
County Court House
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Meeker County Assessor
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McLeod County Assessor
County Court House
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Martin County Assessor
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Marshall County Assessor
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Mahnomen County Assessor
County Court House
Mahnomen, Minnesota 56557

Lyon County Assessor
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Marshall, Minnesota 56258

Lincoln County Assessor
County Court House
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Dodge County Assessor
County Court House
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Lake of the Woods County Assessor
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ROSEAU, MINN. 56751

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ROCK COUNTY,
LUVERNE, MINN. 56156

COUNTY AUDITOR,
RICE COUNTY,
FARIBAULT, MINN. 55021

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Redwood County License Center
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Redwood Falls, Mn. 56283

COUNTY AUDITOR,
RED LAKE COUNTY,
RED LAKE FALLS, MINN. 56750

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COURT HOUSE,
ST.PAUL 2, MINN. 55102

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BENTON COUNTY
FOLEY, MN 56329

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BECKER COUNTY,
DETROIT LAKES, MINN. 56501

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ANOKA COUNTY
ANOKA, MN 55303

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AITKIN COUNTY
AITKIN, MN 56431

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HASTNGS, MINN. 55033

COUNTY AUDITOR,
FARIBAULT COUNTY,
BLUE EARTH, MINN. 56013

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FILLMORE COUNTY
PRESTON, MN 55965

COUNTY AUDITOR,
DODGE COUNTY,
MANTORVILLE, MINN. 55955

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Cottonwood
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ADMINISTRATIVE
HEARINGS

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of Rules of the Department of Revenue Governing Valuation and Assessment of Electric, Gas Distribution, and Pipeline Companies (Utility Companies)

CERTIFICATE OF COMPLETENESS AND ACCURACY

I hereby certify that the attached fifteen sheets constitute the complete list of persons, associations and other interested groups who, as of 8 o'clock a.m. this 1st day of October, 1981, have requested, pursuant to Minn. State. §15,0412, subd. 4, that their names be placed on file with the Department of Revenue for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

STATE OF MINNESOTA
CLYDE E. ALLEN, JR.
COMMISSIONER OF REVENUE

By Dorothy A McClung
DOROTHY A. McCLUNG, Director
Legal Research Division

Agency Exh. No. 12
File No. DR-82-004-JR
Date 11/4/81

MAILING LIST FOR OFFICIAL NOTICE OF AGENCY RULEMAKING

INDEP. BANKERS OF MN
Attn: Norbert McCrady, Exec. V.P.
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Minneapolis, MN 55402

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Personnel Administrator
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MN Dept. of Economic Development
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3M
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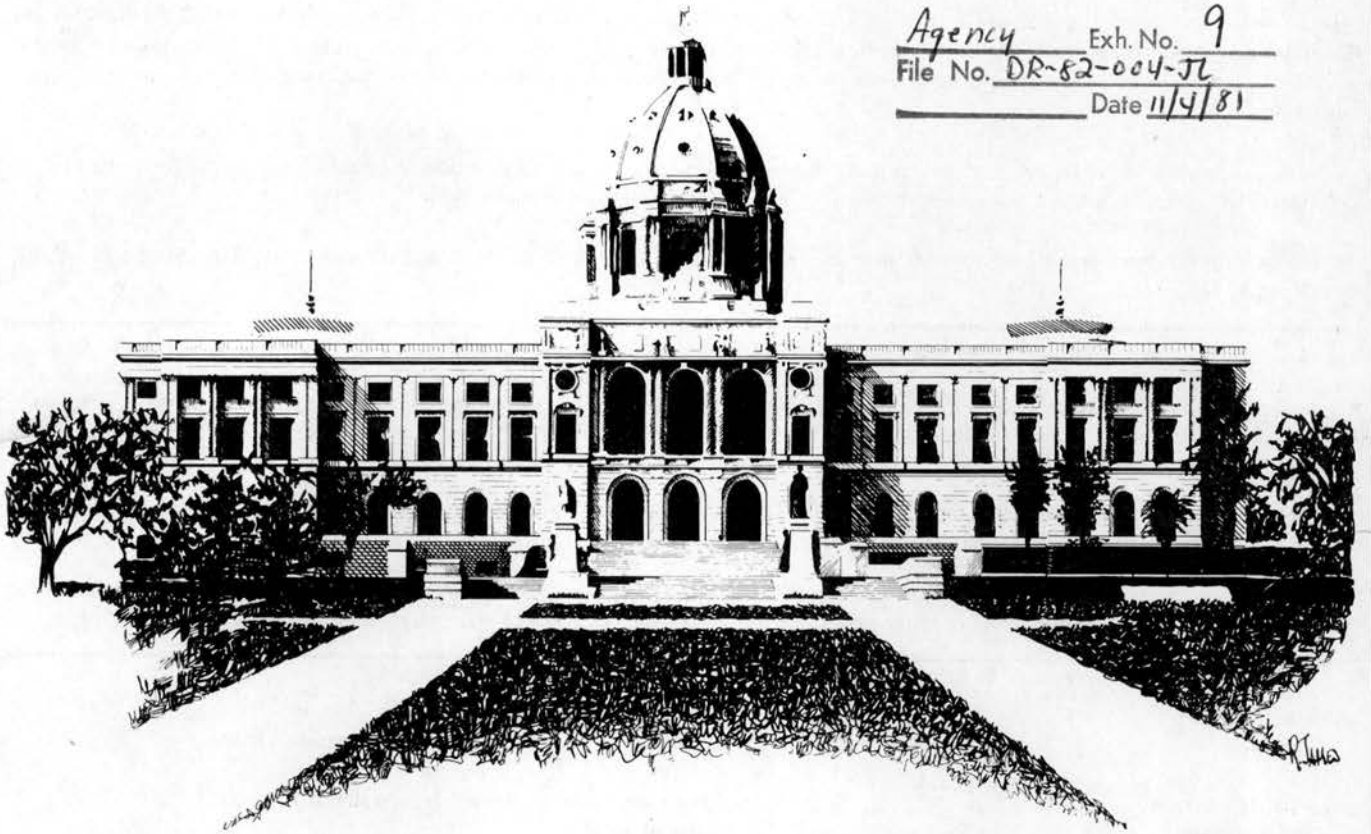

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16	Monday Oct 5	Monday Oct 12	Monday Oct 19
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NOTICE

How to Follow State Agency Rulemaking Action in the *State Register*

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION. Such notices are published in the OFFICIAL NOTICES section. Proposed rules and adopted rules are published in separate sections of the magazine.

The PROPOSED RULES section contains:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

All ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted TEMPORARY RULES appear in the *State Register* but are not published in the MCAR due to the short-term nature of their legal effectiveness.

The *State Register* publishes partial and cumulative lisitngs of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

Issues 1-13, inclusive
Issues 14-25, inclusive
Issue 26, cumulative for 1-26
Issue 27-38, inclusive
Issue 39, cumulative for 1-39
Issues 40-51, inclusive
Issue 52, cumulative for 1-52

The listings are arranged in the same order as the table of contents of the MCAR.

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PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

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.

Office of Administrative Hearings

Proposed Permanent Rules Relating to Workers' Compensation

Notice of Hearing

Notice is hereby given that a public hearing will be held pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4, in the above-entitled matter commencing at 9:00 a.m. on Thursday, November 5, 1981, at Room 83 of the State Office Building, 435 Park Street, St. Paul, Minnesota. The hearing will continue until all interested persons have an opportunity to be heard. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Peter C. Erickson, Hearing Examiner, Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, (612/296-8118), either before the hearing or within five (5) working days after the public hearing ends. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed twenty (20) calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Notice is hereby given that twenty-five (25) days prior to the hearing a statement of need and reasonableness will be available for review at the Office of Administrative Hearings. Copies of this statement of need and reasonableness may also be purchased at a cost of twenty cents per page. The statement of need and reasonableness will include the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules.

The agency's authority to adopt the proposed rules is contained in Minn. Laws of 1981, chapter 346, § 5 (amending Minn. Stat. 1980, § 15.052, subd. 4).

The purpose of the proposed rules is to establish procedures for the conduct of the hearing process relating to contested workers' compensation hearings. The rules contain sections relating to: general authority and definitions; joinder of parties; pleadings including content of petitions and responsibilities of attorneys in initiating contested matters; settlement judge review and settlement conferences; expedited procedures for hearings where employees have been given notice of the employer's intent to discontinue benefits; answers to the petitions; service of documents; definitions of the various types of hearings; notice of hearings; continuances; intervention; consolidation; disqualification of compensation judges; prehearing procedures; discovery; petitions for contribution or reimbursement; subpoenas; the hearing itself; production of medical evidence; rights of parties; witnesses; rules of evidence; contents of the record; provisions relating to transcripts of hearings; disruptions of

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hearings; compensation judge decisions; rehearing; settlements; attorney fees; taxation of costs and disbursements; second injury law; expedited procedures for other hearings; temporary orders; removal and return of exhibits; and the permanent partial disability panel.

The office estimates that the cost to local bodies of implementing this rule for the two years immediately following its adoption will not exceed $100,000 within the meaning of Minn. Stat. § 15.0412, subd. 7.

The permanent rules will supercede the agency's temporary rules which were effective on August 19, 1981.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to: Duane R. Harves, Chief Hearing Examiner, Minnesota Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rules, you should contact Duane R. Harves at (612) 296-8100.

Any person may request notification of the date on which the hearing examiner's report will be available, after which date the office may not take any final action on the rules for a period of five (5) 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 office. 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.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he/she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11, as 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 $250 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.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155 (telephone: 612/296-5615).

September 21, 1981.

Duane R. Harves
Chief Hearing Examiner

Rules as Proposed (all new material)

9 MCAR § 2.301 Scope and purpose. The procedures contained in 9 MCAR §§ 2.301-2.326 shall govern all hearings required to be conducted pursuant to the provisions of the Minnesota workers' compensation laws, Minn. Stat. ch. 82 and the Minnesota Administrative Procedure Act, Minn. Stat. §§ 15.0411-15.052, as those provisions might apply.

9 MCAR § 2.302 General authority and definitions.

A. Assignment or transfer of cases. The chief hearing examiner has full responsibility for the assignment of cases for trial to the compensation judges. The chief hearing examiner may transfer to another compensation judge the proceedings on any case in the event of the death, extended absence, or disqualification of the compensation judge to whom it has been assigned, and may otherwise reassign such cases if necessary to expedite the proceedings if no oral testimony has been received in the cases.

B. Authority of compensation judges. In any case which has been regularly assigned to him or her for trial, a compensation judge shall have full power, jurisdiction and authority to hear and determine all issues of fact and law presented to him or her and to issue such interlocutory and final orders, findings, decisions and awards as may be necessary to the full adjudication of the case.

C. Definitions. For the purposes of 9 MCAR §§ 2.301-2.326, the following terms have meanings given them.

1. "Calendar judge" means a workers' compensation judge from the Office of Administrative Hearings.
2. "Chief hearing examiner" means the Chief Hearing Examiner of the Office of Administrative Hearings.
3. "Commissioner" means the Commissioner of the Department of Labor and Industry.
4. "Compensation judge" means a workers' compensation judge from the Office of Administrative Hearings.

5. "Division" means the Workers' Compensation Division of the Department of Labor and Industry.

6. "Petition" means a claim filed by or on behalf of an injured or deceased employee, employer or insurer which initiates a contested workers' compensation case requiring assignment for hearing.

7. "Petitioner" means the injured employee, an heir or dependent of a deceased employee or a party filing on their behalf or an employer or insurer.

8. "Settlement judge" means a workers' compensation judge from the Department of Labor and Industry.

9 MCAR § 2.303 Joinder of parties.

A. Request. Upon a motion of any party or upon his or her own motion, a settlement or calendar judge may order the joinder of additional parties necessary for the full adjudication of the case. A party not present or represented at the time of joinder shall forthwith be served by the party requesting joinder with copies of the order of joinder and all pleadings in the case.

B. Service. Any party requesting joinder of additional parties shall serve a copy of the request on all existing parties, and the party to be joined, and file the original with proof of service with the settlement or calendar judge no later than ten days prior to the pretrial or settlement conference, unless the judge allows a shorter time when the moving party has shown that the party is a necessary party, that the moving party was unable, through due diligence, to previously ascertain the name of or necessity of joining the party, and that the joinder is necessary to a full and final determination of the rights or liabilities of all persons. When this request is served on the party to be joined, it shall be accompanied by copies of all pleadings and the notice of the date, time and place set for a settlement conference or prehearing conference.

C. Affidavit. When a party requests joinder less than ten days prior to the pretrial or settlement conference date, the request shall include an affidavit of the requesting party stating the facts necessary to show cause why the lesser time should be allowed.

D. Delay. In cases where the settlement or calendar judge has denied the joinder because of the requesting party's failure to meet the ten-day time requirement, the case shall not be stricken, continued or otherwise delayed for the purposes of joinder, unless the attorney for the employee or dependent consents to it.

E. Contents of motion. All motions for joinder shall contain at least the following:

1. The party to be joined and its insurer, if any;

2. The date and nature of the claimed personal injury or impairment;

3. The detailed circumstances, in affidavit form, showing that the party to be joined is a necessary party;

4. The supporting medical opinions relied upon, if applicable;

5. If the party to be joined is the special compensation fund, the detailed circumstances, in affidavit form, showing the specific basis claimed for joinder, including the date of registration of prior impairment or injury where applicable.

F. Objection. A party contesting joinder under 9 MCAR § 2.303 may do so by objection filed with the settlement or calendar judge within ten days of service, requesting a hearing thereon; otherwise, an ex parte order may be issued granting or denying this joinder.

9 MCAR § 2.304 Commencement of proceedings; petitions; responsibilities of attorneys; notice to third parties.

A. Commencement of proceedings. Original proceedings for the adjudication of compensation rights and liabilities are commenced by the service of a petition as provided by Minn. Stat. § 176.305. Any petition filed on behalf of an employee or his or her dependents shall certify that prior notice of intention to initiate proceedings has been sent to the adverse party, pursuant to Minn. Stat. § 176.271, subd. 2, and the date of that notice. Supporting medical reports shall be attached to the petition.

B. Consolidation of claims. Claims by several employees arising out of the same accident may be consolidated in one proceeding only by consent of all parties or by order on appropriate motion.

C. Contents of petitions. A petition shall contain the following information which shall be in the sequence listed in 1.-21.

1. Title. The title of the case shall include the petitioner's name, the employer's name and address, the insurer's name and address, the division's record number and the employee's social security number;

2. The petitioner's address;

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3. The date of the alleged personal injury or onset of occupational disease;

4. The place of employment on the date of the alleged injury or disease;

5. The employee's weekly wage at the time of the alleged injury or disease;

6. A statement that the injury or disease arose out of and in the course of the employment;

7. A statement which specifies the nature and extent of the alleged injury or disease, including the percentage of disability, if known, attaching a copy of all medical reports;

8. The date on which the employer was first given notice of the alleged injury or disease and the manner in which the notice was given;

9. The name and address of the employer's insurer on the date of the alleged injury or disease or if the employer was self-insured, a statement to that effect;

10. A detailed listing of the dates of the alleged disability, stating whether each date was for temporary total, temporary partial, permanent total, or permanent partial disability;

11. A detailed list of the medical benefits alleged to be owing, giving the names, addresses, dates of treatment or purchase of drugs, or other compensable items;

12. The names and addresses of any third parties who have paid disability, medical or other benefits to the employee as a result of the alleged injury or disease, listing the dates and amounts of the payments, and the relevant claim number or policy number;

13. A statement that attorney's fees are or are not requested;

14. A statement that the employer and insurer were notified, as required by Minn. Stat. § 176.271, subd. 2, that a proceeding would be instituted and stating the relief sought, giving the date of the notice and attaching a copy of the notice;

15. A signature and attestation by the employee;

16. The name, address and telephone number of the employee's attorney unless the employee is representing himself or herself;

17. A statement that a settlement or prehearing conference is or is not requested and, if so, the requested location for the conference;

18. A statement indicating the number of lay and medical witnesses expected to be called as witnesses and the anticipated length of their testimony;

19. A statement specifying the principal issues to be resolved at hearing;

20. A statement that the employee is or is not presently receiving workers' compensation benefits and, if the employee is, the amounts and the name and address of the paying party; and

21. The requested location for the regular hearing.

D. Heading of petition. Unless otherwise provided by law, all requests for action by the commissioner, a settlement, calendar or compensation judge after the filing of a petition shall contain the title and appropriate identification number of the case and shall indicate the type of action requested.

E. Responsibilities of attorneys; notice to third parties. All attorneys representing employees, employers, or any other parties to a workers' compensation proceeding shall inquire of their clients at the time the proceeding is commenced, and again within five days of receipt of a notice of prehearing conference, as to whether any third party, other than the workers' compensation insurer, has paid wage loss benefits or treatment expense to the employee or in the employee's behalf.

If inquiry discloses that any third party, such as an insurer or a welfare department, has made any such payments, the attorney discovering that fact shall then have the duty to place the third party on written notice, within five days, of its right to petition for intervention and reimbursement. The written notice shall have attached to it a copy of 9 MCAR § 2.310 and also a copy of all pleadings in the case and a copy of all notices and all orders of the workers' compensation division of the department of labor and industry and of the office of administrative hearings served in the case to date, and shall specifically advise that:

1. The employee has commenced a proceeding to recover workers' compensation benefits, and that under Minn. Stat. § 176.361 and 9 MCAR § 2.310 the third party has the right to petition for intervention and reimbursement of payments made for treatment and wage loss;

2. The name and address of all parties to the proceeding and the names and addresses of their attorneys;

3. The name of the third party's insured, the nature of the payments made, and any identifying claim and policy number;

4. Any failure of the third party to comply with any provisions of 9 MCAR § 2.310 shall result in a denial of the claim for reimbursement unless the compensation judge determines that the error or omission is merely technical.

Failure of an employee's attorney to comply in a timely manner with this rule shall be taken into consideration as an additional significant factor in determining the attorney's fee under Minn. Stat. § 176.081.

Failure of an attorney representing an employer and insurer to comply in a timely manner with this rule shall be taken into consideration for purposes of determining whether a penalty shall be assessed against the employer and insurer under Minn. Stat. § 176.225 for unreasonable or vexatious delay.

Where inquiry by the attorney for the injured employee at the time a proceeding is commenced discloses information that a third party has made payments, the employee's claim petition shall not be accepted for filing and the proceeding shall not be considered commenced unless the claim petition is accompanied by a proof of service of written notice upon the third party, unless the time for commencing an action under the statute of limitations in Minn. Stat. § 176.151 has run. The written notice shall be in the form prescribed by 1.-4.

9 MCAR § 2.305 Settlement judge review and settlement conferences.

A. Referral. Upon the filing of a petition, the commissioner, within ten days, shall refer the matter to a settlement judge who shall review the filing to determine whether a settlement conference is appropriate.

B. Disposition. If a settlement conference has been requested or is deemed appropriate by the settlement judge, he or she shall notify all parties of the date, time and place where the settlement conference will be conducted. The settlement conference shall be completed within 60 days of the date of referral of the petition by the commissioner. If a settlement conference has not been requested or is deemed to be inappropriate, the settlement judge shall certify the matter to the chief hearing examiner.

C. Retention of jurisdiction. If the settlement conference cannot be concluded within 60 days, the settlement judge shall certify the matter to the chief hearing examiner; provided, however, that with the consent of the petitioner or his or her representative, the settlement judge may retain jurisdiction for an additional 60 days for purposes of receiving a full settlement of all issues.

D. Settlement alternatives not precluded. Nothing contained in this rule shall preclude any party from requesting that a settlement conference be scheduled at any time prior to a hearing by a compensation judge, nor shall it prohibit the chief hearing examiner or calendar judge from setting a settlement conference on his or her own motion once the matter has been received from the commissioner.

E. Attendance. At any settlement conference conducted before a settlement, calendar or compensation judge, all parties shall attend and shall, if they are a representative of a party, be authorized to reach a full settlement on all or any issues in the case.

F. Matters agreed upon. If, following a settlement conference, a settlement has not been reached but the parties have reached agreement on any facts, legal or medical issues, or levels of benefits, the settlement, calendar or compensation judge presiding over the settlement conference shall, if he or she approves of those matters agreed upon, issue an order confirming and approving those matters agreed upon. The order shall be binding on any compensation judge who may subsequently be assigned to hear the case. Issues once agreed upon and approved may be reopened by the compensation judge only upon motion of any party on the basis of newly discovered evidence which was not reasonably discoverable at the earlier time.

9 MCAR § 2.306 Notice of intention to discontinue compensation payments.

A. Contents. A notice of intention to discontinue compensation filed pursuant to Minn. Stat. § 176.241, shall contain the following information:

1. The name and home address of the person whose compensation would be discontinued;

2. The file number previously assigned by the division and the office of administrative hearings;

3. The name and address of the attorney, if any, who represented the employee during previous proceedings;

4. A description of the prior order, if any, under which compensation was being paid and the name of the person issuing the order;

5. The date the compensation is proposed to be discontinued;

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6. A complete list of facts supporting the discontinuance which shall be prepared with sufficient specificity to allow the employee to prepare an objection without the necessity of requesting additional information;

7. If the proposed discontinuance is based on medical evidence, copies of all medical reports bearing on the employee's physical condition at the time of the proposed discontinuance;

8. A statement which shall read as follows:

NOTICE

You have the right to object to this proposed discontinuance. If you intend to object, you must prepare a written objection and file it with the Commissioner of the Minnesota Department of Labor and Industry, Fifth Floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101. You may contact (employer) or (insurer) regarding the discontinuance and the procedures related to the filing of an objection. If you file an exemption, it may be mailed or personally delivered to the Department of Labor and Industry at the address listed above. An objection must contain your full name, address and telephone number, the name of the employer and insurer, the date of this notice and the file number listed on this notice.

9. The name and address of the employer and insurer;

10. The name, address and telephone number of the attorney representing the employer or insurer; and

11. The name, address and telephone number of the person filing the notice.

B. Objections.

1. Any objection to the proposed discontinuance shall be in writing, shall be filed with the commissioner, and shall contain the following information:

a. The name, address and telephone number of the employee;

b. The name, address and telephone number of the person filing the objection, if it is not the employee;

c. The name of the employer and insurer;

d. The date of the notice of discontinuance; and

e. The file numbers which were listed on the notice of discontinuance.

2. When an objection has been filed or where it appears to the commissioner that the right to compensation may not have terminated, the matter shall be referred to the chief hearing examiner who shall set the matter for hearing on a priority basis not less than 30 nor more than 75 days from the date of the receipt of the matter from the commissioner.

3. Any objection filed more than 120 days after service of a notice to discontinue shall be treated as a claim petition and shall not be heard on a priority basis.

C. Petitions for discontinuance. When an employer or insurer petitions the commissioner for an order allowing discontinuance of benefits but has chosen not to discontinue payments until after a final determination, the petitioner shall be entitled to a hearing on the same priority basis as set forth in B.2. Petitions filed under this provision shall contain the same information as required for a notice of discontinuance.

9 MCAR § 2.307 Answers.

A. Service and filing. An answer to each petition shall be served and filed within 20 days after service of the application unless a waiver has been obtained pursuant to Minn. Stat. § 176.321, subd. 3.

B. Proof of service. The answer shall be accompanied by proof of service upon the opposing parties.

C. Contents. The answer shall contain the following:

1. Specific responses to allegations regarding the date and nature of the injury, the employment status, notice, wage, relationship of the injury to employment, insurance, benefits paid, matters in dispute, affirmative defenses and additional matters as deemed necessary by the answering party;

2. Any medical report upon which the answer is based, if available;

3. If a medical examination by a doctor chosen by the employer or insurer has not already been completed, the date, time and place for the exam which shall be scheduled to take place within 75 days from the date of service of the notice of intention to initiate proceedings. Any request for an extension of time for scheduling the examination shall be subject to the approval of the calendar or settlement judge, whichever has jurisdiction of the matter at the time the request is made.

9 MCAR § 2.308 Service.

A. Service by state. The commissioner, the chief hearing examiner, and settlement, calendar or compensation judges shall serve all notices, findings, orders, decisions or awards upon the parties or their attorneys or agents of record by first class mail at their addresses of record or by personal service.

B. Service by parties. A party may accomplish service of any document either by first class mail or by personal service. Service of any document required to be served by a party may be served by the party's attorney or authorized agent. Upon filing of the document served, it shall be accompanied by an affidavit or proof of service which shall be in the form acceptable to the district courts.

C. Service by mail. Service of all documents and pleadings may be made by first class United States mail upon all parties to a proceeding whether residents of the same city, town or otherwise. Computation of time in such instances shall be in accordance with the provisions of Minn. Stat. § 645.15.

9 MCAR § 2.309 Hearings.

A. Definition of hearing. For the purposes of 9 MCAR §§ 2.301-2.326, a hearing may be called a settlement conference, a prehearing conference, or a regular hearing. Nothing contained herein is intended to change the statutory requirement that hearings, as defined by statute, be conducted by compensation judges from the office of administrative hearings.

1. A settlement conference is a hearing conducted by a settlement judge. It is for the primary purpose of providing assistance to the parties in resolving disputes and securing a settlement of all issues and for the secondary purpose of assisting the parties in narrowing the issues and of expediting preparation and trial of the matter. The conference may be conducted by telephone and in the cases where the location of the settlement conference would require any party to travel more than 50 miles to attend, it shall be conducted by telephone unless all parties agree otherwise. Written notice of this hearing shall be given at least 20 days prior to the date of the hearing.

2. A prehearing conference may be required whether or not a settlement conference has been held and may be conducted by telephone. The purposes of a prehearing conference are to ascertain if there are genuine disputes requiring resolution by a calendar or compensation judge, to provide assistance to the parties in resolving disputes, to narrow the issues, and to expedite preparation and trial if a regular hearing is necessary. A prehearing conference is conducted by a calendar or compensation judge. It shall be conducted by telephone if the location set for the prehearing conference would require any party to travel more than 50 miles to attend. Written notice of this hearing shall be given at least 20 days prior to the date of the hearing.

3. A regular hearing is a hearing set for the purpose of receiving evidence and is conducted by a compensation judge.

B. Notice of hearing. Notice of the time and place for hearing shall be provided to all parties to a case as required by 9 MCAR § 2.308 A., except that oral or written notification of the date, time and place for a regular hearing which is given to the parties by a settlement, calendar or compensation judge at the time of a settlement or prehearing conference shall be sufficient notice. Each attorney receiving notice of the hearing date at a settlement or prehearing conference shall be responsible for notifying each party the attorney represents of the hearing date. When a written notice is required, it shall be given at least five days prior to the date of hearing, except:

1. When notice is waived by all parties;

2. When a different time is expressly agreed to by all parties; or

3. When the notice is governed by contrary law or rule.

C. Continuances.

1. Requests for continuances are inconsistent with the requirement that workers' compensation proceedings be expeditious and are, therefore, not favored and will be granted only upon a clear showing of good cause. The parties are expected to submit for decision all matters in controversy at a single hearing and to produce at the hearing all necessary evidence, including witnesses, documents, medical reports, payroll statements and all other matters considered essential in the proof of a party's claim or defense.

2. When a continuance is to be requested prior to the hearing date, the party requesting the continuance shall have first

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contacted all other parties to determine whether mutual agreement to the continuance can be reached and, if the continuance be granted, the availability of all parties for hearing at future specific dates. When all parties are in agreement with the request for continuance and have agreed to a date for a future hearing, which date has been approved by the compensation, calendar or settlement judge before whom the matter is pending, and when the continuance request is made no less than ten working days prior to the hearing date,the continuance shall be granted.

3. If all parties have not agreed to a continuance, requests for continuances shall be made to the compensation, calendar or settlement judge before whom the matter is pending. When made more than ten working days prior to the hearing date, the request shall be in writing in the form of a motion for continuance and shall be served on all parties. If less than ten working days remain prior to the hearing date, notice of the motion may be made orally. A hearing on the motion shall be conducted only if ordered by the settlement, compensation or calendar judge to whom the motion is made.

4. Good cause shall not include:

a. When an insurer retains more than one counsel on its own payroll who practice in the field of workers' compensation law, unavailability of the counsel assigned to the case because of engagement in another court or otherwise unless all such counsel are committed elsewhere;

b. When a law firm consists of more than one member who practice in the field of workers' compensation law, unavailability of the counsel assigned to the case because of engagement in another court or otherwise unless all such counsel are committed elsewhere;

c. Unavailability of an individual law practitioner because of engagement in another court, if he has failed to notify the judge in charge of the trial court calendar of that court that he has been assigned to a date and time certain in a workers' compensation case;

d. Unavailability of a medical or other witness if the witness' deposition could have been taken between the time of receipt of the notice of the hearing date and the date of the hearing.

9 MCAR § 2.310 Intervention.

A. Motion. Any person desiring to intervene in a workers' compensation case as a party shall submit a timely motion to intervene to the settlement judge unless the matter has been referred to the chief hearing examiner for assignment, in which case the motion shall be submitted to the compensation judge to whom the case has been assigned or to the calendar judge if the case has not yet been assigned. The motion shall be served on all parties either personally or by first class mail. Timeliness will be determined by the settlement, calendar or compensation judge in each case based on circumstances at the time of filing. The motion shall show how the moving party's legal rights, duties or privileges may be determined or affected by the case, shall set forth the grounds and purposes for which intervention is sought and shall indicate the moving party's statutory right to intervene if one should exist. The motion shall be accompanied by the following, if applicable:

1. An itemization of disability payments showing the period during which the payments were or are being made, the weekly or monthly rate of the payments and the amount of reimbursement claimed;

2. A summary of the medical or treatment payments, broken down by medical or treatment creditor, showing the total bill submitted, the period of treatment covered by that bill, the amount of payment on that bill, and to whom the payment was made;

3. Copies of all medical or treatment bills on which some payment was made;

4. Copies of the worksheets or other information setting forth how the payments on medical or treatment bills were calculated;

5. A copy of the relevant policy or contract provisions upon which the claim for reimbursement is based;

6. A proposed order allowing intervention with sufficient copies to serve on all parties;

7. A proof of service;

8. At the option of the intervenor, a proposed stipulation which states that all of the payments for which reimbursement is claimed are related to the injury or condition in dispute in the case and that, if the petitioner is successful in proving the compensability of the claim, it is agreed that the sum be reimbursed to the intervenor.

B. Stipulation. When the person serving the motion for intervention has included a proposed stipulation, all parties shall either execute and return the signed stipulation to the intervenor or serve upon the intervenor and all other parties specific and detailed objections to any payments made by the intervenor which are not conceded to be correct and related to the injury or condition the employee has asserted is compensable. If a party has not returned the signed stipulation or filed objections within 20 days of service of the motion, the intervenor's right to reimbursement for the amount sought shall be deemed to have been established without the necessity of the intervenor participating further in the proceedings.

C. Attendance by intervenor. Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, the intervenor shall attend all settlement or prehearing conferences and shall attend the regular hearing if ordered to do so by the compensation judge.

D. Order. If an objection to intervention remains following settlement and prehearing conferences, the calendar judge shall enter an order ruling on the intervention which order shall be binding on the compensation judge to whom the case is assigned for a regular hearing.

E. Presentation of evidence by intervenor. Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, at the regular hearing on the claim petition where intervention has been granted, the intervenor shall present evidence in support of his or her claim after the petitioner has rested, unless otherwise ordered by the compensation judge, in order that the issue of intervention may be promptly determined with no undue delay that may prejudice the rights of the original parties.

F. Effects of noncompliance with rule. Failure to comply with any provision of this rule shall result in a denial of the claim for reimbursement unless the compensation judge determines that the error or mistake is merely technical.

G. Failure of attorney to respond. Failure by the employee's attorney to submit a timely response which also complies otherwise with this rule shall be a significant additional factor to be taken into consideration under Minn. Stat. § 176.081 in determining the amount of the attorney's fees. Failure by an attorney representing an employer or insurer to submit a timely response which also complies otherwise with the requirements of this rule shall be taken into consideration for purposes of determining whether a penalty shall be assessed against the employer or insurer under Minn. Stat. § 176.225 for unreasonable or vexatious delay.

9 MCAR § 2.311 Consolidation.

A. Authorization. Consolidation of two or more related cases may be ordered for the purpose of receiving evidence. Consolidation may be ordered upon motion by any party to the calendar or compensation judge or upon the calendar or compensation judge's own motion if the calendar or compensation judge determines:

1. That separate cases present substantially the same issues of fact and law;
2. That a holding in one case would affect the rights of the parties in the other case; and
3. That the consolidation would not substantially prejudice any party.

Notwithstanding the requirements of this rule, the parties may stipulate and agree to such consolidation.

B. Receipt of evidence. Under consolidation, all documentary evidence previously received in an individual case shall be reintroduced in the consolidated proceedings under a master file if the compensation judge assigned to try the case designates one file as a master file. When so adduced, the evidence shall be deemed part of the record of each of the several consolidated cases. Evidence received subsequent to the order of consolidation shall be similarly received with like force and effect.

C. Notice of order. Following the granting of an order for consolidation, the calendar or compensation judge shall forthwith serve on all parties and the commissioner a copy of the order for consolidation. The order shall contain, among other things:

1. A description of the cases for consolidation;
2. The reasons for consolidation;
3. Notification of a consolidated prehearing conference if one has been requested.

D. Objection to consolidation.

1. Motion for severance. Any party may object to consolidation by filing with the appropriate judge, and serving upon all parties at least seven days prior to the regular hearing in the case, a motion for severance from consolidation, setting forth the petitioner's name and address, the title of his case prior to consolidation, and the reasons for his petition.

2. Determination. If the appropriate judge finds that consolidation would prejudice the party moving for severance, the judge shall order such severance or other relief as he or she deems necessary.

E. Service of pleadings and decisions. Separate pleadings shall be filed and separate findings, orders, decisions and awards will be made and filed in each case consolidated for hearing.

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9 MCAR § 2.312 Disqualification.

A. Procedures. A compensation judge shall withdraw from participation in a case at any time if the judge deems himself or herself disqualified, prejudiced or biased for any reason. Proceedings to disqualify a compensation judge shall be initiated by the filing of a motion for disqualification supported by affidavit or declaration under penalty of perjury stating in detail facts establishing grounds for disqualification of the compensation judge to whom a case or proceeding has been assigned. If the compensation judge assigned to hear the matter and the grounds for disqualification are known, the motion for disqualification shall be filed with the chief hearing examiner not more than ten days after the moving party has received notice of the assignment of the judge to the hearing. In no event shall any such motion be entertained after the swearing of the first witness. The motion shall be determined by the chief hearing examiner or his designee. The fact that a compensation judge has previously determined a similar case contrary to the interests of the moving party in the pending case shall not be grounds for disqualification.

B. Affidavit for reassignment. The petitioner and parties responding a petition shall be entitled to reassignment of a regular hearing to another compensation judge in accordance with the provisions of this section. Proceedings for a reassignment shall be instituted by the filing of an affidavit under penalty of perjury in substantially the following form:

State of Minnesota
County of _____

_____, being duly sworn, deposes and says: That (s)he is (a party) (attorney for a party) to the above entitled case; that affiant believes that (s)he cannot have a (fair) (expeditious) (inexpensive) (unencumbered) (impartial) trial before the workers' compensation judge (before whom the case is pending) (to whom the case is assigned).

_____

Subscribed and sworn to before me
this _____ day of _____, 19_____

_____

Notary Public
My commission expires _____

If the compensation judge assigned to hear the case is known, the affidavit shall be filed not more than five working days after receipt of the notice of regular hearing and be directed to the attention of the chief hearing examiner. A copy of the affidavit shall be served on all other parties or their attorneys at the same time the affidavit is filed. In no event shall any such affidavit be entertained after the swearing of the first witness at a regular hearing.

Upon the filing of an affidavit for reassignment in accordance with the provisions of this section, without any further act or proof, the chief hearing examiner shall assign the case or proceeding to another compensation judge. Upon reassignment a new notice of regular hearing shall be served. Under no circumstances shall more than one such reassignment be made in any one case or proceeding pursuant to the affidavit of any one party; provided, however, that one additional reassignment may be made upon petition of a party on the other side. The petition by the other party shall be filed in the manner and time hereinbefore provided.

Unless required because of the unavailability of a compensation judge to hear the case, no continuance shall be granted by reason of an affidavit filed under this section. If a continuance is necessary, another regular hearing will be scheduled as early as possible.

Consolidated cases are to be considered as one case within the meaning of this section. This section is not applicable to settlement or pretrial conferences.

9 MCAR § 2.313 Prehearing procedures.

A. Requirement. All cases shall be subject to a settlement conference or a prehearing conference whenever possible, at which all parties shall attend or be represented, unless a settlement judge or calendar judge orders otherwise. If parties are represented by attorneys, the attorneys shall bring with them their appointment calendars. If a party is not represented by an attorney, the party shall appear personally and shall be prepared to arrange agreeable dates for the regular hearing. Parties or their attorneys attending a settlement or prehearing conference must have authority to settle their respective claims.

B. Settlement discussions. Prior to any settlement or prehearing conference, the parties shall discuss the possibility of settlement if they deem that a reasonable basis for settlement exists. Parties or attorneys appearing at settlement or prehearing conference shall be prepared to participate in settlement discussions.

C. Conference procedures. At the settlement or prehearing conference:

1. All parties shall be prepared to state the issues;

2. All parties shall state the names, and addresses if known, of all witnesses they intend to call;

3. All parties shall give notice of any amendments to pleadings that may still be necessary;

4. All parties shall file copies of all medical reports not already on file. Reports of medical examinations completed after any settlement conference or prehearing conference shall be filed as soon as available prior to the regular hearing;

5. Each party shall state what exhibits, including photographs, motion picture films, video tapes and documentary evidence, are intended to be used at the hearing, and copies of these exhibits shall be made available to opposing counsel no later than ten days prior to the date of the regular hearing; provided, however, that if any party requests showing of motion picture films or video tapes prior to the regular hearing, it shall pay the expense for the showing and may tax this expense in the same manner as other disbursements;

6. If the employee plans to introduce hospital records into evidence, the employee or his attorney shall bring to the settlement or prehearing conference written authorizations for opposing counsel to examine those records if the authorizations have not previously been provided;

7. If the employee is claiming medical or other treatment expenses, the employee or the attorney shall state those expenses at the time of the settlement or prehearing conference, and shall furnish opposing counsel with copies of itemized bills for such expenses at least ten days prior to the settlement or prehearing conference;

8. If the employee is claiming temporary total disability, the employee or attorney shall state at the settlement or prehearing conference the dates of time lost from work;

9. If the employee is claiming temporary partial disability, the employee or attorney shall state the dates of the claim, the approximate amount of the claim, and the names and addresses of the employers for whom the employee worked during the period of the claim; authorizations to permit opposing counsel to confirm wages earned in those employments shall have been furnished at least ten days prior to the scheduled settlement or prehearing conference; and, an itemized breakdown of the claim for temporary partial disability shall be submitted to the compensation judge and opposing counsel at least ten days prior to the time of the regular hearing;

10. The parties or their attorneys shall state whether payment for disability benefits, on medical or treatment expenses, or on funeral expenses has been made by any party other than the workers' compensation carrier. If payment has been made, the name and address of the party making payment shall be furnished to the settlement or calendar judge, together with any identifying policy or claim numbers;

11. If a dispute exists on the wage rate at the time of the injury, the attorney for the employer and insurer shall furnish to opposing counsel at least ten days prior to the settlement or prehearing conference, copies of the relevant wage records of the employee;

12. The attorney for the employee or dependents shall furnish to the settlement or calendar judge a copy of his retainer agreement with the employee or dependents and shall state the amount of retainer fee paid. He shall be prepared at the time of hearing or settlement to show the reasonableness of any attorney's fees or costs, in accordance with Minn. Stat. § 176.081.

D. Prehearing statement. At the time a case is first set for a settlement or prehearing conference, if the information is not already on file, the settlement judge or calendar judge may order the parties to complete, serve on each other and file a prehearing statement which shall contain any of the items in C. which the settlement or calendar judge deems appropriate. In making a determination on the requirement of the preparation of prehearing statements, the settlement or calendar judge shall take into consideration the number of parties involved in the case, the nature and extent of the medical issues, and the nature, extent and type of disability claimed.

E. Evidence not disclosed at conference. Evidence, or other matters listed in C. which have not been disclosed at the prehearing conference shall not be allowed to be presented at the regular hearing unless it can be shown to the compensation judge that the evidence or other matters offered were discovered subsequent to the prehearing conference, were not discoverable through the exercise of due diligence prior to that time, and that the other parties have been advised of the evidence or other matters prior to the trial and have had an opportunity for review.

F. Temporary orders. Any insurer or self-insurer voluntarily agreeing to pay benefits pursuant to Minn. Stat. § 176.91, subd. 1, shall file a formal petition for temporary order.

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1. The petition shall contain the following:

a. Name of the employer and its insurer or self-insured consenting to payment of compensation benefits and medical expenses;

b. The dispute involved, including the name and address of other employer and its workers' compensation insurer, if known, that may be liable for workers' compensation benefits and the date of the alleged injury while working for the employer;

c. The beginning date of the employee's present disability, and the compensation rate that the insurer or self-insurer will voluntarily pay;

2. The original petition for temporary order, with proof of service on all necessary parties, shall be filed with the division, the office, or the court of appeals, depending upon where the matter is pending;

3. The petition for temporary order shall be accompanied by a prepared formal order that should be substantially in the following form:

The undersigned having examined the foregoing petition for temporary order and the compensation files and records herein, and it appearing that a temporary order for payment of compensation benefits should be issued pending a final determination, as provided by Minn. Stat. § 176.191, subd. 1;

NOW, THEREFORE, IT IS HEREBY ORDERED, that (name of insurer or self-insured) having consented to payment of compensation benefits pursuant to Minn. Stat. § 176.191 shall pay to (name), employee, compensation at the weekly rate of $(amount), during the period of employee's disability, beginning (date), and shall also pay reasonable medical expenses related to employee's said disability.

IT IS FURTHER ORDERED, that following a final determination of liability and if it has been determined that some other employer or insurer is liable for all or part of the compensation paid pursuant to this temporary order, then the division, the compensation judge, or Court of Appeals shall order the parties held liable to reimburse (name of paying party) for all or part of the compensation paid pursuant to this temporary order, for which the other parties are held liable, including interest at the rate of five percent per annum.

Dated at ....., Minnesota
this .....day of .....

(WORKERS' COMPENSATION DIVISION)
(COMPENSATION JUDGE)
(COURT OF APPEALS)

.....
By .....

The original and sufficient copies of the order to make service upon all neccessary parties, and any attorneys representing them, shall be filed.

G. Payment of benefits by special compensation fund. An employee seeking payment of benefits by the special compensation fund pursuant to Minn. Stat. § 176.191, subd. 2, shall file a formal petition for temporary order.

1. The petition shall contain the following:

a. A statement that written demand for payment pursuant to Minn. Stat. § 176.191, subd. 1, has been made against all employers and insurers party to the claim and that the payment demanded has been refused:

b. The names and addresses of all employers and insurers or self-insurers who are parties to the claim;

c. A statement as to the dispute involved and the dates of all alleged injuries while working for each employer;

d. The beginning date of the employee's present disability, the compensation rate applicable for each injury date, the proposed compensation rate to be paid by the special compensation fund, and an itemization of all medical expenses requested to be paid pursuant to the temporary order;

2. The original of the petition for temporary order, with proof of service on all necessary parties, shall be filed with the division, the office, or the court of appeals, depending upon where the matter is pending;

3. The petition for temporary order shall be accompanied by a prepared formal order that should be substantially in the following form:

The undersigned having examined the foregoing petition for temporary order and the compensation files and records herein, and it appearing that a temporary order for payment of compensation benefits should be issued pending a final determination, as provided by Minn. Stat. § 176.191, subd. 2;

NOW, THEREFORE, IT IS HEREBY ORDERED that the State Treasurer, as custodian of the special compensation fund, shall, pursuant to Minn. Stat. § 176.191, subd. 2, pay to (name), employee, compensation at the weekly rate of $(amount), during the period of employee's disability, beginning (date), and shall also pay reasonable medical expenses related to the employee's said disability.

IT IS FURTHER ORDERED, that following a final determination of liability and if it has been determined that one or more employers or insurers are liable for all or part of the compensation paid pursuant to this temporary order, then the division, the compensation judge or Court of Appeals shall order the parties held liable to reimburse the State Treasurer, as custodian of the special compensation fund, for all or part of the compensation paid pursuant to this temporary order, for which the other parties are held liable, including interest at the rate of 12 percent per annum.

Dated at ....., Minnesota
this .....day of .....

(WORKERS'S COMPENSATION DIVISION)
(COMPENSATION JUDGE)
(COURT OF APPEALS)

.....
By .....

The original and sufficient copies of the order to make service upon all necessary parties, and any attorneys representing them, shall be filed.

H. Necessary parties. For the purpose of this rule, the following shall be deemed necessary parties:

1. The employee or dependents;

2. All insurers or self-insured named in the petition for temporary order;

3. Any employer who is uninsured or whose insurer for the date of the alleged injury in that employment is unknown;

4. The state treasurer, as custodian of the special compensation fund, if the petition is made pursuant to Minn. Stat. § 176.191, subd. 2.

I. Answer. Within ten days after being served with a copy of the petition for temporary order and order, employers or their insurers, other than paying party, or the state treasurer, as custodian of the special compensation fund, may file a verified answer to the petition in accordance with the provisions of Minn. Stat. § 176.321.

J. Circumstances of nonapproval of temporary orders. Temporary orders, as a general rule, shall not be approved if made contingent upon the waiver by the employee of his rights to claim an additional award pursuant to Minn. Stat. § 176.225, or to have fees for his attorney assessed against the employer and insurer in addition to compensation pursuant to Minn. Stat. § 176.191 or 176.081, subd. 8.

K. Effect of filing. The filing of a petition for temporary order shall not cause the matter to be placed on the trial calendar, unless accompanied by a petition for contribution or reimbursement.

9 MCAR § 2.314 Discovery.

A. Demand. Each party shall, within 30 days of a demand by another party, disclose or furnish the following:

1. The names and addresses of all witnesses that a party intends to call at the regular hearing. All witnesses unknown at the time of the disclosure shall be disclosed as soon as they become known if a prior demand has been made.

2. Any relevant written or recorded statements made by witnesses on behalf of a party. The demanding party shall be permitted to inspect and reproduce any such statements which reproduction shall be at the expense of the party requesting reproduction. Any party unreasonably failing upon demand to make the disclosure required by this rule, upon proper motion made to the compensation judge at the time of trial, may be foreclosed from presenting any evidence at the hearing through witnesses not disclosed or through witnesses whose statements are not disclosed.

3. Medical privilege shall be deemed waived as to the injuries or conditions alleged in the petition by the filing of the petition alleging injury or occupational disease. Medical authorizations shall be furnished, upon demand, to adverse parties. Likewise, any and all medical reports shall be provided, upon demand, to all adverse parties. Upon demand, the petitioner shall

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disclose the names and addresses of all persons who have treated the petitioner in the past for injuries or conditions identical or similar to those alleged in the petition, the dates of the treatment, and shall provide medical authorization for each.

B. Depositions. Pursuant to the provisions of Minn. Stat. § 176.411, subd. 2, depositions may be taken in the manner which the law provides for depositions in civil actions in the district courts for the state, except where a compensatibn judge orders otherwise. When a party has objected to the taking of a deposition, the party requesting the deposition shall bring a motion before the settlement, compensation or calendar judge, before whom the case is pending at the time of the motion, who shall determine whether the deposition should go forward. The settlement, compensation or calendar judge shall order the deposition to proceed if the judge finds that the request for the taking of the deposition has been shown to be needed for the proper presentation of a party's case, is not for purposes of delay, that unusual or extraordinary circumstances exist which compel extensive discovery, or that the issues or amounts in controversy are significant enough to warrant extensive discovery.

Depositions for the purpose of preserving testimony or for presenting medical testimony due to the unavailability of the doctor shall be allowed. Unless, for good cause shown, the party taking the deposition has obtained the permission of the calendar judge, or compensation judge if the case has been assigned for hearing, to take the deposition subsequent to the hearing, it shall be taken sufficiently in advance of the hearing so that the deposition is filed prior to the regular hearing or, at the latest, on the day of the regular hearing.

The original copy of any deposition taken for purposes of presenting testimony in the case shall be filed with the settlement judge if the case is still pending before the settlement judge or with the office of administrative hearings if the matter has been referred to the chief hearing examiner for assignment. The original copy of any deposition taken solely for purposes of discovery shall be sealed and filed as in the case of evidentiary depositions but shall not be reviewed or utilized in any fashion by the compensation judge unless the deposition shall be formally entered as evidence in the case.

C. Motions for additional discovery. Upon the motion of any party, the settlement, compensation or calendar judge having jurisdiction at the time of the motion may order discovery of any other relevant material or information, recognizing all privileges recognized at law. The judge may order any means of discovery available pursuant to the rules of civil procedure for the district courts of the state of Minnesota provided that the request for such discovery can be shown to be needed for the proper presentation of a party's case, is not for purposes of delay, and that the issues or amounts in controversy are significant enough to warrant extensive discovery.

D. Penalties. Upon the failure of a party to reasonably comply with 9 MCAR §§ 2.301-2.326 relating to discovery or with an order of a settlement, compensation or calendar judge made pursuant to this rule, upon a motion properly made at the time of the hearing, the compensation judge assigned to the regular hearing may make a further order as follows:

1. An order that the subject matter of the order for discovery or any other relevant facts shall be taken as established for the purposes of the case in accordance with the claim of the party requesting the order; or

2. An order refusing to allow the party failing to comply to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence.

E. Proprietary information. When a party is asked to reveal material which that party considers to be proprietary information or trade secrets, he or she shall bring the matter to the attention of the appropriate judge, who shall make such protective orders as are reasonable and necessary or as otherwise provided by law.

9 MCAR § 2.315 Petitions for contribution or reimbursement.

A. Contents. Petitions for contribution or reimbursement shall set forth in detail the allegations showing the basis of the claim for contribution or reimbursement against the additional employer or insurer named,therein, or of the claim for reimbursement against the state treasurer, custodian of the special compensation fund. The petition shall be supported by medical evidence, and shall be signed and verified. The original petition shall be filed with the settlement judge if the matter is pending before the division or with the chief hearing examiner if the matter has been referred for assignment, together with proof of service upon the employee or his attorney and all additional parties named in it.

B. Filing. In all cases where a claim petition or other form of action is pending, a petition for contribution or reimbursement shall be filed no later than ten days prior to a settlement or prehearing conference, and copies of all pleadings, including any notice of settlement or prehearing conference shall be served upon the additional employers or insurers by the party bringing the petition. In cases where no action is pending, the filing of the petition for contribution or reimbursement with the division shall initiate proceedings.

C. Answer. Within 20 days after being served with a copy of a petition for contribution or reimbursement, employers or their insurers, other than the petitioning party, may file a verified answer to the petition in accordance with the provisions of Minn. Stat. § 176.321 and, if not already set for settlement or prehearing conference, the matter shall be set for a settlement or prehearing conference in accordance with these rules.

D. Notice to employee. The employee shall be notified of all of the proceedings and should be represented by an attorney of his or her choice. A copy of all motions or answers shall be duly served upon the employee, the employee's attorney, or both in accordance with Minn. Stat. § 176.321.

9 MCAR § 2.316 Subpoenas. Subpoenas may be obtained without charge from the workers' compensation division or the office of administrative hearings. The name and address and telephone number of the party or attorney requesting service of the subpoena shall be included on the subpoena before service is made. When service is made, service and witness fees shall be tendered in accordance with Minn. Stat. § 357.22.

Upon motion promptly made, and in any event at or before the time specified in the subpoena for compliance with it, the calendar judge or compensation judge, if the case has been assigned for regular hearing, may quash or modify the subpoena if the judge finds that it is unreasonable or oppressive.

9 MCAR § 2.317 The hearing.

A. Notice. A place, date and time certain will be assigned to each case. Notice of the hearing will be given as soon as the assigned date is known, but shall be given at least five days in advance of the hearing. The notice will include the place of hearing and the amount of time allowed for the hearing. Cases will be set for one location only, which shall be that most convenient for the petitioner, and adequate time will be allowed so that the case may be completely heard in one setting. In the event that an additional hearing date is required, it shall be set by agreement of all parties and the compensation judge. If the parties cannot agree, the compensation judge shall set the hearing as provided herein.

B. Availability of medical witnesses. As soon as the parties are apprised of the date scheduled for hearing, they shall immediately notify all medical witnesses in writing and arrange for their presence or for the taking of their deposition pursuant to 9 MCAR § 2.314 B.

C. Medical reports. The production of medical evidence in the form of written reports, by stipulation of the parties, is encouraged. These reports should include:

1. The date of the examination;
2. The history of the injury;
3. The patient's complaints;
4. The source of all facts set forth in the history and complaints;
5. Findings on examination;
6. Opinion as to the extent of disability and work limitations, if any;
7. The cause of the disability and, if applicable, whether the work injury was a substantial contributing factor toward the disability;
8. The medical treatment indicated;
9. Opinion as to whether or not permanent disability has resulted from the injury and whether or not the condition has stabilized. If stabilized, a description of the disability with a complete evaluation; and
10. The reason or reasons for the opinion or opinions.

D. Rights of parties. All parties shall have the right to present evidence, to cross-examine witnesses, and to present rebuttal testimony.

E. Witnesses. Any party may be a witness or may present witnesses on his behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation. At the request of a party or upon his own motion for good cause, the compensation judge may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

F. Rules of evidence.

1. Pursuant to Minn. Stat. § 176.411, subd. 1, the compensation judge is bound neither by the common law or statutory rules of evidence nor by technical or formal rules of pleading or procedure.

2. Evidence must be offered to be considered. All evidence to be considered in the case, including all records and

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documents in the possession of any party, or a true and correct photocopy thereof, shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case. Any independent investigation by the compensation judge pursuant to the provisions of Minn. Stat. § 176.391, subd. 1, shall be part of the record provided all parties are aware of the investigation and have had an opportunity to participate in it.

3. Documentary evidence. Documentary evidence in the form of copies of excerpts may be received or incorporated by reference upon agreement of the parties or if ordered by the compensation judge.

4. Notice of facts. The compensation judge may take notice of judicially cognizable facts but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

5. Examination of adverse party. A party may call an adverse party or his managing agent or employees or an officer, director, managing agent or an employee of the state or any political subdivision thereof or of a public or private corporation or of a partnership or association or body politic which is an adverse party, and interrogate them by leading questions and contradict and impeach them on material matters in all respects as if they had been called by the adverse party. The adverse party may be examined by his counsel upon the subject matter of his or her examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted, and impeached by any other party adversely affected by the testimony.

G. The record.

1. The compensation judge shall maintain the official record, other than the stenographic notes of a hearing reporter if one was used, in each case until the issuance of the judge's final order.

2. The record in a compensation case shall contain:

a. All pleadings, motions and orders, including the judgment roll and the entire record from any previous hearing which is relevant to the issues under consideration;

b. Evidence received or considered unless, through agreement of the parties or by order of the compensation judge, custody of an exhibit is given to one of the parties;

c. Those parts of the official file on the matter at the division which the compensation judge incorporates;

d. Offers of proof, objections and rulings thereon;

e. The compensation judge's order;

f. All memoranda or data submitted by any party in connection with the case;

g. A transcript of the hearing, if one was prepared; and

h. The audio-magnetic recording tapes, if that device was used to record the hearing.

3. The transcript.

a. The chief hearing examiner shall direct that the verbatim record of a hearing shall be transcribed if requested by any person. If a transcription is made, except as provided in c., the chief hearing examiner shall require the requesting person and other persons who request copies of the transcript to pay a reasonable charge for them if transcribed by the office. If transcribed by someone other than the office, the person requesting the transcription or a copy shall be liable to the person preparing the transcript for the charge.

b. Charges for transcripts prepared by the office shall be set by the chief hearing examiner, with the approval of the Department of Finance, and all moneys received for transcripts prepared by the office shall be payable to the State Treasurer, Office of Administrative Hearings Account.

c. Pursuant to the provisions of Minn. Stat. § 176.421, subd. 4, clause (3), a party may petition the chief hearing examiner for an order directing that a transcript be prepared, for purposes of appeal to the Court of Appeals, at no cost to the appellant. A petition filed under this provision shall include the following:

(1) Title of the case;

(2) Case identification numbers;

(3) Name, address and telephone number of the attorney representing the appellant;

(4) A sworn affidavit from the appellant which shall include:

(a) Appellant's monthly personal income from all sources including income from trusts, bonds, and savings certificates;

(b) A list, at market value, of all stocks, bonds, savings certificates or other certificates of indebtedness held by the appellant and the appellant's spouse if residing in the same household;

(c) If residing in the same household, the monthly personal income from all sources for appellant's spouse;

(d) A statement of the monthly expenses for the appellant's household;

(e) If the appellant owns any rental property, a statement showing the appellant's equity in the property and the monthly income and expense for the property;

(f) If the appellant owns outright or is purchasing the property in which he or she resides, a statement showing the market value of the property, the appellant's equity in the property, and the present monthly payments, if any.

H. Continuances during the hearing. If it appears in the interests of justice that further testimony should be received, the compensation judge, in his or her discretion, may continue the hearing to a future date and oral notice on the record shall be sufficient if given at the time of the original hearing. Otherwise, the notice of the date for the continued hearing shall be in writing and served on all parties.

I. Hearing procedure.

1. Compensation judge conduct. The compensation judge shall not communicate, directly or indirectly, in connection with any issue of fact or law with any party concerning any pending case, except upon notice and opportunity for all parties to participate.

2. Unless the compensation judge determines that the substantial rights of the parties will be ascertained better in some other manner, the hearing shall be conducted substantially in the following manner:

a. After opening the hearing, the compensation judge shall, unless all parties are represented by counsel, state the procedural rules for the hearing;

b. Any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing shall be entered into the record;

c. If the compensation judge requests opening statements, the party with the burden of proof shall proceed first. All other parties shall make such statements in a sequence determined by the compensation judge;

d. After any opening statements, the party with the burden of proof shall begin the presentation of evidence. That party shall be followed by the other parties in a sequence determined by the compensation judge;

e. Cross-examination of witnesses shall be conducted in a sequence determined by the compensation judge;

f. When all parties and witnesses have been heard, if the compensation judge believes that legal issues remain unresolved, opportunity may be afforded to present final argument, in a sequence determined by the compensation judge. Final argument may, in the discretion of the compensation judge, be in the form of written memoranda or oral argument, or both. Oral final argument shall not be recorded, unless requested by a party or upon the order of the compensation judge. Written memoranda shall, when allowed, be submitted simultaneously or sequentially and within such time periods as the compensation judge shall prescribe. Final arguments shall be limited to legal issues only;

g. After final argument, if any, the hearing shall be closed or continued if ordered by the compensation judge. If continued, it shall be either continued to a certain time and day, which shall be announced at the time of the hearing and made a part of the record, or continued to a date to be determined later, which must be upon not less than 15 days written notice to the parties;

h. The record of the case shall be closed upon receipt of the final written memorandum, transcript, if any, or late-filed exhibits which the parties and the compensation judge have agreed should be received into the record, whichever occurs last.

J. Disruption of hearing.

1. Cameras. No television, newsreel, motion picture, still or other camera, and no mechanical recording devices, other than those provided by the office of administrative hearings, shall be operated in the hearing room during the course of the hearing unless permission is obtained from the compensation judge and then subject to such conditions as the compensation judge may impose to avoid disruption of the hearing.

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2. Other conduct. Pursuant to and in accordance with the provisions of Minn. Stat. § 624.72, no person shall interfere with the free, proper and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt or threaten interference with or disruption of the hearing. In the event of interference or disruption or threat thereof, the compensation judge shall read this rule to those persons causing the interference or disruption and thereafter proceed as the judge deems appropriate.

9 MCAR § 2.318 The compensation judge's decision.

A. Basis for the decision.

1. The record. No factual information or evidence which is not a part of the record shall be considered by the compensation judge in the determination of the case.

2. Administrative notice. The compensation judge may take administrative notice of general, technical or scientific facts within the judge's specialized knowledge in conformance with the requirements of Minn. Stat. § 15.0419, subd. 4 provided that notice of the taking of such administrative notice is given and opportunity has been provided to all parties to rebut the facts sought to be noticed.

B. Compensation judge decisions.

1. Following the close of the record, the compensation judge shall prepare his or her decision and, upon completion, shall immediately file it with the commissioner who shall serve it on all parties as required by Minn. Stat. § 176.281.

2. The compensation judge's decision shall contain the following:

a. The date and location of the hearing and the compensation judge's name;

b. Appearances by parties, if pro se, or their attorneys, giving the full name and mailing address, including zip code, of each;

c. The date on which the record of the hearing closed;

d. A notice of the right of parties to appeal and how the appeal can be perfected;

e. Findings of fact, conclusions and a determination on each issue raised. In cases involving a multiplicity of issues, the compensation judge may organize the decision by major subissues if the judge determines that organizing the decision in that manner will aid the reader in understanding the contents of it.

C. Readability. Compensation judge decisions shall be clear and concise and shall be written in a prose style which can be read and understood by persons of average intelligence. English rather than Latin terms shall be used unless it is necessary to utilize the Latin terminology.

D. Proposed decision filed by party. Any party may file a proposed decision with the compensation judge before the record is closed. Any proposed decision submitted shall conform to the provisions of these rules, shall be served on all other parties and shall be in a form which would allow the compensation judge to sign and issue the decision if it is acceptable.

9 MCAR § 2.319 Rehearing. When a compensation judge has issued his or her findings, conclusions and decision, the judge's jurisdiction over the case shall end, except for taxation of disbursements or awarding of attorney's fees, unless the matter is rereferred to the compensation judge by the court of appeals and the chief hearing examiner for supplemental findings, taking of additional testimony, rehearing, or other action; provided that compensation judges may correct clerical errors in decisions at any time prior to appeal.

9 MCAR § 2.320 Settlements.

A. Stipulations. Stipulations for settlement are allowed pursuant to Minn. Stat. § 176.521 and shall conform to that section and to the requirements of this rule.

B. Filing. All stipulations for settlement shall be filed within 30 days of the date the settlement was negotiated.

C. Approval. Stipulations for settlement shall be filed with and approved by the commissioner or the commissioner's designee if the case has not been referred to the chief hearing examiner.

Stipulations for settlement reached and agreed upon subsequent to the referral of the case to the chief hearing examiner shall be filed with and subject to approval by the compensation judge assigned to hear the case or the calendar judge if the matter has not yet been assigned.

D. Contents. Stipulations for settlement shall contain the following information;

1. A brief statement of all of the admitted material facts;

2. A detailed statement of the matters in dispute, setting forth the contentions of the parties, supported by all medical reports or other documents in the possession of each party pertaining to each issue;

3. The weekly wage and compensation rate of the employee;

4. An itemization of the sums, if any, previously paid by the employer and insurer;

5. A statement that all medical or treatment expenses have been paid by the employer and insurer, or an itemization of the expenses which have not been paid by the employer and insurer, indicating which payments, if any, have been made by the employee. The stipulation shall specifically state whether any third party has paid any of the expenses and, if payments have been made, shall include the name and address of the third party together with any identifying claim or policy number;

6. The number of weeks and rate of compensation and, in cases of permanent partial disability, the percentage loss or loss of use upon which the compromise agreement is based;

7. Where applicable, the amount payable by the employer and insurer to the workers' compensation division for the benefit of the special compensation fund;

8. Where applicable, a statement that the employee has been fully advised of the provisions of Minn. Stat. §§ 176.132 and 176.645, and the effect of the settlement upon any future claims for supplementary benefits or adjustment of benefits;

9. Where applicable, a statement that the employee is claiming or waiving his or her right to make application for an award of attorney's fees against the employer or insurer pursuant to Minn. Stat. §§ 176.081, subd. 7 or 8, 176.135 or 176.191.

E. Attorney's fees detailed. Stipulations for settlement of cases in which the employee or dependents have engaged the services of an attorney shall be accompanied by a statement of the amount of attorney's fees requested and an itemization of the costs incurred, specifying who will be responsible for payment of each cost, and shall provide sufficient information to show the reasonableness of the requested fees and costs in accordance with Minn. Stat. § 176.081. If no fees are requested, the stipulation shall so state.

F. Medical reports. Stipulations for settlement shall be accompanied by copies of all medical reports in the possession of the parties which have not previously been filed.

G. Award. The parties involved in the settlement shall submit an award on stipualtion prepared for signature by the applicable judge and sufficient copies thereof for all parties to be served if the settlement is approved.

H. Copy to client. The attorney representing the employee or dependents shall furnish a copy of the stipulation for settlement to his or her client at the time the client signs the stipulation.

I. Signatures. Stipulations for settlement shall be signed by all parties as required by Minn. Stat. § 176.521.

J. Payment. The employer and insurer shall make payments pursuant to an award on stipualtion within 14 days from the date the award on stipulation is served.

9 MCAR § 2.321 Attorney fees.

A. Authorization. Whenever an employer or insurer receives notice that an attorney is representing an employee or dependent, 25 percent of the compensation, not including medical expense, shall be withheld pending an order determining the reasonable value of any claim for legal services or disbursements pursuant to Minn. Stat. § 176.081. Written notice that the compensation is being withheld shall immediately be mailed to the employee or dependents, the attorney and the division at its Saint Paul office.

B. Application. In applicable cases, the filing of a claim petition or an objection to discontinuance of compensation shall constitute an application for the award of attorney fees against the employer and insurer pursuant to Minn. Stat. § 176.081, subd. 7.

Application for determination and approval of any claim for legal services or disbursements may be filed by the employer or insurer, the employee or dependents or the attorney. Application for attorney fees shall be by written petition. Any application shall disclose the amount of compensation withheld, the total fees or disbursements previously paid to said attorney or his associates and, if filed by the attorney for the employee or dependents, the amount of any retainer fee paid. Applications filed by attorneys shall contain sufficient information to show the reasonableness of the requested fees in accordance with Minn. Stat. § 176.081, subd. 5.

A separate application is not necessary if filed as part of a stipulation for settlement as provided in these rules.

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C. Filing. Applications under this rule shall be filed with the commissioner unless the case has been referred to the chief hearing examiner for assignment, in which case it shall be filed with the compensation judge assigned to hear the case or the calendar judge if no assignment has been made.

9 MCAR § 2.322 Taxation of costs and disbursements.

A. Service of request. Service of the request for taxation of costs and disbursements shall be made upon the other parties, or their attorneys, by the taxing party.

B. Service of objection. An opposing party has five working days from the date of service upon him in which to serve and file a formal objection to taxation or allowance, with admission or proof of service upon the other parties.

C. Hearing. If requested, a time for hearing before the compensation judge who heard the case shall be fixed. A notice thereof shall be given to the parties by the compensation judge.

9 MCAR § 2.323 Second injury law.

A. Application. Application for registration of physically impaired employees shall be in a format prescribed by the division and submitted pursuant to rules of the commissioner.

B. Hearing. Should the commissioner deem the application unacceptable prior to the subsequent injury, the applicant may, within 60 days following receipt of notice of rejection, petition to the division, in writing, for hearing upon the application. A copy of the petition shall be served by the applicant upon the state treasurer, custodian of the special compensation fund, and upon the attorney general. Upon receipt of the petition, the commissioner shall refer the matter to the chief hearing examiner for hearing which hearing shall be conducted by a compensation judge as provided by Minn. Stat. § 176.411, with right of appeal.

C. Referral. If a dispute arises following the notice of intention to claim reimbursement under Minn. Stat. § 176.131, subd. 6, the commissioner shall refer the matter to the chief hearing examiner who shall assign the matter to a compensation judge for hearing which hearing shall be conducted as provided by Minn. Stat. § 176.411, with right of appeal.

9 MCAR § 2.324 Other hearings. Pursuant to the provisions of Minn. Stat. § 15.052, subd. 3, all hearings not discussed herein but required to be conducted by a compensation judge of the office of administrative hearings shall be conducted in substantial compliance with these rules provided, however, that in any dispute wherein an immediate hearing is necessary in order to carry out the purpose and intent of the Minnesota workers' compensation law, the notice of hearing shall be given not less than five working days prior to the hearing date. The chief hearing examiner shall provide expedited assignment of compensation judges to these hearings and shall assign compensation judges to the hearings in a manner which will allow the compensation judge's decision to be issued immediately upon conclusion of the hearing or as soon thereafter as may be reasonable and practical.

9 MCAR § 2.325 Permanent partial disability panel.

A. Notification to administrator. Upon receipt of a file from the commissioner, if the chief hearing examiner, or a calendar or compensation judge if the case has been assigned to them, determines from a review of the file that permanent partial disability is a significant issue to be determined in the case, the chief hearing examiner shall immediately notify the administrator of the workers' compensation court of appeals if the employee resides in a county selected by the court of appeals pursuant to the provisions of Minn. Stat. § 176.152, subd. 7.

B. Questions to panel. When the administrator of the workers' compensation court of appeals notifies the chief hearing examiner of the names and addresses of the members of the permanent partial disability panel, the compensation judge, or the chief hearing examiner in cases in which a compensation judge has not yet been assigned, shall submit written questions to the panel. A copy of the questions shall be served on all parties at the same time.

Hearing. When the chief hearing examiner or compensation judge receives the report of the panel, the case shall be set for a regular hearing as soon as practicable.

D. Disputes relating to payment of panel members. Disputes relating to the payment of the fees of panel members arising pursuant to the provisions of Minn. Stat. § 176.152, subd. 6, shall be brought to the attention of the compensation judge assigned to hear the case no later than 20 days prior to the date of the hearing. The parties disputing the fee shall notify the compensation judge, in writing, of the intent to dispute the fee, stating therein the specific facts relied upon in disputing the fee. A copy of this notification shall be served on all other parties and the members of the panel at the same time as it is filed with the compensation judge. At the hearing, the dispute shall be determined as other issues in the case.

9 MCAR § 2.326 Exhibits: removal and return.

A. Requests for removal. All requests for permission to remove any exhibit or document from the official file must be made to the compensation judge to whom the file has been assigned or to the supervisor of the docket section of the office.

B. Return without consent or notice. Upon the expiration of the time in which to appeal, all exhibits or other documentary evidence may be returned to their source of origin without the consent of the parties or notice thereto, upon order of the

compensation judge. A copy of the letter of transmittal of the exhibits or documents shall remain in the file as part of the record of the case.

C. Request for return. Upon expiration of the time in which to appeal, exhibits or other documentary evidence shall be returned to their source upon the request of the party which introduced the evidence into the record. A request for return of exhibits or documents shall be made in writing to the compensation judge, shall contain the title and appropriate identification number of the case in which they were entered into evidence, and shall identify the exhibits or documents requested. A telephone number of the person making the request shall be included with the request.

Department of Agriculture
Agronomy Services Division

Proposed Rules Governing Storage and Handling of Liquid and Dry Commercial Fertilizer

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Agriculture has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, § 15.0412, subdivision 4h (1980).

Persons interested in these rules shall have 30 days to submit comment on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes section 15.0412, subdivisions 4-4f (1980).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modification is desired.

Authority for the adoption of these rules is contained in the Minnesota Fertilizer, Soil Amendment and Plant Amendment Law, Minn. Stat. §§ 17.711 to 17.729, as amended by Laws of 1981, ch. 214. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for a review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

The purpose of the Minnesota Fertilizer, Soil Amendment and Plant Amendment Law is to regulate the sale and handling of fertilizers and soil conditioners within the State of Minnesota. Presently, no rules exist which govern the storage and handling of liquid and dry commercial fertilizers. Proper storage and handling of liquid and dry commercial fertilizers benefits public health and safety by helping to reduce the number and severity of fertilizer spills which could adversely affect ground and surface water quality.

Please be advised that Minnesota Statutes, Chapter 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he/she becomes a lobbyist. Lobbying includes attempting to influence rulemaking by communicating or using others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for

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lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, (612) 296-5615.

Copies of this notice and the proposed rules are available and may be obtained by contacting Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota 55107, (612) 296-1486.

September 17, 1981

Mark W. Seetin
Commissioner of Agriculture

Rules as Proposed (all new material)

3 MCAR § 1.0325 Liquid fertilizers.

A. Authority and purpose. This rule is adopted by the Commissioner of Agriculture pursuant to Minn. Stat. § 17.725, to govern the storage and handling of liquid commercial fertilizer used for agricultural purposes.

B. Definitions. For the purpose of this rule, the terms defined in this rule, and the terms defined in Minn. Stat. § 17.713, have the meanings given them.

1. "Appurtenances" means valves, pumps, fittings and metering or dispensing devices.

2. "Department" means the Department of Agriculture.

3. "Incident" means a flood, fire, tornado, transportation accident, storage container rupture or leak or other release of liquid fertilizer, whether accidental or not, which is likely to cause adverse effects on the environment.

4. "Liquid commercial fertilizer" means mixed fertilizer or fertilizer materials distributed in a nonpackage form.

5. "Responsible party" means the person who has direct custody or control of liquid fertilizer at the time of an incident.

6. "Safeguard" means a facility, device or system or a combination of any of them designed to prevent the escape or movement of a substance or solution from the place it is stored or kept under conditions which might result in the pollution of any state waters.

7. "Storage container" means a tank in which commercial fertilizer is stored. This does not include delivery equipment unless the delivery equipment is used for storage.

C. Approval of facility and equipment. A person beginning construction of a new liquid fertilizer storage facility or modifying an existing liquid fertilizer storage facility shall first obtain the approval of the Commissioner of Agriculture or his designee. The application shall be made on forms provided by the commissioner. The application shall be approved when inspection of the facility and review of the application demonstrates that the proposed facility satisfies the requirements of this rule and provides safeguards to prevent hazards to people's lives, adjoining property or the environment.

At any time, the commissioner may review approved facilities where it appears that existing safeguards are not sufficient to prevent hazards to people's lives, adjoining property or the environment. Upon determination by the commissioner that hazards to people's lives, adjoining property or the environment do exist, the commissioner may withdraw approval or require additional mitigation measures to be taken.

D. Exceptions. Parts F.1. and G.3. shall not apply to facilities and equipment governed by this rule which were established prior to the date of adoption of this rule unless the existing facility, without modification, would result in a hazard to people's lives, adjoining property or the environment.

E. Variances. Upon receipt of a written request, the department may grant a variance from a provision of this rule. A variance will be granted when the request shows that compliance with this rule would cause unnecessary hardship to the requester and that the requested use would not constitute a hazard to people's lives, adjoining property or the environment. The department shall set forth in writing its reasons for granting or denying a requested variance.

F. Equipment.

1. Adequate provisions shall be made to protect all exposed piping from physical damage that might result from moving machinery, equipment and vehicles.

2. Main valves shall be located as near to the storage container as possible and shall be either closed and made inoperative when the facility is unattended or protected against tampering by adequate fencing.

3. Appurtenances shall be inspected, properly maintained, protected against rust and painted to prevent corrosion or failure.

G. Storage containers.

1. Storage containers shall be inspected, properly maintained, protected against rust and painted to prevent corrosion or failure.

2. Storage container areas shall be kept free of clutter and ignitible materials including weeds and long dry grass.

3. Persons storing liquid fertilizers in storage containers of a rated capacity of 500 gallons or more shall provide safeguards for containment equal to the amount of the largest single storage container.

H. Markings.

1. Each storage container shall be labeled in a clearly legible and conspicuous manner with the appropriate grade or guaranteed analysis of the contents of the storage container.

2. An identification sign shall be displayed in a clearly legible and conspicuous manner stating the name, address and telephone number of the nearest agent, representative or owner of the storage facility.

I. Incidents. A person involved in or responsible for an incident shall report the incident to the department. The department shall immediately notify other appropriate state agencies. The responsible party shall take appropriate action to contain or clean up the incident. The department shall be the lead state agency for making decisions involving the clean-up or containment operations and may initiate those operations if it appears necessary. By initiating clean-up or containment operations, the department shall not be deemed to assume any liability for costs in addition to that prescribed or imposed by law.

3 MCAR § 1.0326 Dry fertilizers.

A. Authority and purpose. This rule is adopted by the Commissioner of Agriculture pursuant to Minn. Stat. § 17.725 to regulate the storage and handling of dry commercial fertilizer used for agricultural purposes.

B. Definitions. For the purpose of this rule, the terms defined in this part, and the words defined in Minn. Stat. § 17.713, have the meanings given them.

1. "Department" means the Department of Agriculture.

2. "Dry commercial fertilizer" means both mixed fertilizer and fertilizer materials distributed in a nonpackage form.

3. "Incident" means a flood, fire, tornado, transportation accident or other event causing a release of dry fertilizer, whether accidental or not, which is likely to cause adverse effects on the environment.

4. "Responsible party" means the person who has direct custody or control of the dry fertilizer at the time of an incident.

5. "Storage container" means a tank or bin in which commercial fertilizer is stored. This does not include delivery equipment unless the delivery equipment is used for storage.

C. Approval of facility and equipment. A person beginning construction of a new dry fertilizer storage facility or modifying an existing dry fertilizer storage facility shall first obtain the approval of the Commissioner of Agriculture or his designee. The application shall be made on forms provided by the commissioner. The application shall be approved when inspection of the facility and review of the application demonstrates that the proposed facility satisfies the requirements of this rule and provides safeguards to prevent hazards to people's lives, adjoining property or the environment.

At any time, the commissioner may review approved facilities where it appears that existing safeguards are not sufficient to prevent hazards to people's lives, adjoining property or the environment. Upon determination by the commissioner that hazards to people's lives, adjoining property or the environment do exist, the commissioner may withdraw approval or require additional mitigation measures to be taken.

D. Exceptions. Part G. shall not apply to facilities and equipment governed by this rule which were established prior to the date of adoption of this rule unless the existing facility, without modification, would result in a hazard to people's lives, adjoining property or the environment.

E. Variances. Upon receipt of a written request, the department may grant a variance from a provision of this rule. A variance will be granted when the request shows that compliance with this rule would cause unnecessary hardship to the

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requester and that the requested use would not constitute a hazard to people's lives, adjoining property or the environment. The department shall set forth in writing its reasons for granting or denying a requested variance.

F. Equipment. Equipment shall be maintained in good operating order.

G. Operations. Dry commercial fertilizer facilities shall be operated to allow the unloading, storage, mixing and loading of the bulk materials in a manner which will prevent avoidable amounts of particulate matter from leaving the premises.

H. Storage containers. Storage containers shall be maintained to prevent major cross contamination of various dry commercial fertilizer ingredients and materials. Storage container areas shall be kept free of clutter and ignitible materials including weeds and long dry grass.

I. Markings. Each storage container shall be labeled in a clearly legible and conspicuous manner with the appropriate grade or guaranteed analysis of its contents.

J. Outside fertilizer storage. Outside fertilizer storage piles shall not be located in areas subject to floods or where surface water runoff could enter storm sewers, sanitary sewers or other state waters.

K. Incidents. A person involved in or responsible for an incident shall report the incident to the department. The department shall immediately notify other appropriate state agencies. The responsible party shall take appropriate action to contain or clean up the incident. The department shall be the lead state agency for making decisions involving clean-up or containment operations and may initiate those operations if it appears necessary. By initiating clean-up or containment operations, the department shall not be deemed to assume any liability for costs in addition to that prescribed or imposed by law.

Department of Commerce
Securities and Real Estate Division

Proposed Rule SDiv 2030 (Cheap Stock), Relating to the Minnesota Securities Act

Notice of Intent to Amend Rule without a Hearing

Notice is hereby given that, pursuant to her authority under Minn. Stat. § 80A.25 (1980), the Commissioner of Securities and Real Estate intends to amend Rule SDiv 2030 (Cheap Stock), relating to the Minnesota Securities Act (Minn. Stat. ch. 80A). The commissioner desires that the proposed rule be amended without a public hearing in accordance with Minn. Stat. § 15.0412, subd. 4h (1980).

A free copy of the proposed rule may be obtained from the commissioner's office. Those interested in submitting comment pertaining to the proposed rule may do so within 30 days of publication of this notice in the *State Register*. Additionally, if during the 30-day comment period, seven or more persons make a written request for a hearing on the proposed rule, the commissioner will hold a public hearing in accordance with Minn. Stat. § 15.0412, subdivisions 4 to 4g (1980). A request for a copy of the proposed rule, all comments, any requests for a hearing and all questions regarding the proposed rule should be directed to:

Mr. Daniel W. Hardy
Assistant to the Commissioner
Securities and Real Estate Division
Department of Commerce
500 Metro Square Building
Saint Paul, Minnesota 55101
Telephone: (612) 296-5689

The proposed rule may be modified by the commissioner if the modifications are supported by the data and views submitted during the 30-day comment period, provided the modifications do not result in substantial change.

The commissioner has prepared a statement of need and reasonableness which contains a summary of the evidence justifying both the need for, and the reasonableness of, the proposed rule. The statement of need and reasonableness is available for inspection by the public, during regular business hours, at the above address.

If no hearing is required, the commissioner will submit to the Attorney General the proposed rule and notice as published in the *State Register*, the rule as proposed for adoption, any written comments received by the commissioner during the 30-day comment period, and the statement of need and reasonableness for the rule. On the same day these materials are submitted to the Attorney General the commissioner will notify any person who has requested that the commissioner inform him or her of when these materials have been submitted to the Attorney General. Any person wishing to be so notified should contact Mr. Hardy at the address listed above.

A copy of the existing rule and proposed changes follows this notice.

Finally, Minn. Stat. ch. 10A.03 (1980) requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1980) as 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 $250, 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.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone: (612) 296-5615.

August 26, 1981

Mary Alice Brophy
Commissioner of Securities and Real Estate

Rule as Proposed

SDiv 2030 Cheap stock.

~~(a) The amount of "cheap stock" allowable, based upon the "fair value of the equity investment" as defined in SDiv 2029(b), shall not exceed three times the first 10 percent of equity investment and two times any further equity investment to a maximum number of shares of cheap stock allowable of 90 percent of the total number of shares to be outstanding after the proposed offering.~~

A. Quantity. The quantity of cheap stock, expressed as a percentage of the total number of shares to be outstanding after the proposed offering, shall not exceed the percentages in Exhibit SDiv 2030 A.-1., depending on the "fair value of the equity investment" as defined in SDiv 2029 (b).

Exhibit SDiv 2030 A.-1.
Maximum Amount of Cheap Stock Outstanding

Minimum Investment	Cheap Stock
5%	15%
10%	30%
15%	40%
20%	50%
30%	70%
40%	90%

~~(b)~~ B. Definition. Cheap stock means securities:

~~(1)~~ 1. Issued in consideration of property tangible or intangible, or services, the value of which has not been reasonably established, or

~~(2)~~ 2. Issued at a price substantially less than the public offering price of the securities and which cannot be justified with reference to the existence of an active public market for such securities. Securities issued at a price substantially less than the public offering price of the securities means:

~~(aa)~~ a. Securities issued for less than ~~66⅔%~~ percent of the public offering price if the securities were issued less than one year prior to registration~~:~~;

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~~(bb)~~ b. Securities issued for less than 50~~%~~ percent of the public offering price if the securities were issued more than one year but less than two years prior to registration;

~~(cc)~~ c. Securities issued for less than 33⅓~~%~~ percent of the public offering price if the securities were issued more than two years but less than three years prior to registration.

In the case of unexercised options, or other securities convertible into the same class of security as that proposed to be offered, the aggregate of the cash amount paid and the cash amount required to be paid pursuant to the conversion or exercise privilege shall be divided by the number of shares issuable upon conversion or exercise to determine whether the securities were "issued at a price substantially less than the public offering price."

~~(c)~~ C. Exclusions. Cheap stock does not include:

~~(1)~~ 1. Securities which have been outstanding more than three years at the time of the proposed registration, provided that the issuer ~~of~~ or its predecessors have been in active, continuous business operation for more than three years immediately prior to the proposed registration;

~~(2)~~ 2. Securities of an issuer which ~~(a)~~ had earnings during the final year prior to registration or ~~(b)~~ had earnings during two of the three fiscal years prior to registration, as determined in accordance with generally accepted accounting principles, after taxes and excluding extraordinary income, if such earnings are in an amount equal to ~~4~~ four percent of the proposed public offering price on all outstanding shares of the same class at the date of application for registration; or

~~(3)~~ 3. Securities previously issued pursuant to a registration under Minn. Stat. ch. 80A.

Department of Revenue
Income Tax Division

Proposed Rule Governing Practice of Attorneys, Accountants, Agents and Preparers before the Department of Revenue (13 MCAR § 1.6101); and Proposed Repeal of Income Tax Rule 2052(4)

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Revenue proposed to adopt the above-entitled rule and repeal the existing rule without a public hearing. The commissioner has determined that the proposed adoption of this rule and repeal of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, § 15.0412, subdivision 4h (1980).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, § 15.0412, subdivisions 4-4f.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Mr. Dale H. Busacker
Attorney, Income Tax Division
Minnesota Department of Revenue
Centennial Office Building
St. Paul, Minnesota 55145
(612) 296-3439

Authority for the adoption of these rules is contained in Minnesota Statutes, § 290.52. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Mr. Busacker upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Mr. Busacker.

The general purpose of this rule is to regulate the practice of attorneys, accountants, agents and preparers (hereinafter referred to as "tax practitioners") before the Department of Revenue. Specifically, the rule is needed (1) to implement the authority which is granted to the Commissioner of Revenue to suspend or disbar tax practitioners, by providing a uniform procedure for such suspension or disbarment; (2) to provide ethical standards of behavior governing practice before the department; (3) to set minimum standards of competency for those who practice; (4) to define what is disreputable conduct; and (5) to define the nature and scope of practice before the Department of Revenue.

The existing Income Tax Rule 2052(4) is repealed because this new rule will supersede it and make it unnecessary.

Copies of this notice and the proposed rules are available and may be obtained by contacting Mr. Busacker.

September 17, 1981

Clyde E. Allen, Jr.
Commissioner of Revenue

Rule as Proposed (all new material)

13 MCAR § 1.6101 Practice of attorneys, accountants, agents, and preparers before the Department of Revenue.

A. Practice defined. The term "practice" comprehends all matters connected with the presentation by an attorney, accountant, agent, or preparer to the Department of Revenue or any of its employees, upon filing an executed power of attorney, of a client's rights, privileges, or liabilities under Minn. Stat. ch. 290 or 290A, and the rules thereunder. Practice includes the preparation and filing of necessary documents, correspondence with and communication to the Department of Revenue, and the representation of a client at conferences, hearings, and meetings. However, the preparation and signing of a tax return, the appearance of an individual as a witness for a taxpayer, and the furnishing of information at the request of the Department of Revenue or any of its employees do not, of and by themselves, constitute practice before the department, unless these acts are coupled with the presentation of a client's case at conferences, hearings, or meetings. For purposes of this rule, the term "practice" is synonymous with "representation."

B. Scope of representation pursuant to power of attorney.

1. When authorized by the taxpayer through a written power of attorney, an attorney, accountant, agent, or preparer may appear as the taxpayer's representative, with or without the taxpayer, before an employee of the Department of Revenue with respect to the tax liability of the taxpayer for the type of tax and taxable year or period authorized in the power of attorney.

2. For purposes of this rule, a power of attorney grants authority to deal with any of the following: original or amended individual income tax returns; property tax refund returns; fiduciary income tax returns; partnership returns of income; corporation income tax returns, including returns of small business corporations, life insurance companies, banks, and savings and loan associations; employers income tax withholding returns or deposits; claims for refund; and estimated tax declarations.

3. A taxpayer representative may inspect only those state records, files, or documents which are either specifically listed, or directly or indirectly connected with matters specifically listed in a power of attorney.

4. If the taxpayer is not present, a person presenting a power of attorney shall present identification satisfactory to the department employee.

C. Persons ineligible to practice. Any person who is:

1. Under disbarment or suspension from practice before the Department of Revenue;

2. An employee of the Department of Revenue;

3. Under disbarment or suspension from practice as an attorney, certified public accountant, or licensed public accountant in the State of Minnesota; or

4. Under disbarment or suspension from practice before the Internal Revenue Service shall be ineligible to appear as a taxpayer representative under this rule. However, with regard to 3. and 4., a granting of reinstatement to practice as an attorney, certified public accountant, or licensed public accountant, or a granting of reinstatement to practice before the Internal Revenue Service shall automatically reinstate a person's eligibility to practice before the Department of Revenue.

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D. Standards of ethics and conduct.

1. No attorney, accountant, agent, or preparer acting as a taxpayer representative shall neglect or refuse to submit records or information in any matter before the Department of Revenue, upon proper and lawful request by a duly authorized employee of the Department of Revenue, unless the taxpayer representative has a good faith belief that the information or testimony is privileged. No taxpayer representative shall interfere, or attempt to interfere, with any proper and lawful efforts by the Department of Revenue or its employees to obtain information relative to any matter before the Department of Revenue. Insisting upon a subpoena shall not be a violation of this paragraph.

2. Each taxpayer representative shall exercise due diligence in regard to all of the following:

a. Preparing, assisting in the preparation of, approving, and filing returns, documents, affidavits, and any other papers relating to Department of Revenue matters;

b. Determining the correctness of representations made by him to the Department of Revenue; and

c. Determining the correctness of representations made by him to clients with reference to any matter administered by the Department of Revenue.

3. Each taxpayer representative shall exercise good faith in determining the correctness of representations made by clients to him with reference to any matter administered by the Department of Revenue when the preparer or agent has reasonable grounds to believe the client's representations are false or inaccurate.

4. No taxpayer representative shall unreasonably delay the prompt disposition of any matter before the Department of Revenue.

E. Incompetent conduct. Incompetent conduct, for which any attorney, accountant, agent, or preparer shall be subject to disbarment or suspension from practice before the Department of Revenue, means the failure by an attorney, accountant, agent, or preparer, after due warning has been given by the Commissioner of Revenue pursuant to G.3., to:

1. Demonstrate the familiarity with the income tax statutes, rules, and forms necessary to enable the practitioner to properly apply, discuss, or complete them, and thus to render adequate services in connection with a taxpayer's case before the Department of Revenue; or

2. Exercise due diligence as required in D.2. The standard used for determining failure to exercise due diligence shall be the common law standard of reasonableness used in determining negligence.

F. Disreputable conduct. Disreputable conduct, for which any attorney, accountant, agent, or preparer shall be subject to disbarment or suspension from practice before the Department of Revenue, includes any conduct violative of D. In addition, the following acts or events constitute disreputable conduct:

1. Conviction of any criminal offense under a state or federal tax statute, or conviction of any crime involving dishonesty or breach of trust;

2. Preparing or filing for himself or another a false or fraudulent Minnesota income tax return or other statement on which Minnesota income taxes or a refund thereof may be based, knowing it is false or fraudulent;

3. Willful failure to prepare or file a Minnesota income tax return for himself or another in violation of the applicable income tax statutes or rules;

4. Willful failure to prepare or file an amended Minnesota income tax return for himself or another, knowing that a material error or omission was made on the original return;

5. Suggesting to a client or a prospective client an illegal plan for evading Minnesota income taxes or the payment thereof, knowing the plan is illegal;

6. Giving false testimony or information in any proceeding before the Department of Revenue, or before any tribunal authorized to pass upon Minnesota income tax matters, knowing it is false;

7. Filing any false or fraudulently altered document, affidavit, or power of attorney in any case or other proceeding before the Department of Revenue, or procuring the filing thereof, knowing it is false or fraudulently altered;

8. Using, with intent to deceive, false representations to procure employment in any case or proceeding before the Department of Revenue, including, but not limited to:

a. Misrepresentations regarding eligibility to practice before the Department of Revenue;

b. Specific material misrepresentations regarding experience or education, whether general or specialized, as an income tax return preparer;

c. Guaranteeing the payment of any tax refund or the allowance of any tax credit; or

d. Representing to a client that the attorney, accountant, agent, or preparer can improperly obtain special consideration or action from the Department of Revenue or an employee thereof, or that he has improper access to sources of information within the Department of Revenue which are otherwise private, confidential, or nonpublic;

9. Approving for filing, or advising or aiding in the preparation of, a false or fraudulent Minnesota income tax return prepared by some other person, knowing the return is false or fraudulent;

10. Misappropriation of, or failure to properly and promptly remit, funds received from a client for the purpose of paying taxes or other obligations due the State of Minnesota;

11. Endorsement or negotiation of a client's check in payment of a refund of any tax, credit, penalty, or interest administered by the Commissioner of Revenue, without the client's prior endorsement. The preceding sentence shall not apply when the full amount of the check is deposited in the taxpayer's bank account for the benefit of the taxpayer;

12. Charging a client a fee based upon a percentage of the refund that the client is eligible to receive from the State of Minnesota, unless representation of the client reaches the contested stage, either in a formal administrative hearing or a court proceeding;

13. Attempting to influence, or offering or agreeing to attempt to influence, the official action of any employee of the Department of Revenue by the use of threats, false accusations, duress, or coercion, by the offer of any special inducement or promise of advantage, or by the bestowing of any gift, favor, or thing of value;

14. In connection with practice before the Department of Revenue, making false accusations or statements knowing them to be false, or circulating or publishing slanderous or libelous matter concerning the Department of Revenue or any of its employees;

15. Knowingly aiding and abetting another person to practice before the Department of Revenue during a period of disbarment or suspension of the other person;

16. For purposes of 1. through 15., the phrases "income tax" and "income tax return" include all matters referred to in B.2.

G. Disbarment and suspension procedures.

1. Authority to disbar or suspend. Pursuant to Minn. Stat. § 290.52, the Commissioner of Revenue, after due notice and opportunity for hearing, may suspend or disbar from further practice before the Department of Revenue any attorney, accountant, agent, or preparer who: is shown to be incompetent or disreputable; refuses to comply with the provisions of this rule; or in any manner willfully and knowingly defrauds, deceives, or misleads any taxpayer with respect to a claim or prospective claim involving the Department of Revenue.

2. Violation of rule. Any attorney, accountant, agent, or preparer shall be subject to disbarment or suspension from practice before the Department of Revenue for violation of any of the provisions contained in this rule.

3. Notification of violation of rule and issuance of warning. Whenever the Commissioner of Revenue has sufficient grounds to believe that any attorney, accountant, agent, or preparer has violated a provision of this rule, he shall notify the practitioner in writing of the specific violation which has been committed. The notification shall contain a warning to the practitioner that if the violation continues, or if any other violations are committed, the commissioner shall commence a proceeding for disbarment or suspension of the practitioner.

4. Commencement of disciplinary proceeding. Whenever the Commissioner of Revenue has sufficient grounds to believe that any attorney, accountant, agent, or preparer has failed to comply with a warning by continuing to violate any provision of this rule, he shall commence a proceeding for disbarment or suspension of the attorney, accountant, agent, or preparer. The commissioner's Notice of and Order for Hearing shall set forth the specific violations which the practitioner has committed, both prior and subsequent to the commissioner's warning, and shall make a recommendation as to the specific disciplinary action to be taken against the practitioner. The entire proceeding shall be governed by the procedure for contested case proceedings as provided in Minn. Stat. §§ 15.0411-15.0426 and in 9 MCAR §§ 2.201-2.299.

5. Voluntary suspension. An attorney, accountant, agent, or preparer, in order to avoid the commencement or conclusion of a disciplinary proceeding, may, by agreement with the Commissioner of Revenue, consent to suspension from

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practice before the Department of Revenue. The Commissioner of Revenue shall then suspend the practitioner in accordance with the disciplinary guideline set forth in 6.

6. Disciplinary guideline for violation of rule. Upon completion of the hearing in a contested case proceeding for disciplinary action brought by the Commissioner of Revenue against an attorney, accountant, agent, or preparer, if the hearing examiner finds that the practitioner has committed the violations specified in the commissioner's Notice of and Order for Hearing, and that disciplinary action is appropriate, the commissioner shall:

a. Suspend the practitioner from practicing before the Department of Revenue for a period of up to one year, if the proceeding brought against the practitioner is the first proceeding in which disciplinable misconduct has been found;

b. Suspend the practitioner for a period of up to five years if the proceeding brought against the practitioner is the second proceeding in which the disciplinable misconduct has been found; or

c. Disbar the practitioner from practicing before the Department of Revenue if the proceeding brought against the practitioner is at least the third proceeding in which disciplinable misconduct has been found.

For purposes of a., b., and c., a voluntary suspension pursuant to 5. is a proceeding in which disciplinable misconduct has been found. The commissioner shall base his decision as to disciplinary action on all the facts before him, along with any extenuating circumstances he deems relevant.

7. Effect of disbarment or suspension. If the commissioner's order against an attorney, accountant, agent, or preparer is for disbarment, the practitioner shall not thereafter be permitted to practice before the Department of Revenue, except to represent himself. Similarly, if the commissioner's order against an attorney, accountant, agent, or preparer is for suspension, the practitioner shall not thereafter be permitted to practice before the Department of Revenue during the period of suspension, except to represent himself. The disbarment or suspension of an individual, where the individual was employed by a firm or organization at the time his violation of this rule occurred, shall not affect the right of other members of the firm or organization to practice before the department.

8. Petition for reinstatement. If there has been a material change in circumstances after suspension or disbarment, a suspended or disbarred attorney, accountant, agent, or preparer may petition, in writing, the Commissioner of Revenue for reinstatement to practice before the Department of Revenue. The petition must be supported with documentation or testimony from a responsible third party as to the fitness, character and ability of the practitioner to resume practice. The commissioner shall review the petition and make his determination within 30 days as to whether the practitioner shall be reinstated. If the petition is granted by the commissioner, the practitioner may resume practice. If the petition is denied by the commissioner, no further petitions may be brought by the practitioner during the remainder of the suspension period, or for a period of five years if the practitioner has been disbarred.

Repealer. Income Tax rule 2052(4) is repealed.

Department of Revenue

Proposed Rules Governing Valuation and Assessment of Electric, Gas Distribution, and Pipeline Companies (Utility Companies)

Notice of Hearing

Notice is hereby given that a public hearing will be held pursuant to Minnesota Statutes, § 15.0412, subdivision 4, in the above-entitled matter in the Conference Room, 500 Rice Street, St. Paul, Minnesota on November 4, 1981, commencing at 10 a.m. and continuing until all persons or representatives of associations or other interested groups 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 Jon Lunde, Office of Administrative Hearings, Room 300, 1745 University Avenue, Saint Paul, Minnesota, 55104, telephone (612) 296-5938, either before the hearing or within five working days after the close of the hearing. The hearing examiner may extend this time limit for a longer period; however, the extension cannot exceed 20 calendar days.

The rule hearing procedure is governed by Minnesota Statutes, §§ 15.0411 to 15.0417 and 15.052, and by 9 MCAR §§ 2.101 to 2.113 (Minnesota Code of Agency Rules). Any questions about procedure may be directed to the hearing examiner, Jon Lunde.

The proposed rules if adopted will effectively amend the current rules of the Department of Revenue relating to ad valorem (property) taxes imposed on utilities. The present rules deal generally with the valuation, allocation and apportionment of

property of electric, gas distribution, pipeline and cooperative electric companies. The proposed rules if adopted would: define certain terms; require utilities to report the cost of leased property; modify the cost approach to value by allowing electric companies an additional 1% depreciation, and gas distribution and pipeline companies an additional 2½% depreciation on the original cost of the companies' assets; increase the study period to be used when computing the "average cost per kilowatt of installed capacity" for steam and gas turbine generating plants; permit an allowance for pollution control equipment and an allowance for obsolescence to be conducted from the value added to the cost approach to value due to the computation of the "average cost per kilowatt of installed capacity" factor; detail the computation of these two allowances; modify the income approach to value by increasing the capitalization rate by 0.5%; specify the types of utilities that are to be valued on a "cost only" method; provide for the utilization of "obsolescence allowances" if a utility meets certain standards and detail the methods to be used to calculate these allowances; specify certain standards to be met by utilities in the retirement of property; require a utility to report certain information on property costs whenever a new taxing district is established; modify the base to be used for the apportionment of utility property to the various taxing districts; and eliminate the example section of the rules while incorporating the examples into the body of the rules.

One free copy of this notice and the proposed rules may be obtained by writing to G. D. Garski, Manager of State Assessed Property, Property Equalization Division, Second Floor, Centennial Office Building, Saint Paul, Minnesota, 55145, telephone (612) 296-5131. Additional copies will be available at the door on the date of the hearing.

The agency's authority to promulgate the proposed rules is contained in Minnesota Statutes, §§ 270.06 and 270.11, subdivisions 1 and 6.

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

Notice: The proposed rule is subject to change as a result of the rule hearing process. The agency therefore strongly urges those who are potentially affected in any manner by the substance of the proposed rule to participate in the rule hearing process.

Please be advised that Minnesota Statutes, chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, § 10A.01, subdivision 11 (Supp. 1979) as 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 $250, 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.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 40 State Office Building, Saint Paul, Minnesota, 55155, telephone (612) 296-5615.

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).

Clyde E. Allen, Jr.
Commissioner of Revenue

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Rules as Proposed

Chapter One: Valuation and Assessment of Electric, Gas Distribution, and Pipeline Companies (Utility Companies)

13 MCAR § 1.0001 Introduction. On October 19, 1973, the Minnesota Supreme Court in Independent School District No. 99, et al. v. Commissioner of Taxation, 297 Minn. 378, ruled that in estimating the market value of utility properties for ad valorem tax purposes, the assessing authorities must consider every element and factor affecting market value. The assessment formula used to value operating utility property since 1962, based solely on the original cost less limited depreciation and commonly known as the "Hatfield Formula," was thus invalidated as a rule of general application.

These ~~regulations~~ rules are promulgated to fill that void and reflect the manner in which the value of utility property will be estimated by utilizing data relating to the cost of the property and the earnings of the company owning or utilizing the property.

Since the Commissioner of Revenue is by statute the assessor of some of the utility property in the State of Minnesota and has supervisory powers ~~of~~ over all assessments of property, and may raise or lower values pursuant to Minn. Stat. ~~,~~ § 270.11, he will estimate the valuation of the entire system of a utility company operating within the state. The entire system will be valued as a unit instead of valuing the component parts, and the resulting valuation will be "allocated" or assigned to each state in which the utility company operates. Finally, by the process of apportionment, the portion allocated to Minnesota will be distributed to the various taxing districts within the state. ~~All~~ Most of the data used in the valuation, allocation, and apportionment process will be drawn from reports submitted to the Department of Revenue by the utility companies. These reports will include Minnesota Department of Revenue Annual Utility Reports (UTL Forms), Annual Reports to the Federal Energy Regulatory Commission and Annual Reports to the Interstate Commerce Commission. Periodic examinations of the supporting data for these reports will be made by the Department of Revenue.

The methods, procedures, indicators of value, capitalization rates, weighting percents, and allocation factors will be used as described in 13 MCAR §§ 1.0003~~-1.0007~~ 1.0006 for ~~1979~~ 1982 and subsequent years, or until, in the opinion of the Commissioner of Revenue, different conditions justify a change.

As in all property valuations the Commissioner of Revenue reserves the right to exercise his judgment whenever the circumstances of a valuation estimate dictate the need for it.

13 MCAR § 1.0002 Definitions. As used in this chapter, the following words, terms and phrases shall have the meanings given to them by this ~~regulation~~ rule, except where the context clearly indicates a different meaning.

A. Allocation. "Allocation" means the process of dividing the unit value of a utility company among the states in which the utility operates.

B. Apportionment. "Apportionment" means the process of distributing that portion of the utility company's unit value which has been allocated to Minnesota to the various taxing districts in which the utility company operates.

C. Book depreciation. "Book depreciation" means the depreciation shown by a utility company on its corporate books, and allowed the company by various regulatory agencies.

D. Capitalization rate. "Capitalization rate" means the relationship of income to capital investment or value, expressed as a percentage.

E. Electric company. "Electric company" means any company engaged in the generation, transmission, or distribution of electric power, excluding cooperatives and municipal corporations.

F. Gas distribution company. "Gas distribution company" means any company engaged in the distribution of natural or synthetic gas, excluding the cooperatives and municipal corporations.

G. Installed capacity. "Installed capacity" means the number of kilowatts a power plant is capable of producing as shown by the nameplates affixed to the generators by the manufacturer.

H. Integrated company. "Integrated company" means any company engaged in two or more utility operations within Minnesota, such as electric distribution and gas distribution, within the framework of one corporate structure.

I. Major generating plant. "Major generating plant" means any steam-electric power plant capable of generating 25,000 KW (Kilowatts) or more; or any hydro-electric, internal combustion, or gas turbine power ~~plan~~ plant capable of generating 10,000 KW or more.

J. Net operating earnings. "Net operating earnings" means earnings from the system plant of the utility after the deduction of operating expenses, depreciation, and taxes, but before any deduction for interest.

K. Non-formula assessed property. "Non-formula assessed property" means property of a utility which is valued by the local or county assessor rather than by the Commissioner of Revenue.

L. Operating property. "Operating property" means any property, owned or leased, except land that is directly associated

with the generation, transmission, or distribution of electricity, natural gas, gasoline, petroleum products, or crude oil. Examples of operating property include, but are not limited to, substations, transmission and distribution lines, generating plants, and pipelines. Land, garages, warehouses, office buildings, pole yards, radio communication towers, and parking lots are examples of non-operating property.

M. Pipeline company. "Pipeline company" means any company engaged in the transmission of natural gas, gasoline, petroleum products, or crude oil via a fixed line of pipes.

N. Standard factor. "Standard factor" means the number used as the basis of comparison when measuring the degree or amount of obsolescence inherent in the property (generating plant) being valued.

O. System plant. "System plant" means the total tangible property, real and personal, of a company which is used in its utility operations in all states in which it operates.

P. Throughput. "Throughput" means the amount of product measured in barrels, gallons, or cubic feet which passes through a pipeline.

~~O.~~ Q. Unit value. "Unit value" means the value of the system plant of a utility company taken as a whole without any regard to the value of its component parts.

~~P.~~ R. Weighted pipe line miles. "Weighted pipe line miles" means the product obtained by multiplying the number of miles of each size of a pipeline by the diameter in inches of each size. Example: a 6 mile pipeline ~~having~~ 3 miles ~~with a~~ of which is 10 ~~inch~~ inches in diameter and 3 miles ~~with a~~ of which is 30 ~~inch~~ inches in diameter would have a weighted miles product of 120.

13 MCAR § 1.0003 Valuation.

A. General. Because of the unique character of public utiltiy companies, such as being subject to stringent government regulations over operations and earnings, the traditional approaches to valuation estimates of property (cost, capitalized income and market) must be modified when utility property is valued. Consequently, for the ~~1979~~ 1982 and subsequent assessment years, until economic and technological factors dictate a change, the value of utility company property will be estimated in the manner provided in this chapter.

B. Market approach. Market value implies a price for which an entire public utility enterprise might reasonably change hands between willing and informed buyers and sellers. The term presupposes a market of normal activity, no urgency to buy or sell on the part of either the buyer or seller, and continued operation of the utility as a single entity. Public utility property is seldom transferred as a whole unit under these circumstances. Consequently, after consideration of this approach, it has been decided that valuation of utility properties by this approach is speculative and unreliable and will not be employed as a method of valuation for utility property at this time.

C. Cost approach. The cost factor that will be considered in the utility valuation formula is the original cost less depreciation of the system plant, and improvements, plus the original cost of construction work in progress on the assessment date. The original cost of any leased operating property used by the utility must be reported to the commissioner in conjunction with the annual utility report. If the original cost of the leased operating property is not available, the commissioner shall make an estimate of the cost by capitalizing the lease payments. Depreciation will not be allowed on construction work in progress. Depreciation will be allowed as a deduction from cost in the amount allowed on the accounting records of the utility company, as such records are required to be maintained by the appropriate regulatory agency.

Depreciation, however, shall not exceed the prescribed percentage of cost: for electric companies, ~~18~~ 19 percent; for gas distribution companies, ~~45~~ 47.5 percent; pipeline companies, ~~45~~ 47.5 percent.

~~When valuing electric company property the "average cost per kilowatt of installed capacity" will also be considered. Any excess of average cost per kilowatt of installed capacity over the actual cost of production plan (except land) multiplied by the kilowatts of installed capacity will be added to the original cost of the plant, and reduced by the same rate of depreciation applicable to the original cost. The average cost per kilowatt of installed capacity is computed by averaging the construction costs of production plant (except land) for major generating plants in the Continental U.S. by type of plant, as shown in the latest issues of the United States Department of Energy publications, Hydro-Electric Plant Construction Cost and Annual Production Expenses and Steam-Electric Plan Construction Cost and Annual Production Expenses and Gas Turbine Electric Plant Construction Cost and Annual Production Expenses. Average cost per kilowatt of installed capacity will be determined~~

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~~after excluding, federally constructed, multi-purpose projects, and nuclear electric generating plants. The periods to be used for computing the average will be as follows: hydroelectric plants, 15 years; steam electric plants; 10 years; gas turbine plants, 10 years.~~

~~The following examples illustrate this procedure. In both examples assume that the study of the most recent construction data available from Federal Power Commission publications indicates that the average cost per kilowatt of installed capacity in a fossil fuel steam plant is $150 per kilowatt. Each of the two plants is of this type.~~

~~1. Plant~~	~~#1~~		~~#2~~	
~~2. Installed capacity~~	~~100,000~~	~~KW~~	~~50,000~~	~~KW~~
~~3. Year in Service~~	~~1960~~		~~1940~~	
~~4. Cost of Plant~~	~~$15,200,000~~		~~$3,500,000~~	
~~5. Cost per KW~~	~~$152~~		~~$70~~	
~~6. Average cost per KW~~	~~$150~~		~~$150~~	
~~7. Excess (line 6-5)~~			~~$80~~	
~~8. Additional value (line 7 × 2)~~			~~$4,000,000~~	
			~~$4,000,000~~	

A modification to the cost approach to value will be considered by the commissioner when valuing electric utility property. The original cost of an electric utility's major generating plants will be increased if the cost of the plant falls below a certain standard. The standard to be used will be a national average of the cost per kilowatt of installed capacity. The cost per kilowatt of installed capacity is the total construction cost of the generating plant divided by the number of kilowatts the plant is capable of producing. The national average to be used will be computed by totaling the construction costs, excluding the cost of land, for major generating plants within the 48 contiguous United States. The total cost of the plants will be divided by the total generating capacity of the same plants to arrive at an average cost per kilowatt of installed capacity. A separate average will be computed for each of the following types of plants: gas turbine, hydro-electric, and steam-electric. The plants used in the calculation will exclude federally constructed, multi-purpose projects, and nuclear electric generating plants. The information used to compute the average will be drawn from the latest issues of the following United States Department of Energy publications: Hydro-Electric Plant Construction Cost and Annual Production Expenses, Steam-Electric Plant Construction Cost and Annual Production Expenses, and Gas Turbine Electric Plant Construction Cost and Annual Production Expenses.

The plants which will be used in the computation of the national average will be those plants built during the most recent 15 years included in the above named publications.

An example of this computation of the national average cost per kilowatt of installed capacity is as follows:

Steam-Electric Generating Plants

Plant	Plant Cost Excluding Land	Plant Capacity
A	$ 14,000,000	100,000 kw
B	13,000,000	90,000 kw
C	17,000,000	110,000 kw
D	14,500,000	80,000 kw
E	18,000,000	120,000 kw
F	10,000,000	70,000 kw
G	19,000,000	130,000 kw
H	9,000,000	60,000 kw
I	20,000,000	140,000 kw
J	8,000,000	50,000 kw
	$142,500,000	950,000 kw

Total plant cost ($142,500,000) divided by total plant capacity (950,000 kw) equals $150 average cost per kilowatt of installed capacity.

The national average cost per kilowatt of installed capacity will be compared to the specific cost per kilowatt of installed capacity for each of the major generating plants owned by the utility being valued. If the national average cost per kilowatt is greater than the subject plant cost, the subject plant will have additional dollars incorporated into its cost in order to raise its cost per kilowatt to the national average. If the subject plant's cost per kilowatt equals or exceeds the national average, no cost will be added.

The following example illustrates this procedure:

XYZ Utility
Steam-Electric Generating Plants

1. Plant	#1	#2
2. Installed Capacity	100,000 kw	50,000 kw
3. Year in Service	1970	1950
4. Cost of Plant (Exclusive of Land)	$15,200,000	$5,000,000
5. Specific Plant Cost per kw	$152	$100
6. National Average Cost per kw	$150	$150
7. Deficiency	none	$ 50
8. Additional Cost (Line 7 × Line 2)	none	$2,500,000

This additional cost to be added to the original cost of the specific plant will be reduced by two factors: an allowance for pollution control equipment and an allowance for obsolescence.

The allowance for pollution control equipment will be computed annually by totaling the construction costs, exclusive of land, of all major generating plants within Minnesota by type of plant. A total will also be made of the cost of the equipment in these plants which has been approved for tax exempt status in accordance with Minn. Stat. § 272.02, subd. 1, clause (15). This total will also be computed by type of plant. The total of the approved pollution control equipment will be divided by the total construction cost, exclusive of land, of the plants in order to calculate a percentage. This percentage will be the ratio of dollars spent for pollution control equipment to total dollars spent to construct a specific type of power plant. This percentage will then be used to reduce the gross additional cost to be added to the cost of the specific generating plant, as computed above. An example of this process is as follows:

Steam-Electric Plants Within Minnesota

Plant	Plant Cost Excluding Land	Cost of Approved Pollution Control Equipment
A	$15,200,000	$1,500,000
B	10,000,000	1,000,000
C	5,000,000	700,000
D	20,000,000	2,000,000
E	16,500,000	1,470,000
	$66,700,000	$6,670,000

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Total cost of approved pollution control equipment ($6,670,000) divided by total plant cost ($66,700,000) equals 10% ratio of pollution control equipment expenditures to total expenditures for generating plant construction.

XYZ Utility
Steam-Electric Plant #2

1. Additional Cost Due to Computation of Average Cost per kw of Installed Capacity	$2,500,000
2. 10% Allowance for Pollution Control Equipment	250,000
3. Additional Cost to be Added after Adjustment for Pollution Control Equipment	$2,250,000

The allowance for obsolescence which will be applied to the additional plant construction cost will be computed annually for hydro-electric and steam-electric generating plants. The information needed to compute the obsolescence factors will be drawn from the same publications that are used to compute the national average cost per kilowatt of installed capacity figure. Gas turbine plants will not have any obsolescence allowance applied to the additional cost added to the plants.

The obsolescence allowance for hydro-electric plants will be calculated through the use of a "plant factor." The plant factor is computed by dividing the number of kilowatt hours a generating plant actually produced in a year by the number of kilowatt hours the plant was capable of producing. The plant factor is normally expressed as a percentage. The mathematical expression of this factor is: net generation (kwh) divided by annual installed capacity (hours in a year × installed capacity (kw)). A standard plant factor will be computed for hydro-electric plants by averaging the ten plants within the 15 year study period used to compute the average cost per kilowatt of installed capacity with the highest plant factor. This standard will then be compared to an average of the most recent three years' plant factor of the subject plant. The amount the subject plant deviates from the standard is the amount of obsolescence which will be applied to the added cost.

An example of this obsolescence allowance computation is shown below.

Hydro-Electric Plants

Plant	Net Generation kwh (000)	Plant Capability kwh (000)	Plant Factor
A	400,150	755,000	53 %
B	300,040	577,000	52 %
C	250,000	480,000	52 %
D	600,000	1,250,000	48 %
E	896,000	1,600,000	56 %
F	700,000	1,400,000	50 %
G	507,000	975,000	52 %
H	450,000	1,000,000	45 %
I	376,000	800,000	47 %
J	810,000	1,800,000	45 %
		Average	50 %

XYZ Utility
Hydro-Electric Plant #4

Year	Net Generation kwh (000)	Plant Capability kwh (000)	Plant Factor
19XX	400,000	1,000,000	40 %
19XX	500,000	1,000,000	50 %
19XX	450,000	1,000,000	45 %
		Average	45 %

Hydro-electric plant #4 plant factor (45%) divided by standard plant factor (50%) equals 90%. Therefore, hydro-electric plant #4 deviates from the standard by 10%, or is 10% obsolete.

The obsolescence allowance for steam-electric generating plants will be computed annually using two indicators. The first

indicator will be the plant factor. The plant factor for steam-electric plants will be computed and applied in the same manner as the computation specified for hydro-electric plants above. The only difference will be that the information used for the computation will be drawn from the latest Steam-Electric Plant Construction Cost and Annual Production Expenses publication rather than the Hydro-Electric Plant publication. Plant factors of the ten best steam-electric generating plants within the 15 year study period will be averaged. This average will be compared to the most recent three year average plant factor for the subject plant. The subject plant's deviation from the standard plant factor is the amount of indicated obsolescence.

The second indicator which will be used to compute an obsolescence allowance for steam-electric generating plants will be a thermal efficiency factor. The source of information for this computation will also be the latest issue of the United States Department of Energy's publication, Steam-Electric Plant Construction Cost and Annual Production Expenses. Thermal efficiency for a generating plant is measured by the number of British thermal units (B.T.U.) required to produce one kilowatt hour. This efficiency rating can be obtained by dividing the number of kilowatt hours produced by a generating plant by the number of B.T.U.'s needed to produce this power. The number of B.T.U.'s used can be obtained by multiplying the units of fuel burned by the generating plant—tons of coal, gallons of oil, or cubic feet of gas—by the average B.T.U. content of the fuel unit. The standard thermal efficiency factor will be computed by averaging the thermal efficiency factor of the ten most efficient steam-electric generating plants within the 15 year study period used to compute the average cost per kilowatt of installed capacity. This standard thermal efficiency factor will then be compared to the thermal efficiency factor of the subject plant. The amount the subject plant deviates from the standard is the amount of obsolescence indicated by this factor.

The two obsolescence figures for the subject plant as indicated by both the plant and thermal efficiency factors will then be averaged. This resulting average is the obsolescence allowance which will be applied to the cost added to the subject plant as a result of the average cost per kilowatt of installed capacity computation. In no instance shall the original cost of a generating plant be reduced by an allowance for obsolescence unless its cost is increased through the use of the average cost per kilowatt of installed capacity computation.

The following examples illustrate the computation of: the standard thermal efficiency factor; obsolescence indicated by the application of this factor to the subject plant; average obsolescence for steam-electric generating plants; and obsolescence allowance adjustment of the added cost due to the use of the average cost per kilowatt of installed capacity for the subject plant.

Steam-Electric Generating Plants

Plant	Net Generation kwh (Millions)	BTU's Used (Millions)	BTU's per kwh
A	2,000	18,400,000	9,200
B	6,000	53,400,000	8,900
C	8,000	72,000,000	9,000
D	5,000	45,500,000	9,100
E	3,000	26,400,000	8,800
F	1,000	9,000,000	9,000
G	4,000	36,600,000	9,150
H	9,000	80,550,000	8,950
I	7,000	61,950,000	8,850
J	5,000	45,250,000	9,050
		Average	9,000

XYZ Utility Company
Steam-Electric Plant #2

Net Generations kwh (Millions)	BTU's Used (Millions)	BTU's per kwh
2,000	21,600,000	10,800

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Steam-electric plant #2 thermal efficiency factor (10,800 BTU's per kwh) divided by standard thermal efficiency factor (9,000 BTU's per kwh) equals 120%. Therefore, steam-electric plant #2 deviates from the standard by 20% or is 20% obsolete.

XYZ Utility Company
Steam-Electric Plant #2

1. Obsolescence Indicated by Plant Factor	10%
2. Obsolescence Indicated by Thermal Efficiency Factor	20%
3. Obsolescence Allowance (Average of 1 and 2)	15%
4. Additional Cost due to Computation of Average Cost per kw of Installed Capacity	$2,500,000
5. 15% Obsolescence Allowance	375,000
6. Additional Cost to be Added after Adjustment for Obsolescence	$2,125,000

The cost indicator of value computed in accordance with this ~~regulation~~ rule will be weighted for each ~~class~~ type of utility company as follows: electric companies, 85 percent; gas distribution companies, 75 percent; and pipeline companies, 75 percent.

The following example illustrates how the cost indicator of value would be computed for an electric company:

1. Utility Plant (Cost)	$200,000,000
2. Construction in Progress	5,500,000
3. Additional Value From Average Cost per K.W. Computation	2,000,000
4. Total Plant	207,500,000
5. Non-Depreciable Plant (Land, Intangibles, C.W.I.P.)	17,500,000
6. Depreciable Plant	190,000,000
7. Depreciation (Maximum 19%)	36,100,000
8. Total Cost Indicator of Value	171,400,000

D. Income approach to valuation. The income indicator of value will be estimated by weighting the net operating earnings of the utility company for the most recent three years as follows: most recent year, 40 percent; previous year, 35 percent; and final year, 25 percent. After considering, as far as possible, all conditions that may exist in the future that may affect the present annual return, including risk, life expectancy of the property, and cost of money, the capitalization rates used to compute value for the assessment will be: electric companies, ~~8.00~~ 8.5 percent; gas distribution companies, ~~8.25~~ 8.75 percent; and pipeline companies ~~8.50~~ 9 percent. The income indicator of value computed in accordance with this ~~regulation~~ rule will be weighted for each class of utility company as follows: electric companies, 15 percent; gas distribution companies, 25 percent; and pipeline companies, 25 percent.

The following example illustrates how the income indicator of value would be computed for a pipeline company:

	1980	1981	1982
1. Net Operating Income	$ 468,000	$ 385,700	$ 450,000
2. Capitalized Income @ 9%	5,200,000	4,285,600	5,000,000
3. Weighting Factor	25%	35%	40%
4. Weighted Capitalized Income	1,300,000	1,500,000	2,000,000
5. Total Income Indicator of Value			4,800,000

E. Unit value computation. The unit value of the utility company will be the total of the weighted ~~indicator~~ indicators of value.

The following is an example of the computation of the unit value for a pipeline company:

1. Cost Indicator of Value	$5,000,000	× 75%	= $3,750,000
2. Income Indicator of Value	$4,800,000	× 25%	= $1,200,000
3. Unit Value of Pipeline Company		100%	$4,950,000

F. ~~Valuation of utility property of cooperatives. Cooperative associations shall have their utility property valued on the basis of historical cost only since they do not operate on the tradition profit making basis. Depreciation will be allowed as a deduction from cost at increments of 2.5 percent per year but the maximum shall not exceed 25 percent of property used in the generation, transmission or distribution of electric power.~~ Valuation of utility property of cooperatives and other non-common carrier or non-regulated utilities. Cooperative associations and other types of utilities which do not operate in the traditional profit making mode, are not common carriers, or are non-regulated, will have their utility property valued on the basis of historical cost only. Depreciation will be allowed as a deduction from the historical cost in increments of 2.5 percent per year, but the maximum depreciation allowed shall not exceed 25 percent of the cost of the utility operating property. Additions to existing utility property will be depreciated 2.5 percent per year until they reach the 25 percent maximum. Retirements of utility property will be deducted from the cost basis at the appropriate depreciation level of the retired property.

The following example illustrates this process for an electric cooperative association:

1. Cost of Substation	$1,000,000
2. Value 1st year @ 97.5%	975,000
3. Value 2nd year @ 95%	950,000
4. Value 3rd year @ 92.5%	925,000
5. Value 4th year @ 90%	900,000
6. Value 5th year @ 87.5%	875,000
7. Value 6th year @ 85%	850,000
8. Value 7th year @ 82.5%	825,000
9. Value 8th year @ 80%	800,000
10. Value 9th year @ 77.5%	775,000
11. Value 10th year @ 75%	750,000
12. Value 11th and succeeding years at 75%	750,000

G. Obsolescence allowances. The commissioner may adjust the value calculated pursuant to this rule through the use of an obsolescence allowance. This allowance is intended to be used in order to recognize the effect the curtailment or termination of a pipeline's source of supply may have on its value. In order for a pipeline or a gas distribution company to be eligible for such an allowance they must meet certain criteria or standards. These standards are listed below. It is mandatory that standards 1, 2 and 3 be met by the utility. It is highly desirable that standards 4 and 5 also be met.

1. The utility must adequately demonstrate, to the satisfaction of the commissioner, that its source of supply for gas or oil will be terminated within the next ten years.

2. The utility must be at, or above, the maximum depreciation allowance as specified by C.

3. The utility must have made application to the appropriate regulatory agency for increased depreciation allowances, and the application must not have been denied or rejected.

4. The utility must not have made any major capital expenditures within the last three years.

5. The utility must not have sold any long term bonds or signed any long term notes within the last three years.

If the utility has made major capital expenditures or entered into long term debt obligations within the last three years, a satisfactory explanation of the rationale for these actions must be made to the commissioner before an allowance for obsolescence will be granted.

The obsolescence allowances which may be applied to the utility's value will be calculated in the following manner:

Method 1. A 5 year average of the utility's annual throughput will be calculated. The throughput for the assessment year will be compared to this average and a percentage calculated. This percentage will be applied to the cost indicator of value calculated pursuant to C. in order to adjust the indicator for obsolescence. The adjusted cost indicator of value will be used in the calculation of the unit value pursuant to E. The following is an example of this procedure:

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Year	Throughput in Barrels
1977	1,200,000
1978	1,300,000
1979	1,150,000
1980	1,100,000
1981	1,050,000
	5,800,000 Total
	1,160,000 Average Throughput

1. 1982 Throughput	1,000,000 Barrels
2. Percent of 1982 Throughput to 5 Year Average Throughput	86%
3. Cost Indicator of Value	$6,300,000
4. Cost Indicator Adjusted for Obsolescence	$5,418,000

Method 2: The book depreciation shown on the books and accounts of the utility will be compared to the depreciation allowed by C. If the book depreciation exceeds the maximum depreciation allowance, 50% of the excess depreciation will be used in the calculation of the cost indicator of value. An example of this calculation is as follows:

1. Book Depreciation	$6,000,000
2. Maximum Allowable Depreciation	4,750,000
3. Excess Depreciation	1,250,000
4. 50% of Excess Depreciation	$ 625,000
5. Utility Plant	$11,000,000
6. Construction Work in Progress	50,000
7. Total Plant	11,050,000
8. Non-Depreciable Plant (Land, CWIP)	1,050,000
9. Depreciable Plant	10,000,000
10. Depreciation (Maximum 47.5%)	4,750,000
11. Obsolescence Allowance	625,000
12. Cost Indicator of Value	5,675,000

Method 3. The income indicator of value computed in accordance with D. will be calculated by capitalizing the utility's 3-year weighted net operating earnings for a specific term of years rather than into perpetuity. The term of years to be used will be the number of years remaining until the expected expiration of the utility's source of supply for product (oil, gas), or the number of years remaining until the utility's major assets (pipeline, pump stations, storage tanks, and similar assets) are fully depreciated, whichever is greater. An example of this capitalization process is as follows:

	1979	1980	1981
1. Net Operating Earnings	$1,320,000	$1,000,000	$800,000
2. Weighting	25%	35%	40%
3. Weighted Net Operating Earnings	$330,000	$350,000	$320,000
4. Total Weighted Net Operating Earnings		$1,000,000	
5. Terms of years until major assets are fully depreciated			8
6. Capitalization rate pursuant to 13 MCAR § 1.0003 D.			9%
7. Capitalization rate converted to term of 8 years			18.0674%
8. Capitalized Income/Income Indicator of Value			$5,534,831

The commissioner shall apply to the valuation process whichever of the three obsolescence methods is most appropriate in order to equitably recognize the effect of obsolescence on the utility's value.

H. Retirements. Utility operating property may be retired from the utility system while still in place if certain criteria are met:

1. The property must be physically disconnected from the utility system. In the case of electrical plants, the

disconnection or dismantling of wires, cables, connectors, or transformers would constitute physical disconnection. In the case of pipelines, the disconnection of pipes, valves, or fittings would be evidence of physical disconnections.

2. An affidavit of retirement should be filed by the utility with the commissioner at least 30 days prior to the assessment date. This affidavit should indicate the facility being retired and the date it was taken out of service.

The utility should make every effort to inform the commissioner of pending major retirements. The commissioner in turn shall notify the county assessor of impending major retirements as soon as this information becomes available to the department.

Utility property which is retired in place shall continue to be taxed for ad valorem purposes; however, its market value shall not be determined on the basis of its value as utility operating property.

If a utility should choose to temporarily retire a facility pending the development of an alternate fuel, greater demand, increased source of supply or some other valid reason, the cost of this facility must be transferred to the appropriate regulatory agency's account entitled "Held for Future Use." Standby facilities will not be considered to be temporarily retired unless their costs are carried in this account. Temporarily retired utility facilities will be valued taking into account a number of factors including: age of the facility, type of facility, amount of maintenance and additional costs needed to restore the facility to operational status, length of retirement, and earning potential of the facility. In no instance shall a temporarily retired facility be valued lower than if the facility were considered non-operating utility property.

13 MCAR § 1.0004 Allocation.

A. General. After the unit value of the utility property has been estimated, the portion of value which is attributable to Minnesota must be determined. This process of dividing the unit value of a utility company among the states in which the utility operates is called allocation. Each of the factors in the allocation formula is assigned a weighted percentage to denote the relative importance assigned to that factor. The resulting sum of the weighted factors multiplied by the unit value yields the valuation of the utility property which will, after the adjustments described in 13 MCAR § 1.0005, be subject to ad valorem tax in the State of Minnesota.

The factors to be considered in making allocations of unit value to Minnesota for the utility companies and the weight assigned to each factor for each class are specified in this ~~regulation~~ rule.

B. Electric companies. The original cost of the utility property located in Minnesota divided by the total original cost of the property in all states of operation is weighted at 90 percent. Gross revenue derived from operations in Minnesota divided by gross operations revenue from all states is weighted at ten percent.

The following example illustrates this formula, assuming a unit value of $20,000,000.

1. Minnesota Plant Cost	~~($115,000,000)~~	x .90 = 50.49%
2. System Plant Cost	~~($205,000,000)~~	
3. Minnesota Gross Revenue	~~(40,000,000)~~	x .10 = 3.8%
4. System Gross Revenue	~~($105,000,000)~~	
5. Total Percentage Allocable to Minnesota		54.29%
6. Unit Value of System Plant		$20,000,000
7. Amount of Value Allocable to Minnesota		$10,858,000

C. Gas distribution companies. The allocation of value of gas distribution companies shall be made considering the same factors as are used to determine the allocation of value of electric companies. The weight given to the original cost factor will be 75 percent, and gross revenue shall be weighted 25 percent.

D. Pipeline companies. In addition to the cost factor and the gross revenue factor, the factor of weighted pipeline miles shall be considered in allocating the value of pipeline companies. Weighted pipeline miles means the number of miles of pipeline multiplied by the diameter of the pipe, measured in inches. To illustrate, a pipeline 6 miles long has 3 miles of pipe with a diameter of 10 inches and 3 miles of pipe with a diameter of 30 inches. The weighted pipeline miles is 120.

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3 miles × 10″ diameter = 30
3 miles × 30″ diameter = 90
Weighted pipeline miles = 120

The following example ~~illustrate~~ illustrates the allocation of value of property of a pipeline company and the weights given to each factor~~:~~:

1. Minnesota Plant Cost	~~($13,500,000)~~	x .75 = 25.76%
2. System Plant Cost	~~($39,300,000)~~	
3. Minnesota Gross Revenue	~~($ 2,980,000)~~	x .05 = 1.60%
4. System Gross Revenue	~~($ 9,300,000)~~	
5. Minnesota Weighted Pipeline Miles	~~(9,500)~~	x .20 = 7.01%
6. System Weighted Pipeline Miles	~~(27,100)~~	
7. Total Percentage Allocable to Minnesota		34.37%

13 MCAR § 1.0005 Adjustments for non-formula assessed or exempt property.

A. After the Minnesota portion of the unit value of the utility company is determined, any property which is non-formula assessed or which is exempt from ad valorem tax, will be deducted from the Minnesota portion of the unit value. Only that qualifying property located within the State of Minnesota may be excluded.

B. The following properties will be valued by the local or county assessor and, therefore, the formula provided herein for the valuation of utility property will not be applicable for such property~~:~~:

1. Land;
2. Non-operating property;
3. Rights of way.

C. The Minnesota portion of the unit value will be reduced by the original cost of ~~these items except that~~ land and rights of way. In the case of non-operating property, the deduction shall be original cost, less the rate of depreciation applicable in the valuation process pursuant to 13 MCAR § 1.0003.

D. A deduction from the Minnesota portion of the unit value shall also be made for property, real or personal, which is exempt from ad valorem tax. For instance, pollution control equipment for which an exemption has been granted is exempt. A deduction from the Minnesota portion of the unit value shall be made at original cost, less the applicable rate of depreciation used in the valuation process pursuant to 13 MCAR § 1.0003. The value of personal property, such as office machinery and vehicles, which is not taxed, shall also be excluded from the Minnesota portion of the unit value. The deduction shall be at original cost less the applicable rate of depreciation utilized in the valuation process.

The following example illustrates how these items are deducted from the Minnesota portion of the unit value.

1. Minnesota Portion of Unit Value		$5,000,000
2. Excludable Items—Nondepreciable		
a. Land Assessed Locally		3,000
b. Land Rights		1,000
3. Excludable Items—Depreciable		
a. General Plant Items	$10,000	
b. Pollution Control Equipment	10,000	
c. Gross Depreciable Items	20,000	
d. Depreciated at 25%	5,000	
e. Net Depreciable Exlucable Items		15,000
4. Total Excludable Items		20,000
5. Minnesota Apportionable Value		4,980,000

E. The utility company shall have the burden of proof to establish that the value of any property should be excluded from the

Minnesota portion of the unit value. Accordingly, the utility company shall have the responsibility to submit, in the form required by the Commissioner of Revenue, such schedules of exempt or non-formula assessed property as he may require.

13 MCAR § 1.0006 Apportionment.

A. After the unit valuation of the utility company has been allocated to the State of Minnesota and has been adjusted pursuant to 13 MCAR § 1.0005, the determined amount shall be apportioned or distributed to the taxing districts in Minnesota in which the company operates. This apportionment will be made by the Commissioner of Revenue on the basis of information submitted by the utility companies in annual reports filed with the commissioner.

B. The following information must be submitted for each taxing district:

1. The market value of the company's operating property by classification, as reflected in the last assessment, including the cost of leased taxable property.

2. The original cost of the company's operating property by classification, including the cost of leased taxable property.

3. The original cost of any new additions since the last assessment, including work in progress on the assessment date.

4. The market value of any retirements made after the last assessment, as reflected in that assessment.

5. The original cost of any retirements made after the last assessment.

6. Whenever a new taxing district is established, the information submitted by the utility companies for the taxing district must be submitted in the same form as enumerated in 1.-5. If the utility, because of administrative difficulty, is forced to make estimates of values and costs for property within new taxing districts, these estimates must be approved by the commissioner.

C. The total market value of each company's operating utility property in Minnesota shall be divided by the ~~larger~~ greater of:

1. The last market value of ~~each~~ the company's operating utility property in each taxing district, plus original cost of new construction, reduced by the last market value of property retired since the last assessment.

2. The original cost ~~x 75 percent~~ together with any additional cost computed in accordance with 13 MCAR § 1.0003 C. of ~~each~~ the company's operating utility property in each taxing district plus original cost of new construction reduced by the original cost of property retired since the last assessment multiplied by the percentage as specified below.

For the 1982 assessment year the original costs shall be multiplied by 77.5%.

For the 1983 assessment year the original costs shall be multiplied by 80%.

For the 1984 assessment year the original costs shall be multiplied by 82.5%.

For the 1985 assessment year the original costs shall be multiplied by 85%.

For the 1986 assessment year the original costs shall be multiplied by 87.5%.

For the 1987 assessment year the original costs shall be multiplied by 90%.

For the 1988 assessment year the original costs shall be multiplied by 92.5%.

For the 1989 assessment year the original costs shall be multiplied by 95%.

For the 1990 assessment year the original costs shall be multiplied by 97%.

For the 1991 assessment year the original costs shall be multiplied by 100%.

D. For this purpose, the last market value and the last assessment shall mean the latest assessment immediately prior to the current assessment. The portion of unit value to be assigned to each taxing district will be the resulting percentage multiplied by the Minnesota portion of the unit value, as adjusted pursuant to ~~13 MCAR § 1.0006~~ this rule.

~~E. If the market value of any parcel of property assessed pursuant to this chapter is increased, the increase entered on the assessment books shall be subject to the limitation provided in Minn. Stat. § 273.11, Subd. 2. The amount of decrease in~~

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~~market value of such property, exclusive of property retired or destroyed since the last assessment, shall not exceed ten percent of the value in the preceding assessment.~~

Repealer. Rule 13 MCAR § 1.0007 is repealed.

Department of Natural Resources

Migratory Waterfowl Sanctuary Order No. 29

Regulations Designating Certain Waters as Migratory Waterfowl Feeding and Resting Areas during the Open Season for the Year 1981

Petitions having been filed with the Commissioner of Natural Resources of the State of Minnesota by the number of petitioners required by law, who assert that they are licensed resident Minnesota hunters, and that certain designated waters constitute substantial feeding and resting grounds for migratory waterfowl, I, Joseph N. Alexander, Commissioner of Natural Resources, pursuant to authority vested in me by law, having duly investigated and considered said matter and having found said assertions as to said waters hereinafter described to be correct, and that it is in the best interests of proper game management to have the same set aside as migratory waterfowl feeding and resting areas, prescribe the following regulations relating thereto:

Section 1. All waters on Upper Rice Lake in Clearwater County, Bear Lake in Freeborn County, Squaw Lake in Itasca County, South Heron Lake in Jackson County, and Lake Johanna in Pope County are hereby designated as migratory waterfowl feeding and resting areas and shall be duly posted as such.

Sec. 2. All of Lake Christina in Grant and Douglas Counties except that part lying southerly of a straight line described as follows: Beginning at the easterly terminus of the north line of Government Lot 3, Section 12, Township 130 North, Range 41 West, at the water's edge of Lake Christina; thence easterly to the water's edge at the northwesterly point of the Peninsula of Government Lot 1, Section 8, Township 130 North, Range 40 West, that projects into said lake, is hereby designated as a migratory waterfowl feeding and resting area and shall be duly posted as such.

Sec. 3. All that portion of Marsh Lake in Big Stone, Lac qui Parle and Swift Counties lying easterly and southeasterly of a line beginning at that point where the west section line of Section 10, Township 120 North, Range 44 West, meets the lake water line; thence southeasterly approximately 370 rods to the southwest corner of Egret Island located in Section 15, Township 120 North, Range 44 West; thence southeasterly approximately 340 rods to a point where the east section line of Section 22, Township 120 North, Range 44 West, intersects the water line of south shore of the lake, is hereby designated as a migratory waterfowl feeding and resting area and shall be posted as such.

Sec. 4. All that portion of Lake Lizzie in Ottertail County lying in Sections 3, 4, 5, 6, 7, 8 and 9, Township 136 North, Range 42 West, is hereby designated as a migratory waterfowl feeding and resting area and shall be posted as such.

Sec. 5. When so posted, it shall be unlawful for any person, other than uniformed Natural Resources officers and other agents of the Commissioner in the performance of their official duties, or disabled or handicapped persons who, under permit of the Commissioner, may use electric motors of not over 24 pounds of thrust, to use upon said Upper Rice, Bear, Squaw, South Heron, Johanna, or upon such parts of Christina, Marsh, and Lizzie Lakes designated as feeding and resting areas, any kind of motor-propelled boat, raft, watercraft or aircraft during the open migratory waterfowl season.

Dated at Saint Paul, Minnesota, this 16th day of September, 1981.

Joseph N. Alexander, Commissioner
Department of Natural Resources

Department of Natural Resources

Game Refuge Order No. 410

Order Establishing the Glendalough Statutory Waterfowl Refuge, Douglas County

TO WHOM IT MAY CONCERN:

WHEREAS, a petition having the required number of signatures has been presented to the Director of the Division of Fish and Wildlife, State of Minnesota, requesting that the following described lands in Ottertail County Minnesota be established as a state waterfowl refuge.

Southwest ¼ of Northwest ¼, Government Lots 1, 2, 3, 4, 5 and 7 (except that part of said Government Lot 5 lying east of the private road as presently located on said Government Lot 5) of Section 13, Township 133, Range 40;

Government Lots 1 and 2 of Section 14, Township 133, Range 40;

Government Lots 1, 2, 3, 4, 5, 6 and 7 (including that part of said Government Lot 4 platted as Highland Park Beach) of Section 18, Township 133, Range 39.

WHEREAS, all of the owners, lessees or persons in possession of the above described lands have joined in said petition; and

WHEREAS, it has been found that public interest would be best served by the establishment of this waterfowl refuge;

NOW, THEREFORE, UNDER AUTHORITY OF MINNESOTA STATUTES 1981, SECTION 99.25, SUBDIVISIONS 3 AND 6A, IT IS ORDERED THAT THE ABOVE DESCRIBED AREA BE AND IS ESTABLISHED AS A STATUTORY WATERFOWL REFUGE TO BE KNOWN AS THE GLENDALOUGH STATUTORY WATERFOWL REFUGE, OTTERTAIL COUNTY, MINNESOTA. THIS ORDER BECOMES EFFECTIVE UPON DUE PUBLICATION THEREOF AND COMPLETION OF POSTING IN ACCORDANCE WITH LAW.

Dated at Saint Paul, Minnesota
this 9th day of September, 1981.

Joseph N. Alexander, Commissioner
Department of Natural Resources
By: Jerome Kuehn, Acting Director
Division of Fish and Wildlife

Department of Natural Resources

Commissioner's Order No. 2105

Amending Commissioner's Order No. 2100 Regulating the Taking of Certain Furbearers

Pursuant to authority vested in me by law, I, Joseph N. Alexander, Commissioner of Natural Resources, hereby prescribe the following amendments to Commissioner's Order No. 2100 regulating the taking of certain furbearers.

Section 1. Sec. 3, paragraph b., of Commissioner's Order No. 2100 is amended to read as follows:

b. Bag Limits. Residents may possess raccoon without limit. Any person who is not a resident of Minnesota may not take or possess more than eight raccoon per season.

Sec. 2. Sec. 6, paragraph e., Sec. 7, paragraph d., and Sec. 8, paragraph b.3., are all deleted.

Sec. 3. Sec. 9 of Commissioner's Order No. 2100 is amended to read as follows:

No person shall place, set, or operate a trap unless his or her name and either address or driver's license number is etched legibly onto the trap or onto a metal tag no less than 30 gauge in thickness which is welded, brazed or soldered to the trap or affixed to the trap with a tightly twisted wire or solid metal ring.

Sec. 4. Sec. 14 of Commissioner's Order No. 2100 is amended to read as follows:

Each lynx, bobcat, fisher and otter mut be presented, by the person taking it, to a conservation officer for registration before the pelt is sold, but in no event more than 48 hours after the season closes. The pelt shall have been removed from the carcass and the carcass shall be surrendered to the conservation officer. Each fisher shall be skinned so that one front foot remains intact and attached to the pelt.

Sec. 5. Sec. 20 of Commissioner's Order No. 2100 is amended to read as follows:

No person shall be accompanied by a dog or dogs while engaged in tending or setting traps for protected wild animals, unless such dog or dogs are harnessed and attached to a sled or securely tethered to a tree or other permanent device with a leash of no more than 15 feet in length.

Except as provided herein, all provisions of Commissioner's Order No. 2100 shall remain in full force and effect.

Dated at Saint Paul, Minnesota, this 16th day of September, 1981.

Joseph N. Alexander
Commissioner of Natural Resources

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Department of Natural Resources

Commissioner's Order No. 2107

Amending Commissioner's Order No. 2102 Regulating Hunting and Trapping in State Game Refuges, Public Hunting Grounds, Wildlife Management Areas, National Wildlife Refuges and State Parks

Pursuant to authority vested in me by law, I, Joseph N. Alexander, Commissioner of Natural Resources, hereby prescribe the following amendments to Commissioner's Order No. 2102 regulating hunting and trapping in State Game Refuges, Public Hunting Grounds, Wildlife Management Areas, National Wildlife Refuges and State Parks.

Section 1. Sec. 1. Subd. 2 of Commissioner's Order No. 2102 is amended to read as follows:

Trapping is authorized by permit only, issued by the Area Manager, on the following public hunting grounds: Carlos Avery in Anoka and Chisago Counties; Hubbel Pond in Becker County; Red Lake in Beltrami and Lake of the Woods Counties: Talcot Lake in Cottonwood and Murray Counties; Mille Lacs in Mille Lacs and Kanabec Counties; Lac qui Parle in Big Stone, Lac qui Parle, Swift and Chippewa Counties; Orwell in Ottertail County; Roseau River in Roseau County; Thief Lake in Marshall County; Rothsay in Wilkin County; and Whitewater in Olmsted, Wabasha and Winona Counties. If the Area Manager determines that the number of trapping permits issued must be limited in order to avoid undo depletion of the furbearer resource or to prevent excessive crowding of trappers, he may establish any practicable method, including a drawing, for impartially determining the persons who may trap. The Area Manager may reject the application for a trapping permit from any trapper who has failed to submit a trapping report for the previous trapping season.

Sec. 2. Sec. 1. Subd. 7 of Commissioner's Order No. 2102 is amended to read as follows:

Hunting on certain portions of Lac qui Parle, Thief Lake, Elm Lake, Roseau River and Talcot Lake Wildlife Management Areas is controlled as specified in Section 3.

Sec. 3. Sec. 2. Subd. 5 of Commissioner's Order No. 2102 is amended to read as follows:

The hunting of migratory waterfowl adjacent to certain segments of the Rochester, Roseau River, Lac qui Parle, and Talcot Lake Game Refuges is controlled as specified in Section. 3.

Sec. 4. Sec. 2 of Commissioner's Order No. 2102 is amended by adding a new Subd. called Subd. 6 to read as follows:

The Fox Lake Game Refuge, in Martin County, is open to the taking of Canada geese from October 3 to October 7, 1981, both dates inclusive, within the established goose regulations for the zone in which it is located.

Sec. 5. Sec. 3. Subd. 1 of Commissioner's Order No. 2102 is amended by adding a new paragraph called j. to read as follows:

On the Talcot Lake Game Refuge and Sanctuary in Cottonwood County, the controlled hunting zone shall include the area 200 yards out from the following described boundary:

Beginning along County State Aid Highway (CSAH) 7, Cottonwood County at the center of Sec. 17, Township 105 North, Range 38 West; thence south along CSAH 7 to State Trunk Highway (STH) 62; thence west along STH 62 to the intersection with the Township Road at the northwest corner of Section 32, Township 105 North, Range 38 West.

Sec. 6. Sec. 3 of Commissioner's Order No. 2102 is amended by adding a new Subdivision, called Subd. 7, to read as follows:

Within the Talcot Lake controlled hunting zone the following regulations shall apply to waterfowl hunters during the open goose season.

a. Hunting station occupancy is limited to no more than three persons.

b. The resident wildlife manager or the area wildlife manager may limit all persons hunting at all hunting stations within a controlled hunting zone or at any hunting station within a zone to one day of hunting in every eight if he determines that such is necessary to provide for the equitable allocation of hunting opportunities. After making such a determination, the manager shall daily stamp the small game hunting license or firearms safety certificate of every person at each restricted hunting station with the date of such person's hunt. Persons with licenses stamped pursuant to this paragraph may hunt at any restricted station on the day stamped but shall not occupy any such station for the next seven days. Stations subject to the restrictions imposed by this paragraph shall be so posted. The manager shall remove any such restriction when he determines that it is no longer necessary for the purpose specified above.

c. No persons shall occupy a shooting station within the controlled hunting zone except when their vehicles are occupying numbered parking stalls in a designated parking lot in the controlled hunting zone.

d. Hunters shall hunt only at the designated hunting stations having numbers corresponding to their parking stall number.

e. No person shall park in or otherwise occupy any parking stall in the designated parking lot or occupy any designated hunting station during any two consecutive days.

f. No person shall occupy a designated hunting station or park in or otherwise occupy the designated parking lot in the controlled hunting zone during the period from 10:00 P.M. until 5:00 A.M. the following day.

g. No trailers of any kind shall be allowed in the designated parking lot.

h. All guns must be unloaded and cased except within 10 feet of a hunting station.

i. A hunting party shall vacate its shooting station and leave the controlled hunting zone after the daily limit of Canada geese has been taken.

Except as provided herein, all provisions of Commissioner's Order No. 2102 shall remain in full force and effect.

Dated at Saint Paul, Minnesota, this 16th day of September, 1981.

Joseph N. Alexander, Commissioner
Department of Natural Resources

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Department of Agriculture
Plant Industry Division

Adopted Rules Governing Seed Potato Certification (3 MCAR §§ 1.0127-1.0135) and Repeal of Agr 121-126

The rules published and proposed at *State Register*, Volume 5, Number 48, pp. 1913-1922, June 1, 1981 (5 S.R. 1913) are now adopted, with the following modifications:

Rules as Adopted

3 MCAR § 1.0127 Purpose and authority. Rules 3 MCAR §§ 1.0127-1.0135 provide standards for the inspection, certification, production, and marketing of certified seed potatoes in the State of Minnesota. The authority to adopt these rules is contained in Minn. Stat. § 21.118 ~~(1980)~~.

3 MCAR § 1.0128 Definitions. As used in 3 MCAR §§ 1.0127-1.0135, the following defintions apply unless the context clearly indicates otherwise.

D. "Inspected" has the meaning given it in Minn. Stat. § 21.111, subd. 2 ~~(1980~~.

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E. "Seed potatoes" has the meaning given it in Minn. Stat. § 21.111, subd. 5 ~~(1980)~~.

F. "Certified" has the meaning given it in Minn. Stat. § 21.111, subd. 3 ~~(1980)~~.

3 MCAR § 1.0129 General guidance. The provisions of this section govern the production of potatoes for use as certified seed potatoes.

A. Seed potato certification. In order to produce certified seed potatoes, a grower must comply with the following procedures:

1. Potatoes entered for certification shall be inspected while growing in the field and again after harvest at the time of shipment. Certification shall be based upon visual inspection by the commissioner of sample plants and tubers from each field and lot. Certificates shall be issued to show the varietal purity, freedom from disease, ~~and/or~~ and physical defects of the potatoes at the time of inspection.

D. Certified seed potato grades. Grades of certified seed potatotes are established according to the physical defects of the tubers. There are three grades used for shipping Minnesota certified seed potatoes.

2. The red tag certified seed potato grade is the second grade. This grade allows more physical defects of the tubers than the blue tag certified seed potato grade. It may be used by growers of Foundation certified, Approved certified, and Certified seed ~~potato growers~~ potatoes. The red tag grade may also be used for intrastate and interstate shipments of certified seed potatoes.

3 MCAR § 1.0130 Application and eligibility for inspection and certification. The following procedures shall govern:

A. Application for inspection.

1. All potatoes planted on a farm shall be eligible and shall be entered for certification.

2. Application for inspection shall be made before June 16 each year on forms furnished by the commissioner or a seed potato certification inspector. Applications postmarked after June 15 but before July 1 shall be charged a fifty cents per acre late registration fee. No applications shall be accepted that are postmarked later than June 30. The commissioner may extend the deadline due to special circumstances ~~affecting~~, such as natural disasters, which make it impractical or impossible for planting to be completed by the deadline and which affect an area or large number of growers.

5. No application for inspection shall be accepted from a grower in any community or county in which there is not sufficient acreage ~~to warrant the expense of an inspection~~ for the total inspection fee charges to cover the cost of wages and expenses of the inspectors providing the inspection service. Determination of sufficient acreage shall be made by the commissioner.

B. Seed potatoes eligible for Minnesota certification planting. A field shall not be inspected for certification unless both the seed potato variety and the particular lot planted have the authorization of the commissioner. ~~Any well established, named, commercial variety shall be considered for certification if the variety has been described as to vine and tuber characteristics in a journal recognized by the commissioner and in accordance with the recommendations of the Patoto Association of America~~ In considering seed potato varieties for authorization for certification planting, the commissioner shall consider scientific evidence and expert opinion. To be eligible for certification planting, seed potatoes shall be one of the following:

1. From Minnesota growers:

a. Foundation certified seed potatoes;

b. Approved certified seed potatoes; or

c. Certified seed potatoes. A grower may replant his own certified seed potatoes. The commissioner may authorize the planting of purchased certified seed potatoes if there is no source of Foundation certified or Approved certified seed potatoes available to the grower.

3 MCAR § 1.0135 Minnesota certified seed potato grades and tolerances.

A. Minnesota certified seed potato grades. Before becoming eligible for grading as certified seed potatoes, the requirements of 3 MCAR §§ 1.0130 and 1.0131 shall be met. In addition, Foundation certified seed potatoes shall meet the requirements of 3 MCAR § 1.0132. Approved certified seed potatoes shall meet the requirements of 3 MCAR § 1.0133. Grading and tagging or issuance of a bulk certificate are the final steps in the certification process.

1. Minnesota blue tag certified seed potato grade. To be graded as Minnesota blue tag certified seed potatoes, the potatoes shall meet the following requirements:

a. The potatoes shall be, at time of final inspection, one variety; fairly well-shaped; free from bacterial ring rot, powdery scab, freezing, black heart, and soft rot or wet breakdown; and free from injury by surface or pitted scab, and from

damage caused by dirt or other foreign matter, second growth, growth cracks, air cracks, cuts, shriveling, sprouts, pitted scab, surface scab, russet scab, dry rot, other diseases, insects or worms, external discoloration caused from loss of skin, mechanical or other means, and from serious damage caused by sunburn, hollow heart, or internal discoloration (other than hollow heart).

b. Size. For round or intermediate shaped varieties, the maximum size shall be not more than 12 ounces and, unless otherwise specified, the minimum size shall be not less than 1⅞ inches in diameter. For long varieties, the maximum size shall be not more than 14 ounces and, unless otherwise specified, the minimum size shall be not less than 1¾ inches in diameter. For all varieties, size "B", the minimum diameter shall be not less than 1½ inches and the maximum size shall be not more than 2¼ inches in diameter.

c. Lot tolerances. In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, are provided:

(1) For defects:

(a) 10% for potatoes seriously damaged by hollow heart;

(b) 10% for potatoes seriously damaged by sunburn;

(c) 5% for potatoes seriously damaged by internal discoloration (other than hollow heart);

(d) 8% for potatoes injured by (slight) scab;

(e) 10% for potatoes damaged by dirt or other foreign matter;

(f) 10% for potatoes damaged by sprouts; and

(g) 6% for potatoes which fail to meet the remaining requirements of the grade provided, that included in this amount not more than the following percentages shall be allowed for the following defects:

(i)	Soft rot, frozen, or wet breakdown	0.5%
(ii)	Damage by surface or pitted scab	2.0%
(iii)	Damage by dry ~~rots~~ rot	2.0%
(iv)	Late blight tuber rot	2.0%
(v)	Bacterial ring rot	0.0%
(vi)	Powdery scab	0.0%

State Board of Education
Department of Education
Special Services Division

Adopted Rules Governing Licensure Requirements for Head Varsity Coaches of Interscholastic Sports in Senior High Schools (5 MCAR § 1.0533)

The rules proposed and published at *State Register*, Volume 5, Number 34, pp. 1293-1295, February 23, 1981 (5 S.R. 1293) are now adopted with the following modifications:

Rules as Adopted

Chapter Twenty-Seven A: Licensure of Supervisory and Support; Issuance, Suspension, and Revocation

5 MCAR § 1.0533 D. Qualifications for licensure. All candidates recommended for licensure as a head varsity coach of interscholastic sports shall have satisfactorily completed a program approved by the Minnesota Board of Education consisting of ~~a maximum of~~ 12 ~~quarter or 9 semester~~ to 18 quarter hours or the equivalent containing components designed to provide candidates recommended for licensure with knowledge, skills, and understandings in all of the following areas:

5 MCAR § 1.0533 H. School district hardship situations. In cases where a local school district is unable to employ a licensed head varsity coach of interscholastic sports, the superintendent of such school district may request the Commissioner of Education to grant a provisional license for one school year, ~~and~~ renewable ~~for a maximum of one additional School year~~ upon

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application on a year to year basis to a teacher or a baccalaureate degreed person to serve as a head varsity coach of an interscholastic sport upon evidence submitted by the superintendent of schools that the following conditions have been met:

1. Evidence that the school district is unable to employ a licensed head varsity coach of interscholastic sports for the current school year, and

2. The person to be employed under such authorization holds a current, valid Minnesota teaching license~~, and~~ or a baccalaureate degree, and

3. The person to be employed under such authorization ~~is currently enrolled in a program approved by the Minnesota Board of Education leading to the licensure of head varsity coaches of interscholastic sports.~~ has experience in the sport and can demonstrate to the superintendent of schools that he/she has the fundamental knowledge and skills necessary for coaching the sport, and

4. Verification of completion of six quarter hours or 60 clock hours of instruction in first aid and the care and prevention of athletic injuries.

SUPREME COURT

Decisions Filed Friday, September 25, 1981

Compiled by John McCarthy, Clerk

810266/Sp. Mary Louise Wolk, *et al.*, Appellants, v. James De Cowski, *et al.*, Hennepin County.

Statute authorizing warranted interception of oral or wire communications must be interpreted strictly, with any doubt as to its scope being resolved against the state.

Reversed and remanded. Sheran, C. J.

51640/Sp. State of Minnesota v. Stanley Lloyd, Appellant. Hennepin County.

Trial court did not commit prejudicial error in its evidentiary rulings or instructions.

Affirmed. Otis, J.

51339 Bruce B. Bedeau v. John Mart, *et al.*, Lehigh Valley Railroad Co., *et al.*, Defendants and Lehigh Valley Railroad Company, defendant and third party plaintiff, Appellant, v. Mannix Construction, Inc., Maintenance of Way Division, third party defendant. Hennepin County.

Instructions relating to the contract provision, not objected to prior to their submission to the jury, become the law of the case.

Plaintiff may voluntarily dismiss his claims against certain defendants, with the trial court's approval, and the remaining defendant may not object unless such dismissal also has the effect of dismissing his claims against the codefendants.

In the absence of detailed findings explaining the basis of the trial court's decision to remit the verdict, this court is unable to determine the trial court's rationale, and a new trial is appropriate on the question of damages alone.

Affirmed in part, and reversed and remanded in part. Todd, J.

51795/Sp. In re the Marriage of: Pamela Nice-Peterson, petitioner, v. Perry W. Nice-Peterson, Appellant. Hennepin County.

A trial court is accorded broad discretion in its consideration and disposition of a motion to modify an award of child custody made incident to a judgment and decree of marital dissolution. Upon its consideration of affidavits submitted in support of the motion, Minn. Stat. § 518.185 (1980), the trial court shall review the documents and schedule an evidentiary hearing thereon if that review indicates a likelihood that the movant might establish the requisite change of circumstances upon which a modification may be based. *Peterson v. Peterson*, 308 Minn. 297, 308, 242 N.W.2d 88, 95 (1976).

Affirmed. Yetka, J.

51946/Sp. Donald C. Krupenny, Jr., Appellant, v. West Bend Mutual Insurance Company. Ramsey County.

A person who is injured in the course of loading or unloading a motor vehicle is not entitled to no-fault benefits unless the injury occurs while the person is occupying, entering or alighting from a motor vehicle. Minn. Stat. § 65B.43, subd. 3 (1980).

Affirmed. Yetka, J.

81-220/Sp. Randy A. Schultz, *et al.*, v. Thomas Stanton, *et al.*, etc., Appellants, Dennis V. Elwell, James E. Tatro, *et al.* Dakota County.

Reversed and remanded for trial on both the main action and claim for contribution. Yetka, J.

51272/Sp. Tamarac Inn, Incorporated, petitioner, v. The City of Long Lake, *et al.*, Appellants.

Denial of renewal of existing liquor licenses based on failure to complete a restaurant facility and complaints of liquor ordinance violations was arbitrary and capricious, where the restaurant was within days of completion and the ordinance violations were no more serious than those at a similarly situated establishment which was not denied renewal.

Affirmed. Scott, Dissenting, Otis, J.

51471/Sp. State of Minnesota v. Michael A. Morrison, Appellant. Hennepin County.

Evidence was sufficient to support the convictions, trial court did not err in evidentiary rulings or instructions, and defendant is not entitled to a reduction in sentence.

Affirmed. Scott, J.

52071/Sp. State of Minnesota v. Douglas Allen Dahms, Appellant. Faribault County.

Police officers executing a search warrant did not, as defendant contends, exceed the scope of the warrant, and therefore the trial court properly denied defendant's motion to suppress.

Police reports that certain items of property were stolen were not admissible under Minn. R. Evid. 803(6) and, without this evidence, the other evidence was insufficient to sustain four of defendant's convictions.

Evidence was sufficient to sustain all the other convictions except one, which is reduced.

Reversed in part, remanded for resentencing. Scott, J.

50556/Sp. Minnesota Federation of Teachers, Local 331, Petitioner, Appellant, v. Independent School District No. 361. Koochiching County.

Because it is reasonably debatable whether the controversy sought to be arbitrated is within the scope of the arbitration clause, the district court erred in dismissing a motion to compel arbitration made pursuant to Minn. Stat. 572.09 (1980).

Reversed and remanded. Scott, J. Conc. spec. Simonett, J.

81-272/Sp. The City of Minneapolis v. State of Minnesota, by William L. Wilson, Commissioner, Department of Human Rights. Hennepin County.

Anti-discrimination statute prohibits, among other things, discrimination against a white person because of his association with black people.

Evidence supports the hearing examiner's finding that police officer assaulted citizen.

Reversed. Scott, J.

50957/367 Reserve Mining Company v. State of Minnesota and Arthur C. Roemer, Commissioner of Revenue, Appellants. Lake County.

The taconite tailings tax statute, Minn. Stat. § 298.24, subd. 2 (1980), is not unconstitutional as a bill of attainder, as a violation of the separation of powers doctrine, or as an impairment of contract.

The taconite tailings tax is an excise tax subject to the limitations on taxation in the taconite amendment, Minn. Const. art. X, § 6.

Affirmed in part and reversed in part. Wahl, J. Took no part, Sheran, C. J.

51164/Sp. State of Minnesota, by Warren Spannaus, its Attorney General, petitioner, Appellant, v. Lutsen Resorts, Incorporated, *et al.*, Melvin LeRoy Lingwall, *et al.*, Horace A. Lamb, *et al.* Cook County.

Under these circumstances condemnation of an advertising device by the State pursuant to statute neither denies equal protection nor violation principles of equity.

Reversed and remanded. Wahl, J.

51639/Sp. The Minnesota Chemical Dependency Association, petitioner, Appellant, v. Minneapolis Commission on Civil Rights, Timothy Campbell, complainant. Hennepin County.

The determination by the Minneapolis Commission on Civil Rights that complainant was discriminated against on the basis of affectional preference in employment was unsupported by substantial evidence.

Reversed. Amdahl, J. Took no part, Wahl, J.

SUPREME COURT

51894/Sp. Dorothy Matson v. Charles D. Matson, Appellant. Washington County.

The Wisconsin judgment for support and maintenance arrearages is definite and certain and for a specific amount. Therefore, plaintiff was entitled to proceed under the Uniform Enforcement of Foreign Judgments Act, Minn. Stat. §§ 548.26-.33 (1980).

There is no merit to defendant's contention that the Wisconsin court lacked subject matter jurisdiction over the proceeding resulting in the judgment for arrearages.

The Wisconsin court retained continuing personal jurisdiction over defendant to enforce the support and maintenance provisions of the original divorce decree. Due process was satisfied by notice to defendant of the enforcement proceeding through personal service in Minnesota.

Affirmed and remanded for further proceedings. Amdahl, J.

51923 Joseph Lamb, petitioner, Appellant, v. Village of Bagley, State of Minnesota, by Marilyn McClure, Commissioner, Department of Human Rights. Clearwater County.

On this record the use of abusive racial epithets coupled with other disparate treatment constitutes, as a matter of law, impermissible discrimination on the basis of race by the respondent village against complainant, an American Indian employed as one of its police officers.

Reversed and remanded. Simonett, J.

Decision Filed Tuesday, September 22, 1981

81-766/Sp. State of Minnesota, Appellant, v. Michael James Wright. Ramsey County.

Trial court's sentencing departure in placing defendant on probation was based on substantial and compelling circumstances where the trial court reasonably concluded, on the basis of recommendations of a psychiatrist and the agent who prepared the presentence investigation report, that defendant was particularly unamenable to incarceration and particularly amenable to individualized treatment in a probationary setting consistent with the public safety.

Affirmed. Sheran, C. J.

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over $2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over $10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Department of Administration
Bureau of Real Estate and Transportation

Notice of Request for Proposals for a Building Management Contract

The Department of Administration is requesting proposals for a five-year building management contract, provided funds are appropriated by the Legislature, for the Minnesota Government Services Center located at Fourth Avenue West and Second Street, Duluth, Minnesota.

Responders are to project the total costs of their management services and to detail each service category as requested in the Request for Proposals.

A Request for Proposals is to be obtained by calling or writing:

James L. Ware
Department of Administration
Plant Management Division G-28
50 Sherburne Avenue
Saint Paul, Minnesota 55155
Telephone: (612) 296-9901

Proposals must be submitted no later than 2:30 p.m., on November 30, 1981.

Department of Economic Security

Notice of Request for Proposals for Computer Consulting Services

Notice is hereby given that the Department of Economic Security is soliciting proposals from qualified consultants to certify the performance of computer software used by the Minnesota Community Action Data System. The system is a distributive computer system containing Fund Accounting and Client Components. The system uses the IBM S/34 and IBM 5285 terminals. The consultant is expected to perform the following tasks:

1. Assemble and review design and operating information.
2. Test and document the status of current system software.
3. Assess and certify the performance of the system.
4. Report findings and recommendations for solutions to problems—short and long term.

The estimated cost is $20,000. Due date for proposals is October 26, 1981. Expected date for completion of evaluation of proposals is November 21, 1981. Expected completion date of the project is December 31, 1981. This RFP does not obligate DES to complete the project and DES reserves the right to cancel the solicitation. Direct all inquiries to:

Tracy Page
Department of Economic Security
690 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101
(612) 296-8062

Department of Education
Council on Quality Education

Notice of Request for Proposals to Study Small School Districts' Use of Low Power Television and Secure FCC Licenses

The Council on Quality Education is soliciting proposals related to a state study of the use of low power television (LPTV) in small rural school districts. It is anticipated that contracts will be let to survey the need for this technology, to determine needs for personnel and training in small school districts which set up LPTV transmission facilities, to develop cost estimates for equipment at these facilities, to prepare license applications for the Federal Communications Commission, and to manage and coordinate the above activities or contracts. Contracts for these efforts may be awarded separately or to a single qualified firm, agency, or individual. Spending for the overall study effort will not exceed $90,000. Contracts may be let as early as October 27, 1981.

The RFP's may be requested from and inquiries should be directed to:

Eugene Kairies, Coordinator
Council on Quality Education
Minnesota Department of Education
Division of Special Services
722 Capitol Square
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-5072

Water Planning Board

Notice of Request for Proposals for Assistance in Preparation of Local Planning Handbook for Use by County Officials in Local Water and Related Land Resources Planning

The "Special Study on Local Water Management" was approved by the Minnesota Water Planning Board in January 1981. The study was prepared pursuant to Laws of 1980, ch. 548. In this study, the board has recommended that counties be assigned the responsibility for coordinating local water management activities and for developing comprehensive water and related land resources plans. The purpose of this Request for Proposals is to assist the Water Planning Board by:

1. Determining the scope and detail of county plans which could be developed with existing information and resources.

2. Estimating county financial, technical, administrative, and information requirements for plan development.

This Request for Proposals does not obligate the state to complete the project and the state reserves the right to cancel the solicitation if it is considered to be in its best interest.

I. Scope of Project. This project will examine water and related land resources information, policies, plans, programs, and resources available within selected counties in order to assess the detail and scope which might be required in comprehensive water and related land resources plans prepared by counties. This background information is necessary for the preparation of the Local Planning Handbook (to be completed by board staff).

The assessment will determine the adequacy of existing information and resources for evaluating immediate and long-range needs and guiding solutions to problems relating to flood management; stormwater management; provision and conservation of water supplies; protection and enhancement of water quality and quantity; control or alleviation of soil erosion and siltation; and preservation of the natural and economic value of shorelands, public waters and wetlands, and water surfaces. The project should recognize the prevailing fiscal status constraints; the necessity of scaling plan requirements to need; and should assess the adequacy of existing information and resources in this light.

II. Project Tasks. An assessment of the adequacy of water and related land resources information, policies, plans, programs, and resources available within five to eight selected counties (including at least one county in the metropolitan area) will be made to determine the scope and detail possible in county plans. Determination of county financial, technical, administrative, and informational needs to complete county plans of the scope and detail possible will be made. This project will involve:

1. Selection of the counties in which assessments will be made, assuring an array of water management problems.

2. An inventory of existing information, policies, plans, programs, and resources relevant to comprehensive water and related land resources plan development.

3. An assessment of the adequacy of existing information and resources for development of comprehensive county water and related land resources plans.

4. Determination of the scope and detail possible using obtainable information and resources and design for a format for a hypothetical county plan.

5. Determination of county financial, technical, administrative, and informational needs for development of a county comprehensive water and related land resources plan of the scope and detail suggested to be possible in (4) above.

III. Department Contact. Prospective responders who have any questions regarding this Request for Proposals may call or write John Wells, Minnesota Water Planning Board, 600 American Center Building, 150 E. Kellogg Boulevard, St. Paul, Minnesota, 55101, (612) 297-2377. Please note: Other board personnel are not permitted to discuss the project with responders before the proposal submittal deadline.

IV. Submission of Proposals. All proposals must be sent to and received by John Wells at the above address no later than 4:30 p.m., October 28, 1981. Late proposals will not be accepted. There must be three copies of each proposal and they are to be sealed in a mailing envelope or package with the responder's name and address clearly written on the outside. Prices and terms of the proposal as stated must be valid for the length of the project.

V. Project Costs. The board has estimated that the cost of this project should not exceed $10,000 for professional services and expenses.

VI. Project Completion Date. The project shall be completed by March 31, 1982.

VII. Proposal Contents. The following will be considered minimum contents of the proposal:

1. A statement and discussion of the project objectives to demonstrate the responder's view of the nature of the project.

2. Identification and description of the deliverables related to each project task to be provided by the responder.

3. A description of the responder's background and experience, with particular emphasis on work with local and state government.

4. A detailed cost and work plan which identifies major tasks to be accomplished.

5. A description of the extent of the Water Planning Board's participation in the effort, as well as any other services to be provided by the board.

The description of the background and experience of the responder shall include identification of personnel who will conduct the project and an explanation of their training and work experience. No changes in the primary personnel assigned to the project will be permitted without specific written approval of the state project manager.

The detailed cost and work plan will be considered a scheduling and managing tool, as well as a basis for invoicing.

VIII. Evaluation. All proposals received by the deadline will be evaluated by representatives of the Water Planning Board. If deemed necessary, an interview may be included in the evaluation process. Factors upon which proposals will be judged include, but are not limited to the following:

1. Expressed understanding of project objectives.

2. Project work plan.

3. Project cost detail.

4. Qualifications of both company and personnel.

Experience of project personnel will be given greater weight than that of the firm. Evaluation and selection will be completed by November 6, 1981. Results will be sent immediately by mail to all responders.

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Minnesota Environmental Quality Board

Proposed Rules Governing the Environmental Review Program

Notice of Postponement of Public Hearing

Notice is hereby given that the public hearing on the proposed rules as noticed in the September 7, 1981 issue of the *State Register* at 6 S.R. 354 has been postponed. The agency will reschedule the hearing for a later date. The proposed rules as noticed in the same issue of the *State Register* at 6 S.R. 355 through 6 S.R. 393 are not affected by this postponement. The proposed rules as noticed will be the rules that are the subject of the public hearing.

Questions regarding this matter should be directed to Tom Rulland, (612) 296-2319 at the Environmental Quality Board, Room 100, Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101.

Office of the Governor

Notice of Appointment of Department Head

In accordance with Minnesota Stat. § 15.06, notice is hereby given of the appointment of Valdis Vikmanis as Acting Commissioner of the Department of Finance on August 26, 1981.

Pollution Control Agency
Solid and Hazardous Waste Division

Notice of Intent to Solicit Outside Opinion Regarding Amendments to Rules Governing the Minnesota Waste Reduction and Source Separation Demonstration Grant Program

Notice is hereby given that the Minnesota Pollution Control Agency is seeking information or opinions from sources outside the agency in preparing to promulgate amendments to 6 MCAR § 4.6086 governing the administration of the Minnesota Source Separation and Waste Reduction Program. The promulgation of these rule amendments is authorized by Minn. Stat. §§ 115A.49 to 115A.54 which requires the agency to administer a solid waste management demonstration program. The rule amendments relate to incorporation of additional criteria to prioritize categories of eligible source separation and waste reduction demonstration project applications and to the incorporation of selection criteria to allow ranking of similar project applications in the same project category. Comments are especially sought concerning views on the types of projects which should have a high priority for funding.

The Minnesota Pollution Control Agency requests information and comments concerning the subject matter of these rule amendments. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Donald J. Kyser
Waste Management Assistance Section
Solid and Hazardous Waste Division
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113

Oral statements will be received during regular business hours over the telephone at (612) 297-2727 and in person at the above address.

All statements of information and comment shall be accepted until October 22, 1981. Any written material received by the Minnesota Pollution Control Agency shall become part of the record in the event that the rule amendments are promulgated.

Office of the Secretary of State

Notice of Vacancies in Multi-member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-7876. **Application deadline is October 27, 1981.**

PHYSICAL THERAPY COUNCIL has 1 vacancy for a licensed physician pursuant to Minn. Stat. § 148.67. The council advises the Board of Medical Examiners on all matters relating to physical therapy; registers physical therapists; and takes action against them. Members are appointed by the Board of Medical Examiners and receive $35 per diem plus expenses. For specific information contact the Physical Therapy Council, #352, 717 Delaware St. S.E., Minneapolis 55440; (612) 296-5534.

REHABILITATION REVIEW PANEL has 1 vacancy for a representative for employers pursuant to Minn. Stat. § 176.102, subd. 3. The panel reviews rehabilitation plans and rules; advises Commissioner of Labor and Industry. Members are appointed by the Governor. Compensation for members is governed by § 15.0575. For specific information contact Rehabilitation Review Panel, Space Center, 444 Lafayette Road, St. Paul 55101; (612) 297-2684.

OCCUPATIONAL SAFETY AND HEALTH ADVISORY COUNCIL has 1 vacancy for a management representative. The council advises the Department of Labor and Industry on administration of the state Occupational Safety and Health Act. Members are appointed by the Governor. Meetings are at the call of the chairperson and held at the Space Center Building. Members receive $35 per diem. For specific information contact Occupational Safety and Health Advisory Council, Space Center Building, 444 Lafayette Road, St. Paul 55101; (612) 296-6529.

POWER PLANT SITING ADVISORY COMMITTEE has 20 to 30 vacancies open for members to serve until June 30, 1982. The committee will consider the effectiveness of the Environmental Quality Board in carrying out the policies of the Power Plant Siting Act. This includes a consideration of a methodology and criteria to be used by the board in evaluating the Power Plant

Siting Program and an evaluation of the program. Six day-long (Saturday) meetings and some evening meetings will be held; members are compensated for expenses. Members are appointed by the board. (According to state law, no officer, agent or employee of a utility may serve on this committee). For specific information contact Sheldon Mains, Room 101, Capitol Square Building, 550 Cedar, St. Paul 55101; (612) 296-2757.

STATE EMPLOYEES SUGGESTION BOARD has 1 vacancy for a state officer or employee. The board manages a state employee suggestion system for approximately 30,000 classified and unclassified state employees in order to provide tangible and intangible savings to the state, increase employee morale, and increase the safety of the employees and public. Members are appointed by the Governor. Monthly meetings are held at the Administration Building. Members receive no compensation. For specific information contact the State Employees Suggestion Board, 203 Administration Building, St. Paul 55155; (612) 296-6798.

Department of Transportation

Petition of the City of Cloquet for a Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of the City of Cloquet has made a written request to the Commissioner of Transportation for a variance from minimum design standards for street width along Doddridge Avenue between 7th Street and 14th Street.

The request is for a variance from 14 MCAR § 1.5032 H.1.C. Rules for State Aid Operations under Minnesota Statute, Chapters 162 and 163 (1978) as amended, so as to permit a minimum roadway width of 44 feet with parking permitted instead of a roadway width of 46 feet.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 16th day of September, 1981.

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Amended Order and Notice of Street and Highway Routes Designated and Permitted to Carry the Gross Weights Allowed under Minn. Stat. § 169.832

Order No. 66058

Whereas, the Commissioner of Transportation has made his Order No. 65851, which has been amended by Orders 65929, 65932, and 65963, designating and permitting certain street and highway routes, or segments of routes, to carry the gross weights allowed under Minnesota Statutes § 169.832, and

Whereas, the commissioner has determined that the additional following routes, or segment of routes, should be designated to carry the gross weights allowed under Minnesota Statutes § 169.832, and

Whereas, amended order No. 65929 was in error describing the T. H. 63 route, and

Whereas, the *State Register* dated Monday, July 27, 1981 was also in error in describing the T.H. 63 route.

It is hereby ordered that Commissioner of Transportation Order No. 65851 is amended this date by adding the following designated streets and highway routes, or segments of routes as follows:

Trunk Highways

T. H. 63	—	From Olmstead County State Aid Highway 6 to Junction I-90. (Correction to Order No. 65929 and *State Register* of Monday, July 27, 1981).
T. H. 220	—	From North Dakota border at Breckenridge to Junction I-94
T. H. 28	—	From Cyrus to Glenwood, MN

City Streets

*Rosemount — Pine Bend Trail from Junction TH 55 to 1.5 miles East.
Hutchinson — Michigan St. between T.H. 7 and Arch St. (temporary)
Arch St. between Michigan St. and the Farmers Elevator (temporary)

*This segment of Pine Bend Trail was previously designated as a temporary route as per amended Order No. 65929, and *State Register* dated Monday, July 27, 1981, and is now being changed by this order to permanent seasonally posted status.

Dated this 25th day of September, 1981

Richard P. Braun
Commissioner of Transportation

STATE OF MINNESOTA

State Register and Public Documents Division
117 University Avenue
St. Paul, Minnesota 55155

ORDER FORM

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FOR LEGISLATIVE NEWS

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

Briefly/Preview—Senate news and committee calendar; published weekly during legislative sessions. Contact Senate Public Information Office, Room B29 State Capitol, St. Paul MN 55155, (612) 296-0504.

Perspectives—Publication about the Senate. Contact Senate Information Office.

Weekly Wrap-Up—House committees, committee assignments of individual representatives, news on committee meetings and action, House action and bill introductions. Contact House Information Office, Room 8 State Capitol, St. Paul, MN, (612) 296-2146.

This Week—weekly interim bulletin of the House. Contact House Information Office.

DR-82-004-JL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF REVENUE

In the Matter of the Proposed Rules of the Department of Revenue Governing the Valuation and Assessment of Electric, Gas Distribution and Pipeline Companies (Utility Companies).

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Jon L. Lunde, duly appointed Hearing Examiner, commencing at 10:00 a.m. on Wednesday, November 4, 1981 in the Conference Room at 500 Rice Street, St. Paul, Minnesota, pursuant to a Notice of Hearing dated September 18, 1981. Testimony was received that day and the hearing was then continued to Thursday, November 19, 1981 at the same location for purposes of taking additional testimony. The additional hearing date resulted from a Motion filed on October 13, 1981 by Itasca County and other interested parties requesting that they be given additional time to prepare for the hearing on the proposed rules. That Motion was heard on October 16, 1981 at 9:00 a.m. at the Office of Administrative Hearings at which time the Department agreed to a second hearing date. Notice of the second hearing date was announced at the commencement and conclusion of the hearing on November 4.

This is a rulemaking proceeding conducted pursuant to Minn. Stat. Chapter 15 to determine whether the Department of Revenue has authority to adopt the rules proposed and whether they are necessary and reasonable and may be adopted. The Chief Hearing Examiner extended due date for completion of this Report, at the request of the Hearing Examiner, from December 31, 1981 to January 11, 1982.

Dorothy A. McClung, Esq., Director of Legal Research, Centennial Office Building, 658 Cedar Street, St. Paul, Minnesota 55145, appeared as counsel on behalf of the Minnesota Department of Revenue (hereinafter the "Department"). The Department's witnesses were Lyle H. Ask, Director of the Property Equalization Division, and Jerry Garski of the same Division.

Approximately 45 persons attended the hearing; 32 of them signed the hearing register on November 4, 1981, and 19 signed the hearing register on November 19, 1981. The hearing continued until all persons present had had an opportunity to be heard. Subsequent to the close of the hearing, but before the expiration of the 12-day comment period authorized by the Hearing Examiner, seven timely comments, including one Departmental comment, were filed with the Office of Administrative Hearings. Two comments were filed after the expiration of the designated comment period.

The Commissioner of the Minnesota Department of Revenue must wait at least five working days before taking any final action on the rules; during that period, this Report must be made available to all interested persons upon request.

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4d (1980), this Report has been submitted to the Chief Hearing Examiner for his approval. If the Chief Hearing Examiner approves the findings of this Report, he will advise

the Commissioner of actions which will correct the defects and the Commissioner may not adopt the rule until the Chief Hearing Examiner determines that the defects have been corrected. However, in those instances where the Chief Hearing Examiner identifies defects which relate to the issues of need or reasonableness, the Commissioner may either adopt the Hearing Examiner's recommendations to cure the defects or, in the alternative, if the Commissioner does not elect to adopt the recommendations, he may submit the proposed rule to the Legislative Commission to Review Administrative Rules for the Commission's advice and comment. Provisions relating to this submission to the Commission may be found in Minn. Stat. § 15.0412, subd. 4d (1980).

If the Commissioner elects to adopt the recommendations of the Hearing Examiner and makes no other changes and the Chief Hearing Examiner determines that the defects have been corrected, then the Commissioner shall submit the rule to the Attorney General for review of form and legality. If the Commissioner makes changes in the rule other than those recommended by the Hearing Examiner, then he shall submit the rule, with the complete record, to the Chief Hearing Examiner for a review of the changes before adopting it and submitting it to the Attorney General. Procedures relating to this subsequent review by the Chief Hearing Examiner are set forth in Minn. Stat. § 15.0412, subd. 4e (1980).

When the Commissioner submits the rule to the Attorney General, he shall give notice on the day of submission to all persons who requested that they be informed of the submission to the Attorney General.

Based upon all the testimony, exhibits and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On September 11, 1981, the Department filed the following documents with the Chief Hearing Examiner:

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

2. On Monday, October 5, 1981, 30 days prior to hearing, a Notice of Hearing and a copy of the proposed rules were published at 6 State Register 582-596.

3. On October 1, 1981, more than 30 days prior to hearing,, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Department for the purpose of receiving such notice.

4. On October 7, 1981, more than 25 days prior to hearing,, the Department filed the following documents:

   (a) The Notice of Hearing as mailed.
   (b) The Agency's certification that its mailing list was accurate and complete.
   (c) The Affidavit of Mailing the Notice to all persons on the Agency's list.
   (d) The Statement of Need and Reasonableness (actually filed on October 6).
   (e) The names of Department personnel to represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.

(f) A copy of the State Register containing the proposed rules.
(g) All materials received following a Notice of Intent to Solicit Outside Opinion published at 5 State Register 762 on Monday, November 10, 1981.

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

5. The record remained open through December 1, 1981 for the receipt of written comments and statements, the period having been extended by order of the Hearing Examiner to 12 calendar days following the hearing.

6. As authority for the adoption of the rules proposed, the Commissioner cited the following statutory provisions:

Minn. Stat. § 270.06 (1980), which provides:

> It shall be the duty of the commissioner of revenue and he shall have power and authority to:
>
> * * *
>
> (14) The commissioner of revenue may promulgate rules and regulations for the administration and enforcement of the property tax. Such rules and regulations shall have the force and effect of law.

Minn. Stat. § 270.11, subds. 1 and 6 (1980), which provide:

> Subdivision 1. The commissioner of revenue shall have and exercise all the rights, powers and authority by law vested in the state board of equalization, which board of equalization is hereby continued, with full power and authority to review, modify and revise all of the acts of the commissioner insofar as they relate to the equalization and valuation of property assessed for taxation, as prescribed by section 270.12. . . .
>
> * * *
>
> Subd. 6. Change of assessed valuations. The commissioner of revenue shall raise or lower the assessed valuation of any real or personal property, including the power to raise or lower the assessed valuation of the real or personal property of any individual, copartnership, company, association, or corporation; . . .

Minn. Stat. § 273.33, subd. 2 (1980), which provides:

> Subd. 2. The personal property, consisting of the pipeline system of mains, pipes and equipment attached thereto, of pipeline companies and others engaged in the operations or business of transporting natural gas, gasoline or other petroleum products by pipe lines, shall be listed with and assessed by the commissioner of revenue. This subdivision shall not apply to the assessment of the products transported through the pipe lines nor to the lines of local commercial gas companies engaged primarily in the business of distributing gas to consumers at retail nor to pipe lines used by the owner thereof to supply natural gas or other petroleum products exclusively for such owner's own consumption and not for resale to others. . . .

Minn. Stat. § 273.37, subd. 2 (1980), which provides:

> Subd. 2. Transmission lines of less than 69 kv, transmission lines of 69 kv and above located in an unorganized township, and distribution lines, and equipment attached thereto, having a fixed situs outside the corporate limits of cities except distribution lines taxed as provided in sections 273.40 and 273.41, shall be listed with and assessed by the commissioner of revenue in the county where situated. The commissioner shall assess such property at the percentage of market value fixed by law. . . .

Minn. Stat. § 273.38 (1980), which provides:

> 273.38 PERCENTAGE OF ASSESSMENTS; EXCEPTIONS. The commissioner of revenue shall assess at five percent of market value distribution lines, and the attachments and appurtenances thereto, used primarily for supplying electricity to farmers at retail, and which shall be taxed at the average rate of taxes levied for all purposes throughout the county, and which shall be entered, certified and credited as provided in section 273.42. It is further provided that the distribution lines and the attachments and appurtenances thereto of cooperative associations organized under the provisions of Laws 1923, Chapter 326, and laws amendatory thereof and supplemental thereto, and engaged in the electrical heat, light and power business, upon a mutual, non-profit and cooperative plan, shall be assessed and taxed as provided in sections 273.40 and 273.41.

Under the statutory provisions cited, it is concluded that the Commissioner of Revenue has the duty to value and assess certain electric, gas distribution and pipeline companies, and that the rules proposed are within the rulemaking authority delegated to him.

Introduction.

7. Commencing in 1962, the Department valued utility property using the so-called "Hatfield formula" which determined market value at original cost less accumulated depreciation without consideration of any other appraisal methods. In Independent School District No. 99 v. Commissioner of Taxation, 297 Minn. 375, 211 N.W.2d 886 (1973), the Court rejected use of the Hatfield formula because it ignored the mandate in Minn. Stat. § 273.12 to "consider and give due weight to every element and factor affecting market value." In response to this decision, the Department adopted new rules pertaining to the valuation of utility property. The rules currently in effect were adopted in 1975 and amended in 1976 and in 1979. Under the current rules, each utility's entire system is valued as a unit. A portion of that "unit value" is then "allocated" to Minnesota. The portion so allocated is then apportioned to the various taxing districts within the state for property tax purposes.

8. There are three traditional approaches to the valuation of property: Cost, income and market value. Since an entire utility is seldom sold in the market place, there is normally no way to utilize the market value approach where public utilities are involved and that valuation technique is not utilized under the Department's current rules. Instead, under the current rules, utility property is valued on the basis of cost and income. The cost approach utilizes original cost, less limited depreciation on plant and improvements, plus construction work in progress. The weight accorded to the cost so computed in determining value for ad valorum tax purposes is different for different types of utilities. Depreciation allowed is limited to specified percentages of original cost, and subject to modifications based on the "average cost per kilowatt of installed capacity." The income indicator of value is determined by averaging the net operating earnings of each utility company for the most recent three-year period and capitalizing that income by a specified capitalization rate. The weight accorded to the income indicator of value, like the weight accorded to the cost indicator of value, is not uniform. When the unit value is calculated, the portion properly allocable to Minnesota is then computed based primarily upon the original cost of the property in this state compared to the costs in other states. Other allocation factors considered include gross revenues and weighted pipeline miles. The various factors are as-

signed specific weights in determining the proper allocation. After certain adjustments are made to this allocated value (such as for exempt property), it is apportioned among the taxing districts based on the last market value of each company's operating property in each taxing district (with certain adjustments) or a specified percentage of the original cost of the company's operating property in each district (with certain adjustments).

Proposed Rules.

9. The Department has determined that there is a need to amend existing rules pertaining to the valuation of utilities and the rules proposed, if adopted, would amend portions of the rules currently found in 13 MCAR §§ 1.0001 to 1.0007. Those rules apply to the valuation, assessment and apportionment of the ad valorem taxes of electric, gas distribution and pipeline companies operating in this state. Amendments to the seven sections of the existing rules will be consecutively considered. Amendments which are technical in nature or subject to no adverse public comment and which were otherwise adequately supported by the Department's Statement of Need and Reasonableness (hereinafter the "Statement") will not be specifically discussed and if not discussed, are within the scope of the Commissioner's delegated authority and necessary and reasonable. If a particular public comment concerning recommended grammatical changes or other non-substantive clarification is not specifically discussed, it does not mean that the Hearing Examiner necessarily disagrees with it or that the Department should not consider such comments before the rules are finally adopted.

10. Section 1.0002. This section of the Rules contains definitions of terms used. The Department proposes to amend this section by the addition of two new terms: "Throughput" and "standard factor." The public did not comment on or oppose the addition of either of these terms to the rules. However, some discussion of the definition of "standard factor" is necessary. The proposed definition of this term states that it "means the number used as the basis of comparison when measuring the degree or amount of obsolescence inherent in the property (generating plant) being valued." However, the term "standard factor" is not used anywhere in the Rules. In § 1.0003 C., the words "standard plant factor" and "plant factor" are both used. However, in that section, those terms are fully defined and their computation is explained. Since the term "standard factor" is not used in the Rule, the Hearing Examiner suggests that the Department consider adopting a definition of that term in the rules.

11. Section 1.0003. This section of the Rules, which is divided into eight subparts (A.-H.), pertains to the methodology for valuing utility property using the cost and income approaches. Proposed amendments to this section generated the most significant controversy and public comment. The comments generally challenged the Department's use of a limitation on the depreciation allowed to utility companies in the cost approach to valuation, the use of the national average of the cost per kilowatt of installed capacity to make adjustments to the cost of electric utility property, and the computation of the capitalization rate (cap rate) in determining the valuation of utilities under the income approach.

12. Section 1.0003 C. The Department has proposed several amendments to Part C. which governs the valuation of utilities on the basis of cost. The first amendment requires any utility using leased operating property to report

the original cost of such propertyto the Commissioner. If the utility does not know the original cost, the proposed rule provides that the Commissioner shall make an estimate of the cost by capitalizing lease payments. According to the Department's Statement of Need and Reasonableness (hereinafter the "Statement"), the purpose of this amendment is to correct an oversight in the present rules. The definition of operating property has historically included certain leased property. However, since leased property is not normally reported as part of a utility's system plant, a special reporting requirement is necessary so that the value of this property may be included in the cost indicator of value. The proposed amendment provides a method to obtain this information by a special reporting.

Utility companies do not always have access to the cost of property it is leasing. Therefore, the proposed amendment provides that the Commissioner shall estimate the cost of such property by capitalizing lease payments. Capitalization of lease payments to determine cost is a recognized methodology in the appraisal field. There were no adverse public comments with respect to the special reporting of the cost of leased operating property or the methodology to be followed in the event that such costs are not available. Since the reporting is necessary in order to compute the cost of utility property, and since the methodology proposed is an accepted method for determining the cost of leased properties, it is determined that the proposed amendment is necessary and reasonable.

13. The second proposed change to Part C. increases the maximum percentage of original cost permitted for depreciation. For electric companies, the percentage is increased from 18 to 19 percent, and for both gas distribution and pipeline companies, the percentage is increased from 45 to 47.5 percent. The average book depreciation of the four major electric utilities operating within the state is currently at 24 percent of the original cost of plant in service. The average book depreciation for both pipeline and gas distribution companies in Minnesota is currently 45 percent of the original cost of plant in service. During the hearing process, numerous comments were made on that part of the rule which establishes a ceiling on the amount of depreciation which may be used in the calculation of a utility's value, using the cost approach. The comments received did not object to the Department's proposed increase in these percentages, but challenged the existence of any ceiling whatsoever. The utilities generally argued that there should be no limitation on the amount of depreciation used in the cost approach and that the cost of utility property should be considered to be its original cost, less all accumulated depreciation.

14. As is discussed quite thoroughly in its Statement, the Department disallows a portion of the accrued book depreciation of utilities in order to account for the replacement cost of such property. In that regard, it stated as follows (p. 4):

> However, it is readily apparent that because of inflation, the cost of replacing the facilities at today's prices would be more than the original cost at the time of installation. Our holding of the depreciation at a specified maximum attempts to recognize both the wearing out and obsolescence of the facilities together with the fact that to replace or reproduce the facility would produce more value. The agency believes that the proposed maximum depreciation allowance is a reasonable and viable method of accomplishing both these objectives.

Northern States Power Company, Midwestern Gas Transmission Company, InterNorth, Inc., and others challenged the Department's rationale on several grounds. Since utility companies are regulated industries whose earnings are controlled by regulatory agencies, and since they are usually permitted to earn income only on their approved rate base, which consists essentially of depreciated book cost, they argued that net book cost, without a limitation on depreciation, is the true value of a utility. Net book cost is not only the figure upon which utility earnings (or returns) are based, but it is also the figure used to determine the sales price of utility property. In addition, Northern States Power Company argued that the value added to the cost of a utility due to the limitation on depreciation does not represent any additional plant or equipment and that the limitation provision actually values property which doesn't exist and property that is not part of the utility's rate base. John C. Goodman, Vice President of the American Appraisal Company who appeared on behalf of InterNorth, made a similar argument. He stated that a limitation on depreciation does not recognize the full extent of the wearing out and obsolescence of utility facilities and that the replacement or reproduction cost of a facility is irrelevant because a utility's earnings are not based on those factors but are limited to actual book figures. For these reasons, most utility spokesmen recommended that full book depreciation be allowed when computing the cost indicator of value and that current limitations be eliminated.

15. Although the Federal Energy Regulatory Commission generally approves utility rates based upon depreciated or net book costs, that is not always the case. In a recent case (Docket CP 76-500), the Commission approved the use of an $18.5 million cost for rate base purposes, even though the depreciated value of the property on the books of the seller was only $3 million. While that case indicates a departure from the rule cited by utilities, that net book cost, even on the sale or exchange of utility property, is used for ratemaking purposes by the Commission, it certainly does not indicate a new "trend" as the Department alleged.

The concept of a limitation on allowable depreciation in determining the cost of utility property for ad valorem tax purposes has been part of the Department's rules for a considerable period of time. In 1976, and again in 1979, the Rules were amended to increase the percentage of depreciation allowed. The concept of such a limitation, and the methodology involved in the cost approach to the valuation of utility property, has been previously approved in rulemaking proceedings and found to be necessary and reasonable. The Hearing Examiner must follow those prior determinations of reasonableness in this case. There are several reasons for that. First, the concept of limiting depreciation in the cost approach to the valuation of utility property as was previously stated, has been approved in formal rulemaking proceedings under Chapter 15 on at least two occasions. The Hearing Examiner does not believe that the Department must re-establish the need and reasonableness of such a concept each time the percentage figure is adjusted to reflect current economic conditions. Once established, a methodology approved may be continued in the absence of a showing that, due to a change in economic conditions, what was once reasonable, is no longer reasonable. In this case, the Department has proposed a minor modification to the percentage of allowable depreciation used

in the cost approach to valuation. The proposal was to make a minor modification in that limitation and not to re-examine the need or reasonableness of the concept of the use of a limitation. Thus, as the Hearing Examiner perceives it, the issue is not whether there should be a depreciation limitation but rather whether the limitation should be increased by one percent in the case of electric companies or by 2.5 percent of other utilities governed by the Rule. Since there is general agreement that an increase is necessary, the Hearing Examiner finds the proposed percentage increases to be necessary and reasonable.

16. Under 9 MCAR § 2.111, an agency is prohibited from making a substantial change in its rules as originally published. The total elimination of the limitation on depreciation would have a profound effect on utility values and on local taxing districts. Those taxing districts would not have had proper notice of such a proposal in this matter, and such a change would be substantial. Therefore, it is concluded that the total elimination of the depreciation limitation is not properly within the scope of the issues raised by the Department's proposed amendments. Rather, the proper scope of the issues is not whether there should be a limitation but whether that limitation should be increased as proposed. Any other conclusion would subject agencies to the burden of repeatedly demonstrating the need for and reasonableness of concepts, policies and methodologies previously approved and adopted whenever some internal modifications to those policies, concepts or methodologies are proposed. The Hearing Examiner does not believe that was the intended purpose of the Administrative Procedure Act or that the fundamental changes in the current approach proposed by the utilities are proper without more specific notice to interested members of the public. That does not mean that the percentage increase must be limited to the figures proposed by the Department, as those figures can be altered but not in the substantial and fundamental degree suggested.

17. Minnesota Power and Light Company, while it did not challenge the concept of a limitation on depreciation in the cost approach to the valuation of utility property, argued that the limitation on depreciation allowed to electric utilities should not be 19 percent as proposed by the Department, but should be 25 percent, which is the maximum allowable depreciation on property owned by cooperative associations and other types of utilities which do not operate in a traditional profit-making manner. Under § 1.0003 F., the latter utilities are permitted a maximum depreciation not exceeding 25 percent of the cost of their operating property. In that respect, Minnesota Power and Light stated as follows (Ex. C, p. 1):

> The apparent reason for valuing the utility property of cooperatives and other non-regulated utilities differently than that of investor-owned utilities is that they do not operate on a profit motive basis. This distinction does not explain why the maximum depreciation allowance, which is for wearing out and obsolescence, on similar property should be different only because of ownership. The use of different depreciation allowances for the same type of property is considered discriminatory.

The Hearing Examiner is not persuaded by these objections. The Department has legitimately classified cooperatives differently from profit-making utilities. The market value of cooperatives is not governed by the same criteria as other

utilities, and since there are differences between cooperatives and other utilities it is not discriminatory to apply different valuation methodologies to them. Furthermore, it is noted that even though cooperatives are entitled to a higher depreciation ceiling, they are, unlike other utilities, limited in the amount of depreciation deductible in any year. Under the rule, depreciation is allowed only in increments of 2.5 percent per year for cooperatives. That limitation is not imposed upon other utilities and there was no showing that the results of the different valuation methodologies are substantial or discriminatory.

18. However, the need and reasonableness of the differing treatment of cooperatives is not an issue in this proceeding. Under the proposed rules, cooperatives will have the same 25 percent limitaton on depreciation and the same allowable annual increments of depreciation as they have under current rules. While the Department's proposed amendments to § 1.0003 F. alter the language of the rule, they do not alter its substance. The differing treatment of the two classes is not a new feature of the rules but is a continuation of past practice. The present rule, containing the same differing treatment was previously approved as necessary and reasonable. Under 9 MCAR § 2.104, the Agency's Statement of Need and Reasonableness is not required to demonstrate the need or reasonableness of existing rules which are not affected by proposed amendments. The purpose of this provision is, of course, to relieve state agencies of the burden of establishing the need and reasonableness of rules when the substance of those rules is not being changed. In this case, there is no substantive change to those provisions of Part F. challenged and the Agency is not again required to demonstrate the need and reasonableness of its metho- dology for valuing those properties. That has been previously established.

The third change to § 1.0003 C. lengthens the study period for computing the national average of the cost per kilowatt of installed capacity from ten to fifteen years for both steam and gas turbine plants. In its Statement (p. 6), the Department explains the cost per kilowatt of installed capacity concept and justifies the 15-year study period for steam and gas turbine plants stating as follows:

> The proposed revision would lengthen the study period for computing the national average from ten to fifteen years for both steam and gas turbine plants. The agency believes that this revision is both necessary and reasonable because it provides a broader study base and eliminates drastic yearly fluctuations which are inherent in a small sample base.
>
> Attached to this document is a schedule showing a sample calculation of the fifteen-year national average cost per kilowatt for steam generating plants. Note that the ten year study encompasses only 122 steam plants while the fifteen year study uses 181 plants or almost 50% more plants. A sample gas turbine generating plant study would show 311 plants in a ten year study and 349 or 12% more plants in a fifteen year study. While the base for gas turbine plants does not expand as dramatically as that for steam plants, both studies are expanded to a significant degree, and this broader base gives the study better stability.
>
> The agency recommends this revision very strongly because it will promote stability in the assessment of major generating plants. Most of these plants have a dynamic effect on the fiscal policies of local taxing districts. Values must be kept stable to protect the taxing districts.

Gordon Moe, the Minneapolis City Assessor, objected to the lengthening of the

study period from 10 to 15 years. He acknowledged that some lengthening might be appropriate but felt that the increase proposed seemed excessive. Although reasonable minds might differ on the duration of the appropriate study period, or the magnitude of the change in that study period which should be implemented at any one time, the Hearing Examiner is persuaded that the amendment proposed by the Department is necessary and reasonable because it gives a more accurate reflection of national costs and more stable valuations.

19. Many public objections were made to the concept of using the average cost per kilowatt of installed capacity factor to modify depreciated cost figures in the cost approach to the valuation of electric utilities. The objections raised by Northern States Power Company and Minnesota Power and Light Company were similar to the objections the utilities raised to the limitation on depreciation. They argued that since utilities are heavily regulated and can earn income only on their rate base (book value), consideration of replacement cost is improper. They also argued that the use of the average cost per kilowatt of installed capacity factor results in a double allowance for replacement costs because the replacement cost factor is also considered in determining the depreciation limitation.

It is not manifestly unreasonable to include replacement cost considerations in more than one part of a valuation methodology and the mere fact that replacement cost appears in more than one part of the Department's cost approach to the evaluation of utility property does not mean that the extent of the proper adjustment for replacement cost has been doubled. However, that issue need not be decided. As in the case of the differing treatment, for depreciation purposes, of cooperatives and other electric utilities, objections to the use of the cost per kilwatt of installed capacity factor go beyond the scope of the issues in this proceeding. The cost per kilowatt of installed capacity factor has been previously approved and found to be necessary and reasonable in rulemaking hearings under Chapter 15, and the propriety of its continued use should not be redetermined at this time. The Department is not now proposing to add a new factor that was not included in prior rules or to eliminate a factor that was previously included. It has merely rewritten the same rule in a different form and proposed a change in adjustments to it. When so doing, it is not required to again establish that the use of this factor is necessary and reasonable. That has already been established. If parties desire to have this factor eliminated from the Department's rules, they may petition the Department for such a change under Chapter 15. Until such a petition is filed, or the Department on its initiative institutes proceedings to eliminate this factor, its elimination is not properly subject to consideration.

That is not to say that no substantive changes in the cost per kilowatt of installed capacity factor have been made. On the contrary, under the present rule, the cost added to the original cost of an electric plant by using the cost per kilowatt of installed capacity factor is depreciable at the same rate of depreciation applicable to book costs. Under the proposed amendments to the Part that depreciation provision is replaced with an allowance for pollution control equipment and an allowance for obsolescence. However, these substantive changes do not raise the issue whether or not the cost per kilowatt of installed capacity factor is reasonable or should be retained. The issue

is not whether it should be retained but whether the manner in which it is reduced for depreciation should be altered as proposed or in some other manner that reasonably accounts for obsolescence and pollution control equipment. Where a methodology has been found necessary and reasonable in prior hearings, proposed changes in one component of that methodology do not ordinarily require the agency to rejustify the entire methodology. Only the need and reasonableness of the change in the component must be justified in the usual case.

20. The last substantive change to § 1.0003 C., as was mentioned, is the addition of two allowances used to reduce any gross additional value added to the original cost of a power plant as the result of the application of the average cost per kilowatt of installed capacity factor. No one objected to the existence of the allowances or to the methods for their computation. In fact, Northern States Power Company, in a posthearing comment, alluded to the proposed allowances as "an honest effort to reduce the obviously unacceptable inequities [of the existing rules]." Based on the Department's Statement, it is concluded that the allowance for pollution control equipment, as proposed by the Department, is necessary and reasonable to recognize the tax exempt status of this property and that the allowances for obsolescences proposed are necessary and reasonable to account for the effect economic and functional obsolescence has on the market value of hydroelectric and steam electric plants.

The language proposed by the Department in describing the calculation of the standard plant factor should be amended. The words "with the highest plant factor" at the end of the sentence (p. 10, line 27), appear to be misplaced and add unnecessary ambiguity to the rule. It is suggested that the sentence beginning on page 10, line 24, be amended to read as follows:

> A standard plant factor will be computed for hydroelectric plants by averaging the plant factors of the ten plants with the highest plant factors in the 15-year study period.

so amended p. 9

Income Indicator of Value

21. Section 1.0003 D. This Part pertains to the calculation of the income indicator of value. Calculation of the value of a utility by examining its income involves the computation of a capitalization rate to be applied to net operating earnings in order to determine the present worth of the future earnings of the property involved. There is considerable evidence in the record that there is no one proper or correct method to compute capitalization rates. In fact, the process is a highly controversial one in which experts disagree.

The Department proposes to increase the capitalization rate .25 percent for each class of utility. The proposed rates are 8.5 percent for electric companies, 8.75 percent for gas distribution companies, and 9 percent for pipeline companies. The utilities participating in the hearing process all believe that the proposed increase is inadequate and should be greater than the amounts proposed by the Department. Increases in the capitalization rate result in a lower assessed valuation of the property involved and decreases in the capitalization rate result in higher assessed valuations.

22. There are certain aspects of the computation of the capitalization rate which are not in issue. In both the existing and proposed rules, the Department uses three years of weighted net utility operating income as the "income stream" to be capitalized. This three-year period and the weighting assigned to each of the three years will not be affected by the Department's

proposed amendments and were not objected to by interested parties. There is also no dispute that the "band of investment method" used by the Department in arriving at the new capitalization rates proposed is the preferred appraisal technique for developing a capitalization rate for utility companies. That is the method that was utilized by the Department in arriving at the new capitalization rates proposed in amendments to Part D. The band of investment method consists of the rates applicable to that portion of the capital structure represented by debt, and that portion represented by equity. The rate developed is a weighted average, the weighting representing percentages of the mortgage and equity position of utilities or their bands of investment. The theory is that a utility is worth what it can earn.

InterNorth suggested that Part D. (pg. 14, lines 23-26) be changed to read as follows:

> The income indicator of value will be determined by weighting the net operating earnings of the utility company as adjusted, if necessary, to reflect a return on the investment of property subject to valuation, for the most recent three years as follows: (Emphasis added)

Its recommendation is based on the premise that the income stream used to compute the value of a utility should not include income from property (such as intangibles and inventory) which is exempt from taxation. The Department rejected the proffered amendment at the hearing on the ground that the value of property exempt from taxation is deducted from that portion of each utility's unit value allocated to this State under § 1.0005. Since the amendment is proposed to existing language not subject to proposed amendment by the Department, the need and reasonableness of the current language is not an issue. Therefore, the propriety of the rejection of InterNorth's proposed amendment need not be considered.

23. The Department has computed the capitalization rates for utilities on the basis of the capital structure of the average utility within the industry, and the capitalization rate computed by the Department is uniformly applied to electric companies, gas distribution companies and pipeline companies with a minor modification for the risk involved in investments in those three kinds of utilities. The average utility capitalization rate was computed at 8.75 percent. This was reduced to 8.5 percent for electric utilities because of their lower than average interest rates and their earning stability. No adjustments were made to the capitalization rate for gas distribution utilities because, in terms of risk, they conform to the average. The capitalization rate for pipeline companies was increased by .25 percent because they have a higher risk factor stemming from the higher rates of interest they pay, their less stable earnings, and their more competitive situation. The adjustments made to the capitalization rates for these three types of utilities were identical to the adjustments made and approved in 1979 when these rules were last amended. See, Report of the Hearing Examiner, Docket No. DR-79-092-SM, dated July 11, 1979. Consequently, it is concluded that the adjustments made to the capitalization rate for relative risk is necessary and reasonable to accurately reflect value.

24. The manner in which the capitalization rates were computed deserves some discussion. The Department's Statement (p. 10, 11)) summarizes the process it followed in arriving at the capitalization rate. It provides as follows:

The information used in the computation of the cap rate is taken from the latest edition of Moody's Public Utility Manual and includes the following techniques:

1. A determination of what percent of the capital structure of the average utility is made of long-term debt, preferred stock and common equity.

2. A determination of the average interest rate for contracted indebtedness, commonly referred to as the embedded cost of debt. This average interest rate will make up the debt portion of the capitalization rate.

3. A determination of the average dividend rate of the outstanding preferred stock. This dividend rate will make up the preferred stock portion of the capitalization rate.

4. A determination of the rate of return for common equity; which will make up the equity portion of the cap rate.

5. The application of the determined rate to the various bands of investment to develop a capitalization rate for the average utility.

6. The final step is to assign a risk factor to each type of utility to establish a cap rate for that particular industry.

* * *

The agency believes that the amending of the present rules to incorporate these revisions to the current capitalization rates is both reasonable and logical. The major factor causing the proposed changes in the capitalization rates, over those currently in use, is the increase in the interest rates. It is a matter of record that these rates have risen steadily over the past few years.

Interest rates may be advertised which would tend to indicate that our proposed capitalization rates are too low and should be adjusted to even higher levels; however, it must be kept in mind that the interest rates in question are those currently in effect. The income which comprises the income stream is an average of three years' historical income. The capitalization rate proposed by the agency is also based on historical information. It is paramount in appraisal practice to match the correct income stream to the corresponding capitalization rate. In the agency's judgment the rates as now proposed accurately reflect the proper capitalization rate to be applied to the weighted income stream. The combination of these two elements into the income indicator of value will produce an equitable estimate of the worth of a utility. The agency is committed to a policy of review and change, as it [sic] witnessed by our introductory statement on page 1 of this document. As economic conditions change, the computation of both the capitalization rate and the income stream may well change. At this time, however, the agency believes the rates, as proposed, should be adopted.

25. The Department's calculations and sources of data are shown in the following table:

1.	Average Utility Debt Cost	7.92%*	
2.	Average Debt (Percentage of Capitalization)	55.0%**	
3.	Weighted Debt Capitalization Rate Factor		4.36%
4.	Average Utility Preferred Stock Yield	7.30%***	
5.	Average Preferred Stock (Percentage of Capitalization)	9.0%**	
6.	Weighted Preferred Stock Capitalization Rate Factor		.66%

7.	Average Utility Equity Return	10.69%****
8.	Average Equity (Percent of Capitalization)	36.0%**
9.	Weighted Equity Capitalization Rate Factor	3.85%

Average Utility Capitalization Rate of 8.87%
(composed of the total of numbers 3, 6 and 9)
was rounded by the Department to 8.75% and this
factor was then adjusted for risk to arrive at the
capitalization rates proposed by the Department
for the various types of utilities.

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* Data taken from 15-year cost of money study.
** Data taken from 10-year capital structure study after averaging data for electric pipeline and gas distribution companies.
*** Data taken from 20-year preferred stock yield study.
**** Data taken from 10-year common stock yield and growth and earnings study.

26. As was stated, utilization of the band of investment method is universally recognized as the most proper way to arrive at an income indicator of value for utility property. However, there was disagreement with the manner in which the Department computed the various component parts of the methodology. One of the first questions raised was whether a capitalization rate should be computed for each utility or for each type of utility (electric, gas distribution and pipeline) instead of an average industry-wide capitalization rate as adopted by the Department. The Department alleged that the use of an industry-wide capitalization rate applicable to all companies within the same industry is a common practice of utility appraisers. John Goodman, Inter-North's expert, disagreed, stating that the common practice of utility appraisers is to develop a capitalization rate specifically for the company being appraised. Although the number of utilities within the State which are subject to the rule is not known, the Hearing Examiner is persuaded that it is reasonable for the Department to calculate some kind of average capitalization rate for utilities rather than calculating an individual capitalization rate for each utility. The computation of individual capitalization rates would place a difficult administrative burden on the Department. The use of a separate capitalization rate for each of the three types of utilities governed by the Rule does not appear to be unreasonable based on the information that is available, but there is insufficient information in the record to determine whether the ultimate capitalization rates would be substantially different if this approach were utilized. There is also no evidence in the record to indicate that it would not be different, however. The practice of other states in this respect is not known, but the Department has utilized an industry-wide capitalization rate in the past. In adopting a methodology, utilities, as well as the public, should be entitled to insist that a consistent methodology be applied by the Department where no specific formula is specified in its rules and no showing is made that circumstances necessitate a departure from past practice. Therefore, although there is some disagreement as to the common practice of utility appraisers in determining the capitalization and the capitalization rate applicable to utilities, it is concluded that consideration of the average industry-wide capital structure and use of a uniform capitalization rate (adjusted only for risk) is necessary and reasonable for purposes of Minn. Stat. § 15.0412, subd. 4c. While the Hearing Examiner may believe that it is more logical and accurate to develop separate capital structures for each of the

three types of utilities, based on the capital structures of those utilities over time, it does not appear that the Department's approach is unreasonable and, since it is consistent with past practice, it is reasonable in this case.

27. Utility spokesmen also objected to other data used by the Department in computing the capitalization rate. Generally speaking, the thrust of these objections were that the Department had failed to match the income stream to the corresponding capitalization rate. Thus, John Goodman argued that since the income stream is based on the utility's last three years' income, the other costs of capital should be based on figures derived from the same three-year period. Goodman computed a capitalization rate on that basis and came up with a rate of 10.6% instead of the 8.75% rate computed by the Department. This would reduce the value of the pipeline company in the example on page 15, line 13 of the rules by 21%.

In 1979, when the Department's last amendments to the rules in question were proposed, the Hearing Examiner in that case, noting that changes in the band of investment methodology proposed at that time would result in reducing market values by 22 to 28%, held that such changes were far too drastic and that the Department's calculated capitalization rate was reasonable because it reflected current trends in the cost of capitalization without radically changing utility values. The same conclusion is appropriate in this case. It is necessary to have stability in the valuation of major properties and there are no facts in the record to establish that any radical changes have occurred since 1979 which would justify decreasing the assessed valuation of any utility by 21%.

28. Although the use of a uniform capitalization rate adjusted for risk is necessary and reasonable, the reasonableness of the capitalization rate itself was not demonstrated with an affirmative presentation of facts. Except for the use of a 15-year period to determine the embedded cost of debt, the Department failed to discuss the reasons for its selection of the various time periods used in calculating the average rate of return for common equity, capital structure or preferred stock yields. The selection of these time periods is important because of the significant effects changes in the time periods used have on the capitalization rate derived.

To the extent that the time periods used by the Department are consistent with those used in 1979, those time periods are necessary and reasonable. The Hearing Examiner takes administrative notice of the fact that when the Department last adopted a capitalization rate, the time periods used were identical with those used in this case except the time period used for computing the average preferred stock yield. The latter time period was changed from a ten to a twenty-year period. See, Report of the Hearing Examiner, supra, p. 11. The Department did not explaion why the 20-year period is necessary or reasonable at this time, or why the 10-year period previously used should be abandoned. Where a methodology adopted by the Department in one year is found to be necessary and reasonable, that methodology, in the absence of a factual showing that it should be changed, may be continued from year to year with little factual support. However, where the methodology previously followed is altered, factual support for that change must be made by an affirmative presentation of facts. Unexplained changes in methodology do not meet that test of reasonableness. In this case, therefore, it is concluded that the use of a 20-

year period for computing the average preferred stock yields is not reasonable. The public has a right to expect that there will be uniformity and consistency in agency action where there is no showing of changed circumstances, laws or policy determinations, especially where the changes can dramatically affect public rights and interests, or the valuation of taxable property. Since the methodology was not shown to be reasonable, the capitalization rates derived therefrom cannot be considered reasonable for purposes of Minn. Stat. § 15.0412, subd. 4c.

29. To correct this defect, the capitalization rates should be recomputed using the same 10-year period previously used for computing the average dividend rate for preferred stock. Based on the figures appended to the Department's Statement, the average is 8.87, computed as follows:

Year	Yield in %
1970	9.01
1971	7.74
1972	7.53
1973	7.50
1974	9.95
1975	10.63
1976	9.12
1977	8.43
1978	9.03
1979	9.76
Average	8.87

This increases the weighted preferred stock capitalization rate factor from .66% to .80% (9.00% x 8.87%) and the unadjusted capitalization rate from 8.87% to 9.01% which, if rounded, would be a 9.0% capitalization rate and not an 8.75% capitalization rate as computed by the Department. Adjusted by a .25% risk factor, the capitalization rates reasonably supported in the record will be: electric companies, 8.75 percent; gas distribution companies, 9.0 percent; and pipeline companies, 9.25 percent. changed p. 13

If adjusted as indicated, the proposed increase would reflect changes in values resulting from recent economic conditions, would be consistent with former methodology and would not result in substantial fluctuations in property values. As such, it would be necessary and reasonable. The change in the unadjusted capitalization rate would not be substantial for purposes of 9 MCAR § 2.111.

30. Goodman pointed out an additional problem with the 10-year study used to determine the equity return rate. The problem, according to him, is that the source of that data was obtained exclusively from the stocks of electric companies or combination utilities which generally had a very small portion of gas distribution relative to electric, and that no "pure" gas distribution was included in the study. This is a matter of concern but does not render use of the study period unreasonable. Throughout the rules, utilities are lumped together and considered as an industry and the values and figures used do not match those of any particular type of utility. Furthermore, there is no evidence that there is any subtantial difference between the equity return rate utilized and that which would result from the inclusion of other figures.

31. Section 1.0003 F. This Part of the rules deals with the valuation of cooperatives and other non-common carrier, non-regulated utilities. The utility property of these entities will be valued on the basis of historical costs

only, but depreciation allowed in increments of 2.5% per year up to a maximum of 25%, as was previously noted. This section makes several substantive changes to the corresponding section in the existing rules. The scope of the section is expanded to cover certain non-common carrier or non-regulated utilities. The existing section set a 25% depreciation rate limit only on electric utility cooperatives whereas the proposed section sets a 25% depreciation limit on all entities within its scope. In addition, it allows depreciation on additions to existing utility property as well as deductions from the cost basis for retirements of utility property. The Statement of Need and Reasonableness does not elaborate on these amendments in great detail, but the amendments proposed were subject to no adverse public comment, and it is concluded that the amendments to Part F. are necessary and reasonable.

32. Section 1.0003 G. This Part describes a proposed obsolescence allowance which has no counterpart in the existing rules. The allowance applies only to pipeline and gas distribution companies. In order to qualify for the allowance, the utility must meet the standards set forth in the rule. Three different methods of calculating the allowance are set forth, each designed to be applied in different situations in the Commissioner's discretion. Since pipeline and gas distribution companies have uncertain sources of supply which impacts on their market values, it is concluded that the amendments proposed to Part G. are necessary and reasonable in order to adjust the values of pipeline or gas distribution utilities for property that has become functionally or economically obsolete due to supply problems.

33. Part G. provides that the Commissioner "may" adjust the value of pipeline and gas distribution utilities for obsolescence. The use of the discretionary word "may" is improper. Under Minn. Stat. § 15.0411, subd. 3, rules are required to make specific the law enforced or administered by the agency. The Attorney General has consistently disapproved the use of the discretionary "may" because it subjects the public to the unfettered discretion of agency personnel. Its use in this Part (p. 16, line 21) violates the cited statutory provision as so construed. This constitutes a substantive violation of law for purposes of Minn. Stat. § 15.0412, subd. 4c. To correct this defect, the word "may" must be replaced with the mandatory word "shall." Where the applicant for the allowance authorized meets the criteria specified, the allowance must be granted in all cases.

replaced p. 15

Part G.1. also contains unnecessarily vague language. It provides that the applicant must "adequately" demonstrate, "to the satisfaction of the Commissioner," that its source of supply will be terminated within a specified time period. The quoted words, while not improper, are unnecessary and it is suggested that they be deleted. It is also suggested that the word "must", both here and in Parts G.2. - G.5., be changed to "shall", which is preferable mandatory language. As amended, Part G.1. would read:

changed p. 15, 16

amended p. 15.

> 1. The utility shall demonstrate that its source of supply for gas or oil will be terminated within the next ten years.

The normal showing required under such a provision would be a demonstration by the utility that it is more likely than not that the supply will terminate. If the Department considers some other standard of proof is needed, the rule can be amended accordingly.

In addition, it is recommended that the Department clarify the duration of the allowance authorized and whether or when it is subject to review or rescission. It is unclear whether the utility must annually apply for the allowance or whether once granted, it continues in effect indefinitely.

clarification added p. 15

34. Section 1.003 H. This Part sets out criteria for the retirement of utility operating property. It has no counterpart in the existing rules. Under the proposed rule, utility operating property may be retired while still in place if it is physically disconnected from the utility system. In addition, the utility "should" file an affidavit of retirement at least 30 days prior to the assessment date. Once the utility property is retired in place, its market value will not be determined on the basis of its value as utility operating property although it will continue to be subject to property tax. The cost of temporarily retired and stand-by facilities must be transferred to a special account with the appropriate regulatory agency in order to avoid classification as operating property. There were no objections to proposed Part H. and it is found to be necessary and reasonable in order to clarify what property qualifies as retired utility property for ad valorem tax purposes to provide notice to taxing districts and to provide a framework for the temporary retirement of utility property. The notice requirements imposed on utilities are not mandatory. If this is not the intent of the rule, the word "should" can be replaced with "shall."

replaced p. 18

35. Section 1.0005. This Section deals with adjustments for non-formula assessed or exempt property and contains no substantive changes to the existing rules. Several minor grammatical changes were made and an example demonstrating the deduction was added to the text of the rule. There were no adverse public comments on these amendments and they are found to be necessary and reasonable.

36. Section 1.0006. This Section deals with the apportionment of that portion of the unit value of a utility which has been allocated to Minnesota. The apportionment is made among local taxing districts. The Department proposes to amend Part C.2. to remedy an inequity in the current rule whereby taxing districts having utility property built prior to 1975 received less than their proportionate share of the unit value of the utility located in their districts than taxing districts having utility property built after that date. The problem is discussed in the Department's Statement (p. 15) as follows:

> The agency has proposed to alter this section by an addition of a schedule which over the period of ten years will equalize all taxing districts utility plant costs for purposes of apportionment at 100% of original cost. The rules now in force have an inconsistency in that the older utility properties are taken into account at something less than 100% of original cost in the apportionment formula; usually 75% of original cost. The newer utility properties; however are taken into account at more than 75%, the newest properties may use as much as 100% of original cost. This fact gives the newer properties a disproportionate share of the unit value of the utility being valued.
>
> The reason for this inconsistency is historical and dates back to the time that the unit value concept was first used to value utility property. At that time, the rules provided that the taxable unit value of a utility would be distributed to the various taxing districts based on the last market value of the utility property within a taxing district. We chose this method when the regulations were first adopted in 1975 for one major reason - stability. One of the agency's primary aims has always been to protect the taxing districts from major fluctuations in

value. The use of the last market value basis accomplished this purpose in 1975; changes in value were small, no county varying by more than plus or minus 10% in comparable property from 1974 to 1975.

The agency subsequently made one change in the basis of distribution from the last market value, to the original cost of the property x 75% or the last market value - whichever is greater. We believed that this change was necessary due to the fact that the first system seemed to be creating inequities in the distribution of utility values.

The agency, after studing (sic) the way in which this revised apportionment method distributed value is still not convinced that an inequity does not exist. Thus, in keeping with our policy of revising the rules whenever conditions justify a change we are proposing a slightly different apportionment method described in the proposed rules.

The inequity the agency perceives stems from the fact that the older properties, those built prior to 1975, have a market value which is based on depreciated original cost. The method which was employed to value utility property prior to 1975 specified that orignal cost of each utility's property within a taxing district was to be depreciated 2 1/2% per year for ten years. This produced a maximum of 25% depreciation and a residual value of 75% of original cost. A property having an original cost of $1,000,000 in 1965 would have a market value of $750,000 in 1974. The distribution of the unit value in 1975 would be based on this $750,000 figure not the $1,000,000. The newer properties, those built after 1975, do not have this depreciation factor; therefore, their basis for distribution is larger. A property built in 1979 for $2,000,000 would have as its basis for distribution the total original cost of $2,000,000; no depreciation reduces this cost.

Another factor which further compounds this problem is that of inflation. A utility may have two identical properties; for example electrical substations; both having the same capacity, both having the same function. If these two substations are built ten years apart; one in 1965, one in 1975; not only will the depreciation factor come into play but inflation will have pushed the cost of the substation built in 1975 to perhaps twice that of the earlier one. Thus, the new property receives an even greater share of the unit value.

In order to attempt to remedy this situation, the agency proposes to bring the older properties back to 100% of their original cost over a period of years. The schedule proposed would change the percent of original cost to be used in the apportionment process only 2.5% per year until 100% parity is reached. This narrows the gap between the old and new properties yet it protects the taxing districts by minimizing any drastic shifts in value. The agency believes this change to be a reasonable and equitable method of correcting a problem which experience has brought to our attention.

An important fact to bear in mind is that the unit value concept presupposes that all parts of the unit are equally important in determining the value of the entire entity. One piece of a pipe line is just as important as any other piece if the integrity and completness (sic) of the pipeline system is to be maintained. The agency believes this same fact to be true in apportionment as in valuation. All parts of the unit are important and the basis of apportionment should be uniform for all. We believe our proposal to be reasonable, rational and necessary if equity and equality are to be achieved by our apportionment system.

37. Several parties, primarily taxing districts, voiced concern over the proposed amendment. There is evidence that most generating plants built on or after 1975 are in rural areas and that older plants are predominantly in metropolitan areas. It is argued that the proposed amendment results in an unjust

shift of value from rural host communities to metropolitan areas. It is further argued that the full effects of this shift in value are unknown at the present time.

On the other hand, the Minneapolis City Assessor supports the change and suggested that the existing inequity be remedied in two years rather than in ten years as proposed by the Department. On the basis of the evidence presented, it is concluded that there is an inequity in the current rules resulting in a disproportionately large share of the unit value of certain utilities being apportioned to taxing districts containing "new" utility property. The proposed rule is necessary to correct this inequity and is reasonable because it gradually brings older properties back to 100% of original cost over a period of ten years, thus avoiding any drastic consequences to taxing districts which will be affected.

38. At the hearing on November 19, 1981, Itasca County and other rural taxing districts pointed out an additional inequity in the rules and proposed amendments intended to correct them. The problem was described as follows (Ex. D):

> Under both the existing and the proposed rules, the average cost /kw adjustment is also taken into account in apportioning the Minnesota unit value of the utility among the various taxing districts. In this process, however, the Minnesota unit value allocated to taxing districts with older plants is increased to the average cost/kw adjustment by an amount in excess of the increase in the Minnesota unit value which results from the adjustment. This aberration, which reduces the Minnesota unit value allocated to other taxing districts, arises from the fact that the average cost/kw adjustment passes through an elaborate series of formulas between the point when it is first taken into account in determining the cost factor and the point when Minnesota unit value is determined. The suggested changes would limit the increase in value allocated to the districts with old plants as a result of the average cost/kw adjustment to the increase in Minnesota unit value which results from the adjustment. The other districts, therefore, would not lose value as a result of the adjustment. To correct this problem, the following specific changes to the text of the rules were proposed:
>
> 1. A new paragraph to be added to 13 MCAR § 1.0003C at page 14 after line 22 which would read:
>
> Any company for which a modification is made under 13 MCAR § 1.0003C due to the average cost/kw adjustment being made to original cost of a plant or plants located in Minnesota shall have an alternative cost indicator computation made without giving effect to the average cost/kw adjustment of such plant or plants.
>
> added p. 13
>
> 2. A new paragraph to be added to 13 MCAR § 1.0003E at page 15 after line 21 which would read:
>
> Any company whose cost indicator was modified under 13 MCAR § 1.0003C to reflect the average cost/kw adjustment of a plant or plants located in Minnesota shall have an alternative unit value computation made without giving effect to the modification in respect of such plant or plants.
>
> added p. 14
>
> 3. A new paragraph to be added to 13 MCAR § 1.0004B at page 21 after line 12 which would read:
>
> If any modification has been made to the cost indicator under 13 McAR § 1.0003C to reflect the average cost/kw adjustment of a plant or plants located in Minnesota, an alternative computation of the Minnesota allocation shall be made without giving effect to the modification in respect of such plant or plants.
>
> added p. 20

4. A new paragraph to be added to 13 MCAR § 1.0005D at page 23 after line 16 which would read:

> If any modification has been made to the cost indicator under 13 MCAR § 1.0003C to reflect the average cost/kw adjustment of a plant or plants located in Minnesota, an alternative computation of the Minnesota apportionable value shall be made without giving effect to the modification in respect of such plant or plants.

added p.22

5. A new sentence to be added to 13 MCAR § 1.0006A at page 23, line 31, which would read:

> If any modification has been made to the cost indicator under 13 MCAR § 1.0003C to reflect the average cost/kw adjustment of a plant or plants located in Minnesota, the apportionment to the taxing districts made pursuant to subsection (sic, Part) C hereof shall be based upon the Minnesota apportionable value alternatively computed in 13 MCAR § 1.0005D without giving effect to the modification in respect of such plant or plants.

added, with clerical changes p.23

6. The following language to be deleted from 13 MCAR § 1.0006C2 on page 24, lines 24-25:

> together with any additional cost computed in accordance with 13 MCAR § 1.0003C.

deleted p.24

7. A new paragraph to be added to 13 MCAR § 1.0006C2 at page 25 after line 13 which would read:

> All computations made under alternative 1 or 2 of this subsection (sic, Part) shall be made without giving effect to any modification to reflect the average cost/kw adjustment made pursuant to 13 MCAR § 1.0003C.

added, with clerical changes p.24

8. A new subsection to be added to 13 MCAR § 1.0006 at page 25 after line 19 which would read:

> E. After all other computations have been made under this section, there shall be added to the value of each district in which is located a plant or plants qualifying for the average cost/kw adjustment under 13 MCAR § 1.0003C a share of the difference between the Minnesota apportionable value computed under 13 MCAR § 1.0005 (i) with the adjustment and (ii) without the adjustment in respect of a plant or plants located in Minnesota, in proportion to the amount of the adjustment made with respect to the property located in each such district.

added p.25

In its posthearing comment, the Department recommended adoption of these amendments. Based on the information presented, it is concluded that the current and proposed rules contain an inequity resulting in an unintended shifting of value to some older generating plants at the expense of other taxing districts. That fact is not disputed. After reviewing the amendments proposed, it is concluded that the amendments are reasonable and necessary to correct the inequity and that they should be adopted.

39. It was asserted by Carlton County that inclusion of these amendments would result in a proposed final rule that is substantially different than the rule as originally published in the State Register. Substantial changes are governed by 9 MCAR § 2.111 of the Rules of the Office of Administrative Hearings. It provides that in determining whether a final rule is substantially different from the initial version as published in the State Register, the Hearing Examiner shall consider the degree to which it affects classes and

persons not present at the hearing or goes to a new subject matter of significant substantive effect, or 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 results in a rule fundamentally different from that contained in the Notice of Hearing.

The proposed amendments deal with the subject matter of apportionment and alter the proposed rules in a relatively minor way considered in the context of the magnitude of the apportionment process. Classes of persons affected by the amendments were represented at the hearing where they were proposed and discussed, and the amendment is necessary to eliminate an unintended inequity. The very purpose of rulemaking hearings is to give the public an opportunity to point out inequities and problems in proposed rules. To require an agency to commence a new rule hearing procedure every time such a problem and its cure is pointed out is not consistent with the whole purpose of Chapter 15. Therefore, in this case, it is concluded that the amendments proposed do not constitute substantial changes for purposes of 9 MCAR § 2.111 and that they are necessary and reasonable as proposed.

40. The repeal of § 1.0007 which sets forth a comprehensive example of mathematical computations under the rule is reasonable. In place of the comprehensive example contained therein, the Department has inserted mathematical examples of the computations required throughout the rule. This improves clarity and readability and is necessary and reasonble.

41. Those amendments not specifically discussed herein are found to be necessary and reasonable in their entirety and supported in the Department's Statement and other evidence of record.

Based on the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. That the Department of Revenue gave proper notice of the hearing in this matter.

2. That the Department has fulfilled the procedural requirements of Minn. Stat. § 15.0412, subd. 4-4f (1980) and all other procedural requirements of law or rule.

3. That the Department has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 15.0412, subd. 4e and 15.052, subd. 3(4)(i) and (ii) (1980), except as noted at Finding 33.

4. That the Department has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. § 15.0412, subd. 4c (1980), except as noted at Finding 28.

5. That the amendments and additions to the proposed rules which were suggested by the Department after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 15.0412, subd. 4d (1980) and 9 MCAR §§ 2.110 A. and 2.111 (1980 Ed.).

6. That the Hearing Examiner has suggested action to correct the defects cited in Conclusions 3 and 4 as noted at Findings 29 and 33.

7. That due to Conclusions 3 and 4, this Report has been submitted to the Chief Hearing Examiner for his approval pursuant to Minn. Stat. § 15.0412, subd. 4d (1980).

8. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

9. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Department from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

It is hereby recommended that the proposed rules be adopted except where specifically otherwise noted above.

Dated this 11th day of January, 1982.

JON L. LUNDE
Hearing Examiner

DR-82-004-JL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED RULES OF THE DEPARTMENT OF REVENUE GOVERNING THE VALUATION AND ASSESSMENT OF ELECTRIC, GAS DISTRIBUTION AND PIPELINE COMPANIES (UTILITY COMPANIES).

ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on November 4, 1981, before Jon L. Lunde, a Hearing Examiner of the State Office of Administrative Hearings, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Department of Revenue and;

WHEREAS, the Department of Revenue has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, subd. 4-4f; and

WHEREAS, the Department of Revenue has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. §§ 15.0412, subd. 4e and 15.052, subd. 4, and 9 MCAR § 2.111; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Department of Revenue has cured the defects in the rules as required.

NOW, THEREFORE, upon receipt of this Order, the Department of Revenue has the responsibility of submitting the complete hearing record and the rules as adopted by the Department of Revenue to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4e and 4f.

Dated: March 23, 1982.

DUANE R. HARVES
Chief Hearing Examiner

By: George A. Beck
GEORGE A. BECK
Hearing Examiner

DR-82-004-JL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPRTMENT OF REVENUE

In the Matter of the Proposed Rules of the Department of Revenue Governing the Valuation and Assessment of Electric, Gas Distribution and Pipeline Companies (Utility Companies)

REPORT OF THE CHIEF HEARING EXAMINER

The above-entitled matter came on for review by the Chief Hearing Examiner pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4d (1980) which provides in part:

> If the [hearing examiner's] report contains a finding that the proposed rule is substantially different from that which was proposed at the public hearing, or that the agency has not met the requirements of section 15.0412, subdivisions 4 through 4f, it shall be submitted to the chief hearing examiner for approval. If the chief hearing examiner approves the finding of the hearing examiner, he shall advise the agency of actions which will correct the defects, and the agency shall not adopt the rule until the chief hearing examiner determines that the defects have been corrected. If the chief hearing examiner determines that the need for and reasonableness of the rule has not been established pursuant to subdivision 4, clause (c), and if the agency does not elect to follow the suggested actions of the hearing examiner to correct that defect, then the agency shall submit the proposed rule to the legislative commission to review administrative rules for the commission's advice and comment. The agency shall not proceed to adopt the rule until it has received and considered the advice of the commission; provided, that the agency is not required to delay adoption longer than 30 days after the commission's receipt of the agency's submission.

Based upon a review of the record in this proceeding, the Chief Hearing Examiner hereby approves the Report of the Hearing Examiner in all respects and specifically as to any finding of substantial change or of failure to comply with Minn. Stat. § 15.0412, subd. 4-4f (1980) or of failure to establish need for and reasonableness of the proposed rule.

In order to correct the defects enumerated by the Hearing Examiner, the agency shall either take the action recommended by the Hearing Examiner or reconvene the rule hearing if appropriate. If the agency chooses to reconvene the rule hearing, it shall do so as if it is initiating a new rule hearing, complying with all substantive and procedural requirements imposed on the agency by law or rule.

If the agency chooses to take the action recommended by the Hearing Examiner, it shall, prior to submitting the rules to the Attorney General for review, submit to the Chief Hearing Examiner a copy of the rules as initially published in the State Register, a copy of the rules as proposed for final adoption in the form required by the State Register for final publication, and a copy of the agency's Findings of Fact and Order Adopting Rules. The Chief Hearing Examiner will then make a determination as to whether the defect in regard to substantial change and the requirements of Minn. Stat. § 15.0412, subd. 4-4f (1980) have been corrected.

Should the agency make changes in the rules other than those recommended by the Hearing Examiner, it shall also, prior to submitting the rule to the Attorney General, submit the complete record to the Chief Hearing Examiner for a review in regard to substantial changes.

Dated: January 13th, 1982.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

State of Minnesota
Department of Revenue

In the Matter of the Proposed Rules of the Department of Revenue Governing the Valuation and Assessment of Electric, Gas Distribution and Pipeline Companies (Utility Companies)

Statement of Need and Reasonableness

The above-captioned rules are being proposed in order to update and revise the current Rules and Regulations of the Department of Revenue Relating to Ad Valorem (Property) Taxes. The current rules have been in effect since 1975. They have been revised twice. Once in 1976, and once in 1979; however, it is the announced intention of the Department of Revenue to revise the rules whenever conditions, economic or otherwise, dictate a need for revision. This intention is clearly expressed in 13MCAR § 1.0001, Introduction, of the current rules, "The methods, procedures, indicators of value, capitalization rates, weighting percents, and allocation factors will be used as described in 13MCAR §§ 1.0003 - 1.0007 for 1979 and subsequent years, or until, in the opinion of the Commissioner of Revenue, different conditions justify a change." (emphasis supplied) It is now the opinion of the Commissioner of Revenue that the rules should be revised.

This document has been prepared as a verbatim affirmative presentation of the facts necessary to establish the statutory authority, need for, and reasonableness of the proposed new rules. It is submitted pursuant to 9MCAR § 2.104 requiring a Statement of Need and Reasonableness.

A Notice of Intent to Solicit Outside Information or Opinions in the preparation of these proposed rules was published in the State Register on November 10, 1980 (5SR 762). Open forum type discussion meetings were held on November 5, 1980, February 5, May 13, and June 14, 1981. These meetings were attended by members of the Department of Revenue together with city and county assessors and representatives of various utility companies. Lists of those in attendance, agendas, meeting notes, and correspondence received relative to these meetings will be submitted by the Department to the Hearings Office at the time of the Hearing. Various suggestions and comments made at these meetings were received and duly considered by the agency.

Authority to Adopt Rules

The agency published a Notice of Intent to Adopt Rules without a Public Hearing in the April 6, 1981 edition of the State Register (5SR1572-1582). This notice concerned basically the same rules which are now being proposed for adoption at hearing. The Notice of Intent solicited enough interest to warrant a public hearing. Accordingly, the agency withdrew its request to adopt the proposed rules without a public hearing and now proposes to adopt the rules utilizing the public hearing process. Copies of all material pertinent to the adoption of the rules without a public hearing; in addition to all comments received from interested parties will be submitted to the Hearing Office at the time of Hearing.

Minn. Stat. § 270.06 (14) states that the ..."Commissioner of Revenue may promulgate rules and regulations for the administration and enforcement of the property tax. Such rules and regulations shall have the force and effect of law..." The above captioned rules are encompassed within this authority.

Further, Minn. Stat. § 270.11, Subd. 1 and 6 gives the Commissioner of Revenue the authority to review, modify, revise, raise or lower the assessed valuation of any real or personal property of any individual, copartnership, company, association or corporation. The Commissioner of Revenue is also charged with the responsibility under Minn. Stat. §§ 273.33, Subd. 2; 273.37, Subd. 2; and 273.38 of assessing the... "personal property, consisting of the pipeline system of mains, pipes and equipment attached thereto, of pipeline companies and others engaged in the operations or business of transporting natural gas, gasoline or other petroleum products by pipelines... transmission lines of less than 69kv, transmission lines of 69kv and above located in an unorganized township and distribution lines, (of electric companies) and equipment attached thereto, having a fixed situs outside the corporate limits of cities... the distribution lines, and the attachments and appurtenances thereto, (of electric companies) used primarily for supplying electricity to farmers at retail...".

Adoption of Proposed Rules
Need and Reasonableness

13MCAR § 1.0002 Definitions: This section has been revised by the addition of two new terms. The words "throughout" and "standard" have been added to the alphabetical list of terms which already make up the definition section of the existing rules. These new definitions are needed in order to establish a common language for the obsolescence section of the proposed rules. The language used in defining the terms is as straightforward and simplistic as possible while still conveying the necessary meaning.

The agency has also made two non-substantive revisions to the Definitions section. One change has inserted the word "means" after the term defined rather than three dashes (—). This change brings the rules into conformity with the format prepared by the Office of Administrative Hearings. The second change involves the re-codifying of some established definitions. This change is necessary because the inclusion of the new definitions changes the alphabetical order of the existing definitions.

The agency believes that all the revisions made to the Definition section are necessary, useful and reasonable and should be adopted as proposed.

13MCAR § 1.0003 Valuation, Cost Approach. This section has been revised in a number of areas. The first change requires the utilities to report to the commissioner the original cost of any leased utility property. The second change increases the amount of depreciation allowed to electric, gas and pipeline companies. The third change increases the study period to be used in computing the "average cost per kilowatt of installed capacity" factor for steam and gas turbine electric generating plants from ten years to fifteen years. A fourth change is the addition of two allowances; one allowance for pollution control equipment, and an allowance for obsolescence; which will be used to adjust any added value which would accrue to a utility plant due to the use of the "average cost per kilowatt of installed capacity" factor. The need for, and reasonableness of these revisions is explained below.

The first revision is an attempt to correct an oversight in the present rules. A careful reading of the definitions contained in 13MCAR § 1.0002 will disclose that definition L. "Operating Property" means any property owned or leased except land, that is directly associated with the generation, transmission, or distribution of electricity, natural gas, gasoline, petroleum products or crude oil. Note that the

words owned or leased appear in the definition of operating property. It is this operating property the rules attempt to value.

The valuation of the operating property is accomplished by using two indicators of value. Any income earned by the use of leased property would be included in the income indicator of value; however, leased property is normally not reported as part of a utility's system plant. A special reporting or listing is necessary so that this property may be included in the cost indicator of value thus retaining the compatibility of the two approaches to value. The agency believes that this is a necessary provision if the two valuation methods are to reflect the value of similar property.

During the course of our meetings with representatives of the utility industry it was learned that a lessee does not always have access to the cost of property which it is leasing. The agency did not want to jeopardize the lessee-lessor relationship by the imposition of these rules; therefore, the proposed rule provided for an estimate to be made by the commissioner in the event that cost information is not available. This cost estimate will be made based on capitalized lease payments. This process is not unique and is recognized as a valid method for making estimates of cost throughout the appraisal field.

The agency believes that this proposal is reasonable and is necessary in order to calculate an accurate cost indicator of value for utilities having leased property.

The second proposed change in the rules concern the amount of depreciation which will be allowed as a reduction of the cost of the utility's property. There are several types of cost which are used in the appraisal of utilities:

1. Original Cost - Original cost is the actual cost of a property when it was first acquired or constructed.
2. Book Cost - Book cost is the original cost of a property less accrued depreciation.
3. Reproduction Cost - Reproduction cost is the present dollar cost to reproduce a replica of the existing property, i.e. what the property would cost today. Reproduction cost is obtained by trending known costs up or down, depending on whether current construction costs are greater or less than when the property was first constructed.
4. Replacement Cost - Replacement cost is the present dollar cost to replace a property with one having similar or equal usefulness.

The estimation of value by use of the cost approach requires the use of the proper type of cost, and then computing the loss in value due to depreciation.

Depreciation is made up of three factors:

1. Physical deterioration which is the loss in value from original cost caused by normal use and wearing out of the property.
2. Functional obsolescence which is a loss in value because of functional deficiencies or inadequacies within the property itself. Normally, functional obsolescence would result from technological changes which result in better, more efficient techniques.
3. Economic obsolescence which is a loss in value caused by factors outside the property itself.

In the case of electric utilities the various elements of depreciation are considered by the Federal Energy Regulatory Commission which then specifies what rates of depreciation are to be used by the various utilities for different classes of assets.

The four major electric utilities operating within Minnesota are currently at the following depreciation level:

Original Cost of Plant in Service	$3,592,007,278
Accrued Depreciation	871,345,766
Book Cost of Plant in Service	2,720,661,512
Ratio of Depr. to Original Cost	(Approx.) 24%

The rules propose to allow the electric companies a maximum of 19% depreciation. The difference between 24% and 19% is the agency's method of calculating replacement cost for the utility's property and acts as a hedge against inflation.

Minn. Stat. § 273.11, Subd. 1 requires that ..."all property shall be valued at its market value." With most types of property the concept of market value equates to replacement cost. The owner of a 20 year old three bedroom, 1000 square foot rambler does not have his property valued by the local assessor at the original cost of $15,000; neither does the assessor use book cost. The assessor would use some form of either reproduction or replacement cost. When the house was built in 1960 construction costs must have been approximately $15 per square foot; hence, the selling price, (maket value, original cost) of $15,000. Today, inflation has pushed these same construction costs to $60 per square foot, so the market value or replacement cost of the property is $60,000.

The agency recognizes that a multimillion dollar utility does not sell in the same way a three bedroom rambler might. It also recognizes that in most instances the utility is limited in its earnings by its rate base; (rate base is normally original cost less depreciation). However, it is readily apparent that because of inflation the cost of replacing the facilities at today's prices would be more than the original cost at the time of installation. Our holding of the depreciation at a specified maximum attempts to recognize both the wearing out and obsolescence of the facilities together with the fact that to replace or reproduce the facility would produce more value. The agency believes that the proposed maximum depreciation allowance is a reasonable and viable method of accomplishing both these objectives.

The pipeline and gas distribution companies have the following depreciation levels.

Original Cost of Plant in Service	$4,139,665,100
Accrued Depreciation	1,660,591,335
Book Cost of Plant in Service	2,479,073,765
Ratio of Depr. to Original Cost	40%

The proposed values would allow pipeline and gas distribution companies a maximum of 47.5% depreciation. The overall industry average depreciation rate of 40% does not exceed the maximum allowable depreciation as in the case of electric utilities. The agency is aware of this difference. We believe that because of the dissimilarity between the industries that the depreciation rates are proper. The electric industry is constantly updating and replacing its property so that overall depreciation rate is fairly low. In the pipeline industry, on the other hand, it is common practice to build a line and leave it in place for years. Since the pipes are normally buried

they are not easily accessible as are electric wires. In addition, the state of the art in the pipeline industry changes much more slowly than in the electric industry. There are only so many ways you can design a pipe, while new and different ways for transmitting electricity are regularly being discovered. (Witness the change from transporting electricity in A.C. form to the D.C. mode.) There is very little replacement and updating in the pipeline field. Minnesota has operating pipelines which were built in the 1940's. Because of this longer life span of pipeline property, a larger depreciation allowance is necessary to adequately reflect the loss in value of the property. The same rationale holds true in most instances for gas distribution companies.

There is a further consideration to be looked at as well. It is an acknowledged fact that the need for electricity will go on for the foreseeable future. The demand for electric power can be met in a number of ways; by hydro power, nuclear energy or coal fired generating plants. In short, the electric industry is here to stay. Gas and oil in the other hand are not quite as stable or certain. It may well be that a pipeline may not have nearly as long a life as the builder intended either because the source of supply is exhausted, or is cut off for political or economic reasons. This of course, has a decided effect on the market value of the property. A prospective buyer would be much more willing to pay a higher price for a long term monopoly utility, than for a relatively short term speculative utility. The larger depreciation allowance given to pipelines and gas distribution companies is one of the agency's methods of recognizing this fact. We believe the proposal to be reasonable in its concept, and necessary if we are to find a realistic estimate of market value for these types of utilities.

The third change in 13MCAR § 1.0003 concerns adjusting electric utility property to take into account the effect of inflation on property values. This change is aimed at a specific type of electric utility asset, the major generating plants. The adjustment is accomplished through the use of a special study called the "Average Cost per Kilowatt of Installed Capacity."

The "Average Cost per Kilowatt of Installed Capacity" is a method of replacement cost which computes the national average cost, over a specified term of years, of building a major generating plant. This average is then applied to all major plants operated by a utility. If the national average is higher than the original cost of the plant the original cost is increased to that of the average; if the national average is lower no adjustment is made.

The reason this average is computed and used can best be explained by again using the homeowner as a comparison. The appraiser can best estimate the value of the three bedroom rambler by using two methods; 1) comparable sales, and 2) cost per square foot of construction. It is apparent that major utility generating plants do not sell frequently on the open market. Therefore the comparable sales avenue of appraisal is not generally available to us. Major generating plants are not built on a square foot basis, but rather on a capacity basis. They are measured and classed as to how many kilowatts they can produce operating at maximum capacity. Therefore, instead of using the square foot construction costs of generating plants to estimate current worth, as we would in the case of a house, we utilize cost per kilowatt.

We feel that this is a fair and workable technique of calculating an accurate measure of replacement cost for a number of reasons.

1. It follows accepted appraisal techniques of comparing construction costs for like properties.
2. It makes no adjustment on smaller standby units which are often kept in working condition by a utility for emergency use only.
3. By using the national average, the utility in Minnesota receives the benefit of warm weather building methods which are usually less costly.
4. The method gives the utility the advantage of the most advanced technology used in building power plants, and refutes the argument "We wouldn't build a plant like that today."
5. It typically produces an additional value only for older plants and does not produce an across the board increase for the newer plants.

The proposed revision would lengthen the study period for computing the national average from ten to fifteen years for both steam and gas turbine plants. The agency believes that this revision is both necessary and reasonable because it provides a broader study base and eliminates drastic yearly fluctuations which are inherent in a small sample base.

Attached to this document is a schedule showing a sample calculation of the fifteen year national average cost per kilowatt for steam generating plants. Note that a ten year study encompasses only 122 steam plants while the fifteen year study uses 181 plants or almost 50% more plants. A sample gas turbine generating plant study would show 311 plants in a ten year study and 349 or 12% more plants in a fifteen year study. While the base for gas turbine plants does not expand as dramatically as that for steam plants, both studies are expanded to a significant degree, and this broader base gives the study better stability.

The agency recommends this revision very strongly because it will promote stability in the assessment of major generating plants. Most of these plants have a dynamic effect on the fiscal policies of local taxing districts. Values must be kept stable to protect the taxing districts. In addition to this change affecting the average cost per kilowatt of installed capacity, the agency is also proposing two additional revisions to the current rules. The revisions both concern allowances which will be applied to the gross additional value to be added to a plant because of the application of the average cost per kilowatt of installed capacity factor. The first allowance concerns pollution control equipment and the second an allowance for obsolescence.

It is a well accepted fact that a substantial portion of the construction costs of modern day power plants are expended for the abatement of pollution. The national average cost per kilowatt study mentioned above does not differentiate between dollars spent for pollution control and dollars spent for ordinary costs of construction; therefore, if an additional amount is added to a power plant as a result of the application of the average cost per kilowatt of installed capacity computation, part of the additional amount represents pollution control expenditures.

Minn. Stat. § 272.02, Subd. 1, Clause (b) grants a property tax exemption to... "real and personal property used primarily for the abatement and control of air, water, or land pollution to the extent that it is so used." This exemption is recognized in the valuation formula in 13MCAR 1.0005D; however, under current rules no recognition is given to the pollution control expenditures which are part of the added value given to a power plant due to the average cost per kilowatt computation.

The agency proposes to rectify this fact through the use of an allowance for pollution control equipment which is to be applied to the gross additional added value. The

computation of this allowance is very simple. A total of the plant costs, excluding land, of all major generating plants within Minnesota will be made. The computation will be by type of plant; steam, hydro or gas turbine. Another total of the cost of the pollution control equipment installed in these plants, by type of plant, which has been approved for property tax exemption by the Department of Revenue, will also be made. This total cost of the pollution control equipment will be divided by the total of the plant costs and this percentage will be deducted from the gross additional value added to each major generating plant affected by the average cost per kilowatt of installed capacity computation.

Only Minnesota generating plants will be used for this computation because each state has unique pollution control laws and regulations. It is not possible to apply Minnesota pollution standards to plants in other states and expect to gain a meaningful result. The agency believes that the computation of the pollution control allowance and its application to Minnesota generating plants only, is reasonable and necessary. It recognizes the intent of Minn. Stat. § 270.02, Subd. 1, Clause (b), while still employing accepted appraisal principles in estimating market value for major generating plants.

The other allowance which the agency proposes to apply to the additional value to be added to a generating plant because of the application of the average cost per kilowatt of installed capacity factor is an obsolescence allowance. This obsolescence allowance is to be applied only to hydro and steam type generating plants.

Gas turbine plants will not be eligible for this allowance because the design and operation of these units has not changed appreciably from their introduction to the present time. These units were first introduced in the mid-1960's and are normally purchased in a packaged form much as one would buy an auxillary generator, the only difference being the size. The cost per kilowatt of installed capacity of these units has varied only slightly over the years and the operating characteristics of all the units is fairly uniform since most are based on a relatively standard aircraft type jet engine. The agency believes that at this time there is no need to apply an obsolescence allowance to the plants; however, this position may change in the future if technological discoveries advance the state of the art to a point where obsolescence is warranted.

The age and operating characteristics of hydro and steam plants varies a substantial amount. If the intent of the average cost per kilowatt of installed capacity concept is to bring the cost per kilowatt of older plants up to relatively present day levels then the agency believes that it is only proper and reasonable to recognize the fact that even though an older plant may generate, or be capable of generating, as much power as a newer plant it may well do so with much less efficiency. Since this lack of efficiency, or obsolescence, would have an effect on the plant's market value, the agency believes that an allowance should be made for this fact. The example of the residential home can again be used to illustrate this point. A home of 1,000 square feet with a very fuel efficient heating system would be worth more than a comparable size home with an outdated, inefficient furnace.

The agency proposes to measure this obsolescence by establishing a standard and comparing the specific plant to the standard. The amount the specific plant varies from the standard is the amount the plant is obsolete.

One of the standards used for this measurement of obsolescence is called the "plant factor." The plant factor compares how much electrical energy a generating plant

actually produced in a year to the maximum amount of energy it could have produced. For example, if a plant could have produced 1,000,000 KWH but only produced 500,000 KWH it was operating at a plant factor of 50%.

The plant factor is a good indicator of a generating plant's obsolescence because it actually measures obsolescence in two ways, economic and functional. If there is a low demand for a generating plant's product, electricity, then the plant will be operated at less then full capacity; hence a low plant factor. This lack of demand, or economic obsolescence, impacts a property's market value in much the same manner as a hotel built on a secondary road would most likely have a lower market value than one built near a busy freeway.

The plant factor would also recognize the downtime a generating plant experiences for maintenance and repair. It is logical to assume that an older plant would experience more time out of service for repair than a new one; simply because the component parts of the older plant have been exposed to more wear and tear, or are of an outmoded design which is not as reliable as a newer design. Another term for this frequency of repair and maintenance would be functional obsolescence. Thus, the more a generating plant is down for maintenance, the lower its plant factor would be, and the more functional obsolescence would be applied to this plant.

In order to compute the standard factor, the agency again proposes to look at those plants which were used to compute the national average cost per kilowatt of installed capacity. Since these are the plants which serve to make up the basis of the additional value, it is only reasonable to use the operating characteristics of these same plants to compute the standard plant factor. The proposed rules detail how this standard is to be computed, and it is a very simple mathematical formula. The formula multiplies the installed capacity of the various plants in kilowatt hours (KWH) times the number of hours in a year; the product of this computation is the maximum amount of power the plant could have generated in a year. The amount of KWH the plant actually produced is then divided by this optimum generation amount and a percentage developed. This computation is done for all generating plants within the specified 15 year study period. The ten plants with the highest or best plant factor are then selected out of the study and an average computed of their plant factor. The use of ten plants insures that a stable index will be used each year without abrupt fluctuations due to one or two plants operating under highly unusual circumstances. This then becomes the standard. Plant factors are then computed in the same manner for each hydro or steam generating plant which would have additional cost dollars added to it because of the application of the average cost per kilowatt of installed capacity computation. Plant factors are computed for the most recent three years, and then averaged. A three year time span is used in order to minimize the downtime effect a major overhaul or repair due to an accident might have on the net generation of a plant. This three year average plant factor is then compared to the standard plant factor. The amount or percent the three year average deviates from the standard is the amount of obsolescence measured by the application of this method. This percentage will then be used to reduce the gross additional value added to the hydro-electric plants. Steam-electric plants will have an additional obsolescence factor computed.

Hydro-electric plants differ from steam plants in that hydro plants essentially use no fuel, they are powered by the movement of water. Steam electric plants on the other hand must burn a fuel to create heat to make steam; just as their name implies. Therefore, one of the measures of the efficiency of such a plant is the amount of fuel needed to produce a unit of electric power. This is called the "thermal

efficiency factor." Since the fuels used in steam-electric plants vary; coal, oil, natural gas; the only common attribute of the various fuels is that they all contain British Thermal Units (BTU). The computation of the thermal efficiency factor measures the numbers of BTU's a plant would require to produce one KWH of electric power. This measure of a steam plants efficiency is a very viable measure of obsolescence, particularly in light of current costs of energy. A plant which requires a greater amount of fuel to produce a KWH would be less attractive to a buyer than one which could generate a KWH using a very small amount of fuel.

The thermal efficiency standard will be computed by again selecting the ten plants using the least amount of fuel or BTU's to produce a KWH from all those plants which comprise the 15 year study period used to calculate the average cost per kilowatt of installed capacity. This standard will then be compared to the actual thermal efficiency of the subject steam electric plants.

There is no need to use a three year average thermal efficiency factor because the operating characteristics of a plant do not vary from year to year with respect to the utilization of fuel. The plants are much like an automobile in that a particular model of car may be rated at 20 MPG; one year it may actually get 18 MPG, another 22 but it would not suddenly jump up to 40 MPG. The amount or percentage that the subject plant deviates from the standard is the amount of obsolescence in the subject plant as measured by this thermal efficiency factor.

These two measures of obsolescences for steam electric plants; plant factor and thermal efficiency factor, are then averaged and this average obsolescence percentage is used to reduce the gross additional value added to the plant.

The calculation of all of these averages and allowances may seem very complex and technical but in essence it can be reduced to a few simple facts or statements. The agency is proposing that 1) to build a major generating plant today would cost a minimum amount of dollars per kilowatt 2) if a generating plant has construction costs which are less than this minimum the construction costs will be raised to meet the minimum 3) any additional dollars added to the cost will be reduced by an allowance for pollution control expenditures which are an intergal part of any power plant and 4) additional allowances will be made to the added cost to recognize the fact that older plants are not as efficient in their operating characteristics as are new plants. The agency bases all of these proposal in sound appraisal practice. We believe that these proposals are extremely reasonable in their concept and necessary to the proper estimation of market value for electric companies.

13MCAR § 1.0003 D. The revision in this section concerns the income approach to valuation.

This approach utilizes the capitalization of income in a mathematical process in an attempt to derive a value which represents the present worth of the future earnings of the property. The capitalization process has two major factors: 1) the income to be capitalized and 2) the captialization rate. We propose to change one of these factors to more accurately reflect current economic conditions.

We currently use three years of net utility operating income as the income to be capitalized. This is the income after expenses, depreciation and taxes, but before interest expense. This level of income is usually referred to as the income developed by the regulatory agency. It excludes all income from operations and investments that are not directly related to the operation of the company. This particular

income stream is preferred by most utility appraisers, and has the most acceptance throughout the country.

The agency uses three years of these net utility operating earnings in order to level out the peaks and valleys inherent in income determination. This leveling out provides for a relatively stable value, rather than a value which would vary widely from year to year. At present the three years are weighted 40% for the first year's income, 35% for the second and 25% for the third. This weighting of income provides for the most attention to be paid to the most recent performance of the company and attempts to strike a balance between stable income and the recognition of current economic conditions effecting a company.

A capitalization rate is then applied to this weighted income. The capitalization rate is an anticipated rate of return from an investment; a rate at which income is processed (capitalized) to indicate the probable capital value. Usually this rate is commensurate with the risk of the business venture.

In developing a capitalization rate three basic methods are available. They are:

1. The Summation Method - which uses the "safe rate" (usually that of government bonds) and adds to it an allowance for management, non-liquidity, and risk. This method is usually considered to be the least reliable and is not in common use by appraisers of utility property.

2. The Comparative Method - which computes a capitalization rate by measuring the actions of purchasers in the market place. However, since utilities very seldom sell as a unit there are few market transactions from which a rate can be developed. For this reason this method is rarely used in the field of utility valuation.
3. The Band of Investment Method - which is the combination of the rate applicable to the portion of the capital structure represented by debt with the rate applicable to the portion of the capital structure represented by equity. The rate developed is a weighted average, the weighting representing percentages of the mortgage and equity position or bands of investment. This method, which is currently used by the agency, is the most generally accepted method of developing a capitalization rate for use in the appraisal of utilities.

The computation of the capitalization rate using the band of investment method is done on the basis of an average utility within an industry; that is, all companies within one industry (i.e. electric, gas distribution, pipeline) share the same rate. This is done as a matter of convenience due to the agency's lack of time and personnel. It is common practice for utility appraisers all across the country to apply a single capitalization rate to companies within the same industry.

The information used in the computation of the cap rate is taken from the latest edition of Moody's Public Utility Manual and includes the following techniques:

1. A determination of what percent of the capital structure of the average utility is made up of long term debt, preferred stock and common equity.
2. A determination of the average interest rate for contracted indebtedness, commonly referred to as the embedded cost of debt. This average interest rate will make up the debt portion of the capitalization rate.
3. A determination of the average dividend rate of the outstanding preferred stock. This dividend rate will make up the preferred stock portion of the capitalization rate.

4. A determination of the rate of return for common equity; which will make up the equity portion of the cap rate.
5. The application of the determined rate to the various bands of investment to develop the capitalization rate for the average utility.
6. The final step is to assign a risk factor to each type of utility to establish a cap rate for that particular industry.

Attached to this document is an example of the application of these techniques. You will note that the average utility cap rate as computed is 8.75%. We have adjusted this rate to allow for risk as follows:

1. Electric utilities - adjusted to 8.50% because they have lower than average interest rates and better than average earnings stability.
2. Gas distribution utilities - no adjustment made. This group represents the average utility.
3. Pipeline companies - adjusted to 9.00% because they have a higher risk factor than the average utility. Pipelines usually pay a slightly higher rate of interest, and because they do not have a monopoly, as do electric and gas companies, their earnings are less stable.

The agency believes that the amending of the present rules to incorporate these revisions to the current capitalization rates is both reasonable and logical. The major factor causing the proposed changes in the capitalization rates, over those currently in use, is the increase in the interest rates. It is a matter of record that these rates have risen steadily over the past few years.

Interest rates may be advertised which would tend to indicate that our proposed capitalization rates are too low and should be adjusted to even higher levels; however, it must be kept in mind that the interest rates in question are those currently in effect. The income which comprises the income stream is an average of three year's historical income. The capitalization rate proposed by the agency is also based on historical information. It is paramount in appraisal practice to match the correct income stream to the corresponding capitalization rate. In the agency's judgment the rates as now proposed accurately reflect the proper capitalization rate to be applied to the weighted income stream. The combination of these two elements into the income indicator of value will produce an equitable estimate of the worth of a utility. The agency is committed to a policy of review and change, as it witnessed by our introductory statement on page 1 of this document. As economic conditions change, the computation of both the capitalization rate and the income stream may well change. At this time, however, the agency believes the rates as proposed should be adopted.

13MCAR § 1.0003 Valuation F. The agency proposes to delete the existing language of the rules and add expanded language together with a numerical example. The old language addressed specifically the method to be used in the valuation of cooperative associations. Since these associations do not have "profits" in the usual business sense, only the cost indicator of value could be used in the valuation process. The agency has found that there are other types of utility property which are also not operated for profit. A good example of this type of utility is a private pipeline which transports only its own product and does not function as a common carrier. New language has been added to this rule detailing how this type of utility is to be valued.

The agency believes that this proposed language is both reasonable and necessary. It is reasonable because it prescribes that only cost will be used when making valuations of certain types of utility property. Certainly this is reasonable because income cannot be used if the utility has no income to capitalize. The proposed rule is necessary in that it enables the agency to accomplish its task of valuing these utilities.

13MCAR § 1.003 Valuation, G. Obsolescence allowance. This proposal is the most extensive revision to the existing rules. The agency believes that it is an important revision because it deals with an important issue, the energy situation in the United States. The proposal addresses the manner in which a pipeline or a gas distribution company could receive a lower estimated market value through the use of an obsolescence allowance. The agency believes this is a critical area because it is charged with the responsibility of estimating the market value for these properties. It is reasonable to assume that a property would have a lower market value if a prospective buyer knows that in a few years the property's ability to generate income would be greatly diminished. This is the situation that some pipelines are finding themselves in at the present time. The certainty of a continuing source of supply for some pipelines is very unsure and this fact does have a decided impact on their market value. The agency proposes to recognize this fact and discharge its responsibility through the use of obsolescence allowance.

Obsolescence in the valuation process normally takes two forms; functional or economic. Functional obsolescence is a loss in value because of functional deficiencies or inadequacies within the property itself. Normally, functional obsolescence would result from technological changes which result in better and more efficient techniques; however, in the case of a pipeline it could be typified by a pipeline which was constructed of 10 inch pipe in order to handle 1,000,000 barrels of oil and now finds itself restricted to 500,000 barrels of oil. This pipeline appears to be overbuilt and functionally obsolete.

Economic obsolescence is usually defined as a loss in value caused by factors outside the property itself. A prime example of this type of obsolescence has occurred with the Canadian restriction on oil and natural gas exports. This restriction had a definite impact on the earnings and consequent market value of pipelines and gas distribution companies carrying these products. The agency has drawn up a proposal to recognize this shift in value.

The agency's first proposal in this matter is that the utility must meet certain standards or criteria. The agency has done considerable research on these standards and believes that they represent fair and reasonable benchmarks of a company which is faced with obsolescence. The first standard is self explanatory. The second and third standards concern depreciation. The agency believes that so long as the utility is able to lower its cost indicator of value by applying accrued depreciation to its original cost each year it has no need of an additional obsolescence allowance. It is only when a company has reached the maximum of 47.5% depreciation, as specified by 13MCAR 1.0003, C., that a special allowance should be computed.

The agency also believes that if a utility expects to be out of business within the near future, it will take steps to insure that its property is fully depreciated at that time. This is only good business practice, and it insures that the utility must convince a separate regulatory body that it truly does expect to go out of business soon.

The fourth and fifth standards are also only a reflection of common business sense. If a utility is expecting to terminate operations soon, it is reasonable to assume that they would not make major capital investments, or incur any long term debt. If either of these standards have not been met, the utility must explain the rationale for this action to the commissioner. There may be certain circumstances which would offer an explanation for these actions; however, if a reasonable explanation is not offered, the commissioner must assume that the utility is not going out of business, and no allowance for obsolescence will be made.

The agency believes that it is important that these standards be made part of the rules. The intent is not to lower the market value of every pipeline or gas distribution company, but rather to adjust the value of those truly in need of such an adjustment. Only by prescribing specific criteria can the agency make this adjustment in a fair and equitable manner. We believe the standards are reasonable in their concept and necessary to the purpose of this section of the rules. We urge they be adopted as proposed.

If a utility qualifies for an obsolescence allowance, this allowance may take the form of one of three methods proposed by the agency. We have proposed three methods because we foresee different circumstances which would fit one method but not another. For example: one pipeline could be in a situation whereby it was authorized to export 1,000,000 barrels of oil per year until its export permit expired in three years; at which time it could export none. Another pipeline might be faced with decreasing sources of supply: 1,000,000 barrels per year to 900,000, to 800,000, and so on; until final cessation of supply in ten years. Obsolescence allowance method #3 might work best for the first pipeline while method #1 would be more applicable to the latter situation. Each case will be examined, researched and the facts weighed; the commissioner will then determine which of the three methods best suit the situation.

Method 1 would adjust the cost indicator of value in a situation where the utility was experiencing declining throughput. The method is reasonable in both its concept and mathematical application. It accomplishes the desired result of adjusting the utility's market value in certain circumstances.

Method 2 also would lower a utility's market value by lowering the cost indicator of value. It too is simple in its concept and application. It would probably be used in the case of a pipeline which was almost fully depreciated.

Method 3 is a bit more complex in its theory but it follows sound appraisal practice. The method converts the capitalization rate specified in 13MCAR § 1.0003 D from one which assumes that the utility will continue in business indefinitely, to a rate for a specific term of years. The theory of capitalized income indicator of value expresses how much a buyer would pay for a company at the present time in anticipation of future benefits or profits. Obviously, if a buyer believed that a company would continue in business for a long time he would pay more for it than one which had only a few years of viability. Method 3 attempts to measure or recognize this difference.

The agency believes that all the proposed methods are reasonable in their construction, and are a necessary means to accomplish the end of adjusting market values of utilities to allow for obsolescence.

13 MCAR § 1.0003 Valuation 4. Retirements. The agency has proposed new language pertaining to the retirement of utility property. This language has been added to the existing body of the rules in order to protect both the utilities and the taxing districts. The section spells out what constitutes an "in place" retirement of utility property; specifies what takes property out of the utility's system and places it in the category of non-utility property. By specifying the conditions and requirements necessary for this type of retirement the utility company has certain and definite procedures to follow if it wishes to retire its operating property from utility usage while still retaining the physical structure and capability of the property. This will eliminate disagreement over what is, or what is not, retired. If the retirement meets the proposed criteria, the property can be considered to be effectively retired, if the standards are not met and the procedures are not followed, the property will continue to be valued and taxed as operating utility property.

The taxing districts are also protected in that the proposal calls for advance notification of any major retirement. In some instances the value of utility property makes up as much as 90% of the tax base within a community. This notification will put taxing districts on notice of any pending shifts or decreases in the tax base. Tax impacts of this potential magnitude require advance notice and planning. The agency believes that the proposed rule will provide a mechanism to provide this advance notice to impacted taxing districts.

The agency has written the rule in such a form as to make the administrative burden to the utility company as small as possible while still retaining some type of documentation. The agency further has given the utility the option of temporarily retiring a facility in place pending future developments. In these times of critical energy supplies, the agency believes this to be a reasonable and rational attempt to save sources of energy production, internal combustion generating plants for instance, by not imposing a unreasonable tax on these facilities.

It is most important to recognize the fact that the proposed rules do not attempt to exempt any property from taxation; merely to distinguish between utility and non-utility property. The agency believes that the rule is both reasonable in its conception and necessary in its application. We urge that it be adopted as proposed.

13MCAR § 1.0006 Apportionment B. 6. New wording has been proposed to the regulations addressing to the matter of reporting property information for newly created taxing districts. The Legislature in Minn. Stat. § 444.16 through 444.21 gave municipalities the authority to create special storm sewer taxing districts. The advantage of these taxing districts over the impositions of a special assessment is that the municipality does not have to prove that any property is specifically benefited, rather they are able to levy a specified millage on all property within the district.

This situation has caused some reporting problems for the utilities and the proposed language is intended to remedy this situation. The utilities have a difficult time under certain circumstances developing costs by specified area on items of distribution plant such as poles, wires and gas pipes. The proposed language enables the utilities to make estimates of the costs if it is apparent that the development of actual costs would be too burdensome. The mill rate imposed by the special taxing districts is usually limited to less than two mills. Therefore, so long as the estimates are reasonable, no adverse fiscal impact will be felt by either the utilities or the taxing districts.

The agency believes that the adoption of this language is both necessary to eliminate an existing problem area, and reasonable in its concept. We believe that its adoption will benefit taxing districts and utilities alike.

13MCAR § 1.0006 Apportionment C2. The agency has proposed to alter this section by an addition of a schedule which over the period of ten years will equalize all taxing districts utility plant costs for purposes of apportionment at 100% of original cost. The rules now in force have an inconsistency in that the older utility properties are taken into account at something less than 100% of original cost in the apportionment formula; usually 75% of original cost. The newer utility properties; however are taken into account at more than 75%, the newest properties may use as much as 100% of original cost. This fact gives the newer properties a disproportionate share of the unit value of the utility being valued.

The reason for this inconsistency is historical and dates back to the time that the unit value concept was first used to value utility property. At that time, the rules provided that the taxable unit value of a utility would be distributed to the various taxing districts based on the last market value of the utility property within a taxing district. We chose this method when the regulations were first adopted in 1975 for one major reason - stability. One of the agency's primary aims has always been to protect the taxing districts from major fluctuations in value. The use of the last market value basis accomplished this purpose in 1975; changes in value were small, no county varying by more than plus or minus 10% in comparable property from 1974 to 1975.

The agency subsequently made one change in the basis of distribution from the last market value, to the original cost of the property x 75% or the last market value - whichever is greater. We believed that this change was necessary due to the fact that the first system seemed to be creating inequities in the distribution of utility values.

The agency, after studing the way in which this revised apportionment method distributed value is still not convinced that an inequity does not exist. Thus, in keeping with our policy of revising the rules whenever conditions justify a change we are proposing a slightly different apportionment method described in the proposed rules.

The inequity the agency perceives stems from the fact that the older properties, those built prior to 1975, have a market value which is based on depreciated original cost. The method which was employed to value utility property prior to 1975 specified that original cost of each utility's property within a taxing district was to be depreciated 2 1/2% per year for ten years. This produced a maximum of 25% depreciation and a residual value of 75% of original cost. A property having an original cost of $1,000,000 in 1965 would have a market value of $750,000 in 1974. The distribution of the unit value in 1975 would be based on this $750,000 figure not the $1,000,000. The newer properties, those built after 1975, do not have this depreciation factor; therefore, their basis for distribution is larger. A property built in 1979 for $2,000,000 would have as its basis for distribution the total original cost of $2,000,000; no depreciation reduces this cost.

Another factor which further compounds this problem is that of inflation. A utility may have two identical properties; for example electrical substations; both having the same capacity, both having the same function. If these two substations are built ten years apart; one in 1965, one in 1975; not only will the depreciation factor

come into play but inflation will have pushed the cost of the substation built in 1975 to perhaps twice that of the earlier one. Thus, the new property receives an even greater share of the unit value.

In order to attempt to remedy this situation the agency proposes to bring the older properties back to 100% of their original cost over a period of years. The schedule proposed would change the percent of original cost to be used in the apportionment process only 2.5% per year until 100% parity is reached. This narrows the gap between the old and new properties yet it protects the taxing districts by minimizing any drastic shifts in value. The agency believes this change to be a reasonable and equitable method of correcting a problem which experience has brought to our attention.

An important fact to bear in mind is that the unit value concept presupposes that all parts of the unit are equally important in determining the value of the entire entity. One piece of a pipeline is just as important as any other piece if the integrity and completness of the pipeline system is to be maintained. The agency believes this same fact to be true in apportionment as in valuation. All parts of the unit are important and the basis of apportionment should be uniform for all. We believe our proposal to be reasonable, rational and necessary if equity and equality are to be achieved by our apportionment system.

13MCAR § 1.0006 Apportionment E. The agency proposes to take this section out of the existing rules. Note that the statuatory reference cited in the rules, Minn. Stat. § 273.11, Subd. 2, is that portion of the law which referred to limited market values. The 1979 Legislature repealed this provision of the law. The agency proposes to bring the rules into conformity with the current statutes. The agency believes that this proposal is both necessary and reasonable if the rules are to be consistent with the law.

13MCAR § 1.0007 Comprehensive example. The agency is also proposing to delete this narrative together with the entire comprehensive example from a special section of the rules and incorporate the examples into the body of the rules. The examples we have employed throughout the existing rules, have been used only to inform and to illustrate. The examples were never intended to be rules in and of themselves. The agency believes that those persons effected by the rules will be much better served by having the numerical examples in close proximity to the narrative of the rule, rather than having to turn to a special section and search for the appropriate example. We believe this layout is much more reasonable in its design and is necessary if the clarity and readability of the rules is to be improved.

SP:N6

CAPITALIZATION OF AVERAGE UTILITY WORKSHEET

ALL INFORMATION FROM
1980 MOODY'S PUBLIC UTILITY MANUAL: SPECIAL FEATURES SECTION

10 YEAR STUDY - HOW THE AVERAGE UTILITY IS CAPITALIZED

	YEAR	% OF DEBT	% OF PREFERRED	% OF COMMON
ELECTRIC COMPANIES	1970	55.8%	10.9 %	33.3 %
	1971	54.8	11.7	33.5
	1972	53.8	12.4	33.8
	1973	53.8	12.4	33.8
	1974	55.0	12.7	32.3
	1975	53.5	12.8	33.7
	1976	52.5	12.9	34.6
	1977	50.9	13.1	36.1
	1978	50.5	12.9	36.6
	1979	51.4	12.7	35.8
AVERAGE		53.2%	12.5 %	34.4 %
TRANSMISSION COMPANIES	1970	63.2%	7.4 %	29.4 %
	1971	62.1	6.5	31.4
	1972	60.4	6.5	33.0
	1973	60.2	6.3	33.4
	1974	59.6	5.8	34.6
	1975	58.3	5.3	36.4
	1976	55.5	5.5	39.1
	1977	51.9	4.9	43.2
	1978	52.4	5.5	42.1
	1979	52.4	5.3	42.3
AVERAGE		57.6%	5.9 %	36.5 %
DISTRIBUTION COMPANIES	1970	55.9%	9.4 %	34.7 %
	1971	53.6	9.9	36.6
	1972	54.0	9.1	36.9
	1973	53.8	8.5	37.6
	1974	56.0	8.3	35.8
	1975	54.9	8.8	36.4
	1976	53.0	9.4	37.6
	1977	51.0	9.9	39.1
	1978	48.3	10.3	41.3
	1979	47.1	9.8	43.1
AVERAGE		52.8%	9.3 %	37.9 %
ROUNDED AVERAGE OF THREE INDUSTRY AVERAGES		55 %	9 %	36 %

PUBLIC UTILITY STOCK YIELD WORKSHEET

ALL INFORMATION FROM 1980 MOODY'S PUBLIC UTILITY MANUAL: SPECIAL FEATURES SECTION

20 YEAR STUDY
PREFERRED STOCK YIELD

YEAR	YIELD IN %
1960	5.43
1961	5.16
1962	4.63
1963	4.72
1964	4.74
1965	N/A
1966	5.37
1967	6.03
1968	6.44
1969	7.55
1970	9.01
1971	7.74
1972	7.53
1973	7.50
1974	9.95
1975	10.63
1976	9.12
1977	8.43
1978	9.03
1979	9.76
AVERAGE	7.30

10 YEAR STUDY
COMMON STOCK YIELD AND GROWTH IN EARNINGS

YEAR	AVERAGE MARKET PRICE	DIVIDENDS PER SHARE	DIVIDEND YIELD %	EARNINGS PER SHARE	5 YEAR MOVING AV. EARN. PER SHARE	% EARN. PER SHARE INCREASE	INDICATED RATE
1970	$79.06	$4.70	5.94%	$6.89	$6.69	2.92%	8.86%
1971	84.16	4.77	5.67	7.14	6.86	2.54	8.21
1972	80.20	4.87	6.07	7.73	7.07	3.06	9.13
1973	71.21	5.01	7.04	7.55	7.25	2.54	9.58
1974	48.26	4.83	10.01	7.63	7.39	1.93	11.94
1975	51.25	4.97	9.70	7.77	7.56	2.30	12.00
1976	60.10	5.18	8.62	7.86	7.71	1.98	10.60
1977	67.55	5.54	8.20	8.83	7.93	2.85	11.05
1978	63.54	5.81	9.14	8.59	8.16	2.64	11.78
1979	60.28	6.22	10.32	8.95	8.42	3.19	13.51
AVERAGE	$66.56	$5.19	8.07%	$7.90	$7.51	2.62%	10.69%

PUBLIC UTILITY

15 YEAR COST OF MONEY STUDY

YEAR	AVERAGE YIELD ALL UTILITY BONDS	AVERAGE YIELD NEWLY ISSUED UTILITY BONDS	AVERAGE YIELD NEW, GAS, LIGHT, POWER BONDS
1965	4.68%	4.37%	4.61%
1966	5.61	4.97	5.53
1967	6.01	5.35	6.07
19	6.72	6.41	6.80
1969	7.99	7.07	7.98
1970	8.85	8.76	8.79
1971	7.71	7.47	7.70
1972	7.46	7.16	7.50
1973	7.88	7.45	7.91
1974	9.21	8.36	9.59
1975	9.76	8.90	9.97
1976	8.80	9.06	8.92
1977	8.35	8.17	8.43
1978	9.22	9.21	9.30
1979	10.64	10.39	10.85
AVERAGE	7.93%	7.82%	8.00%

AVERAGE OF 3 COST OF MONEY INDICATORS: 7.92%

COMPUTATION OF AVERAGE CAPITALIZATION RATE

1)	AVERAGE UTILITY DEBT COST	7.92%
2)	AVERAGE DEBT % OF CAPITALIZATION	55.00%
3)	WEIGHTED DEBT CAP. RATE FACTOR	4.36%
4)	AVERAGE UTILITY PREFERRED STOCK YIELD	7.30%
5)	AVERAGE PREFERRED STOCK % OF CAPITALIZATION	9.00%
6)	WEIGHTED PREFERRED STOCK CAP. RATE FACTOR	.66%
7)	AVERAGE UTILITY EQUITY RETURN	10.69%
8)	AVERAGE EQUITY % OF CAPITALIZATION	36.00%
9)	WEIGHTED EQUITY CAPITALIZATION RATE FACTOR	3.85%
	AVERAGE UTILITY CAP RATE	8.87%
	IN THE APPRAISAL FIELD IT IS CUSTOMARY TO ROUND CAP RATES; THEREFORE, SAY	8.75%

STEAM PLANTS STUDY

Average Cost Per K.W. of Installed Capacity - 15 Year Study
Source: Steam Electric Plant Construction Cost and Annual Production Expenses
Published by the U. S. Department of Energy

Plant Name	Location	Study Year	Total Cost (000's)	Land (000's)	Cost Less Land (000's)	Mega Watts
Phoenix	AZ	1st	$ 63,337	$ 12	$ 63,325	396.0
Hayded No. 2	CO	1st	97,587	105	97,482	275.4
Manatee	FL	1st	339,810	3,469	336,341	1,726.6
Wansley No. 1	GA	1st	292,350	2,493	289,857	952.0
Duck Creek	IL	1st	208,718	6,755	201,963	416.5
Canal No. 2	MA	1st	122,453	-	122,453	529.6
Sherburne Co.	MN	1st	363,219	835	362,384	1,440.0
Rusn Island	MO	1st	361,808	750	361,058	1,241.0
Southwest	MO	1st	N/R			
Mansfield Br.	PA	1st	794,589	998.5	784,604	1,827.5
Harrington	TX	1st	106,062	193	105,869	360.0
New Haven Har.	CT	2nd	135,782	3,832	131,950	464.6
Gibson	IN	2nd	273,979	2,856	271,123	1,336.0
Rodemacher	LA	2nd	68,587	2,189	66,398	445.5
Waterford	LA	2nd	125,639	2,821	122,818	891.0
Mystic #4 Unit #7	MA	2nd	134,648	-	134,648	617.0
B. F. Cleary	MA	2nd	22,021	167	21,854	110.0
Big Stone #1 #2	SD	2nd	164,455	708	163,747	455.8
Colstrip No. 1	MT	2nd	296,568	3,108	293,460	716.7
Leland Olds No. 2	ND	2nd	105,309	-	105,309	460.0
Miami Fort No. 7	OH	2nd	120,751	1,486	119,265	557.1
West Loraine	OH	2nd	47,183	197	46,986	235.3
Winyah No. 1	SC	2nd	67,346	1,481	65,865	315.0
Columbia #1 #2	WI	2nd	146,567	537	146,030	544.7
Neal #2 #3	IA	2nd	139,013	-	139,013	549.8
Gaston E.C. #5	AL	3rd	166,352	10	166,342	952.0
Navajo	AZ	3rd	657,875	-	657,875	2,409.5
Santan	AZ	3rd	58,808	149	58,659	414.0
Anclote	FL	3rd	101,327	1,037	100,290	556.2

Plant Name	Location	Study Year	Total Cost (000's)	Land (000's)	Cost Less Land (000's)	Mega Watts
Smith Lansing	FL	12th	$ 63,604	$ 204	$ 63,400	2340.0
Branch Haritee	GA	12th	166,866	221	166,645	1,746.2
Coffeen	Il	12th	162,047	727	161,320	1,005.5
Robert Reid	KY	12th	12,527	243	12,284	81.6
Cooper	KY	12th	48,158	533	47,625	344.0
New Boston	MA	12th	78,403	138	78,265	717.7
Ried Gardner	NV	12th	116,203	819	115,384	340.9
Marshall	NC	12th	216,018	777	215,241	2,000.0
Colbert B	AL	12th	80,403	114	80,289	550.0
San Angelo	TX	12th	11,285	55	11,230	133.5
Sim Gideon	TX	12th	50,619	463	50,156	612.0
Mt. Storm	WV	12th	302,873	865	302,008	1,662.5
Apache	AZ	13th	13,236	40	13,196	92.9
Chalk Point	MD	13th	277,948	822	277,126	1,328.6
Neal Nos. 1 & 2	IA	13th	73,895	141	73,754	501.8
Wilkes	TX	13th	59,527	172	59,355	881.5
Sunrise	NV	13th	13,498	88	13,410	81.6
Hudson	NV	13th	210,853	412	210,441	1,114.5
Asheville	NC	13th	55,995	2,168	53,827	413.6
Mooreland	OK	13th	50,824	97	50,727	351.0
Rio Pecos	TX	13th	14,722	73	14,649	141.5
Four Corners	NM	14th	109,259	64	109,195	633.6
Fitzhugh	AR	14th	7,383	62	7,321	59.8
McDonough	GA	14th	72,986	663	72,323	598.4
Marion	IL	14th	21,085	1,036	20,049	99.0
Cimmaron River	KS	14th	9,033	12	9,021	65.0
McPherson	KS	14th	3,564	22	3,542	32.0
Big Sandy	KY	14th	162,534	1,051	161,483	1,096.8
Brayton Point	MA	14th	296,889	806	296,083	1,600.2
Tracy	NV	14th	47,330	410	46,920	238.0
Ravenswood	NY	14th	289,754	3,273	286,481	1,827.7
Paradise A	KY	14th	204,097	416	203,681	1,408.0
Naughton #1	WY	14th	33,540	327	33,213	163.2
Cholla	AZ	15th	27,900	241	27,659	113.6
Haynes	CA	15th	208,610	1,041	207,569	1,606.0
Bailly	IN	15th	96,140	142	95,998	615.6

Plant Name	Location	Study Year	Total Cost (000's)	Land (000's)	Cost Less Land (000's)	Mega Watts
Ghent	KY	3rd	$ 242,104	$ 2,737	$ 239,3678	1,113.3
G. Andrews	MS	3rd	110,441	330	110,111	781.5
Newington	NH	3rd	80,950	404	80,546	414.0
Gilbert	NJ	3rd	81,164	238	80,926	340.2
Roseton	NY	3rd	324,102	605	323,497	1,242.0
Belews Creek	NC	3rd	349,254	14,123	335,131	2,160.0
J. M. Gavins	OH	3rd	583,220	2,712	580,508	2,600.0
Riverside	OK	3rd	107,776	1,248	106,528	945.0
B. M. Davis	TX	3rd	98,711	3,104	95,607	703.8
Ft. Phanton	TX	3rd	47,364	114	47,250	363.6
Huntington #2	UT	3rd	147,955	2,186	145,769	446.4
Jim Bridger	WY	3rd	536,933	1,223	535,710	1,581.5
Monticello	TX	3rd	204,732	5,631	199,101	1,186.8
T. C. Ferguson	TX	3rd	58,029	270	57,759	446.4
Comanche	CO	4th	197,160	207	196,953	778.5
Edge Moor	DE	4th	75,818	-	75,818	446.4
La Cynge	KS	4th	434,990	3,503	431,487	1,578.6
Conesville #4	OH	4th	132,636	69	132,567	841.5
Comanche	OK	4th	31,406	346	31,060	290.0
Brunot Island	PA	4th	74,056	394	73,662	355.9
Williams	SC	4th	94,831	676	94,155	632.7
Cumberland	TN	4th	434,593	2,082	432,511	2,600.0
Station II	KY	4th	71,317	N/R	71,317	360.0
Erickson	MI	4th	33,759	498	33,261	160.0
San Juan	NM	4th	197,608	131	197,477	676.4
Mill Creek	KY	5th	116,906	842	116,064	711.0
Big Lajan	LA	5th	33,639	593	33,046	230.4
New Madrid	MO	5th	143,907	1,123	142,784	650.0
Bowline Point	NY	5th	251,733	1,124	250,609	1,242.0
Montour	PA	5th	258,948	2,837	256,111	1,641.7
O. W. Sommers	TX	5th	92,633	5,364	87,269	892.8
Harrison	WV	5th	390,765	5,423	385,342	2,052.0
Centralia	WA	5th	317,680	1,881	315,799	1,460.0
McClellan	AK	5th	17,285	79	17,206	136.0
Powerton	IL	5th	374,822	3,297	371,525	1,785.6
Mohave	NV	6th	211,815	772	211,043	1,636.2

Plant Name	Location	Study Year	Total Cost (000's)	Land (000's)	Cost Less Land (000's)	Mega Watts
Ormond Beach	WI	6th	$ 180,453	$ 7,563	$ 172,890	1,612.8
A. B. Hepkins	FL	6th	37,347	N/R	37,347	118.3
Bowen	GA	6th	440,093	1,319	438,774	3,498.6
Monroe	MI	6th	589,778	3,443	586,335	3,279.6
Mitchell	WV	6th	249,670	761	248,909	1,632.6
Seminole	OK	6th	154,086	1,653	152,433	1,724.6
E. Joslin	TX	6th	29,723	320	29,403	261.0
Jones	TX	6th	53,953	522	53,431	5,120
[redacted]ighton #3	WY	6th	53,117	-	53,117	326.4
J. E. Amos	WV	6th	521,222	1,832	519,390	2,932.6
Big Brown	TX	6th	153,688	2,333	151,355	1,186.8
Morgontown	MD	7th	198,639	473	198,166	1,251.0
Big Bend	FL	7th	277,375	4,597	272,778	1,336.5
Baldwin	IL	7th	374,551	2,588	371,963	1,892.1
Warrick	IN	7th	36,399	1	36,398	380.0
Cayuga	IN	7th	161,766	425	161,341	1,062.0
Asbury	MO	7th	27,168	125	27,043	212.8
Lewis Creek	TX	7th	56,170	3,205	52,965	542.9
La Bodie	MO	7th	441,919	540	441,379	2,482.0
M. R. Young	ND	7th	43,160	871	42,289	256.5
J. M. Stuart	OH	7th	379,484	1,269	378,215	2,440.8
Cheswick	PA	7th	130,290	1,021	129,269	565.3
Conemauch	PA	7th	238,726	1,338	237,388	1,872.0
Jefferies #3 & #4	SC	7th	43,123	7	43,116	345.6
[redacted]teree	SC	7th	102,211	378	101,832	771.8
[redacted]e Hubbard	TX	7th	82,104	1,710	80,394	927.5
Paradise B	TN	7th	158,813	301	158,512	1,150.2
Tombigbee	AL	8th	14,545	96	14,449	75.0
Four Corners #4 & #5	NM	8th	184,133	44	184,089	1,636.2
F. E. Ratts	IN	8th	43,306	82	43,224	233.2
Coleman	KY	8th	73,704	175	73,529	521.3
Pathfinder	SD	8th	16,392	342	16,050	75.0
W. C. Beckjord	OH	8th	61,434	27	61,407	460.8
Homer City	PA	8th	484,856	3,188	481,668	2,011.5
Hatfield's Ferry	PA	8th	261,542	242	261,300	1,728.0
New Genoa	WI	8th	52,553	376	52,177	345.6

Plant Name	Location	Study Year	Total Cost (000's)	Land (000's)	Cost Less Land (000's)	Mega Watts
Edgewater #4	WI	8th	$ 46,608	$ 266	$ 46,342	351.0
Dallman	IL	9th	N/R			
Prairie Creek	IA	9th	24,588	133	24,455	148.8
Burlington	IA	9th	25,364	81	25,283	212.0
Canal	MA	9th	60,874	236	60,638	542.5
Allen S. King	MN	9th	84,446	566	83,880	598.4
S. E. Corette	MT	9th	21,781	66	21,715	172.8
Fort Churchill	NV	9th	33,783	45	33,738	210.0
R. W. Miller	TX	9th	47,468	44	47,424	391.5
Naughton No. 2	WY	9th	35,744	-	35,744	217.6
Turkey Point	FL	10th	59,264	2,187	57,077	804.1
Kinkaid	IL	10th	161,959	5,796	156,163	1,319.4
Petersburg	IN	10th	403,691	464	403,227	1,298.8
Stanton	ND	10th	24,916	151	24,765	172.0
Sioux	MO	10th	142,688	363	142,325	1,099.6
Maddox	NM	10th	11,597	26	11,571	113.6
Northport	NY	10th	313,709	2,089	311,620	1,548.4
Cardinal Units #1 & #2	OH	10th	480,137	1,372	478,765	1,880.5
Keystone	PA	10th	210,317	4,044	206,273	1,872.0
Bull Run	TN	10th	143,201	2,083	141,118	950.0
Fort Martin	WV	10th	144,888	97	144,971	1,152.0
Carl Bailey	AR	11th	11,055	39	11,016	120.0
Crystal River	FL	11th	107,419	1,688	105,731	964.3
Northside	FL	11th	138,680	367	138,313	1,158.7
Quindaro No. 3	KS	11th	33,052	-	33,052	239.1
B. F. Cleary	MA	11th	4,236	47	4,189	28.3
Baxter Wilson	MS	11th	147,516	411	147,105	1,327.6
Thomas Hill	MO	11th	61,721	40	61,681	470.0
Roxboro	NC	11th	229,586	8,064	221,522	1,813.1
Leland Olds No. 4	ND	11th	35,628	394	35,234	240.0
Grainger #2	SC	11th	N/R			
P. H. Robinson	TX	11th	N/R			
V. H. Braunig	TX	11th	65,336	1,456	63,880	894.0
Greene County	AL	12th	75,010	165	74,845	568.5
Hayden #1	CO	12th	40,032	312	39,720	190.0
Cape Canaveral	FL	12th	58,815	804	58,011	804.1

Plant Name	Location	Study Year	Total Cost (000's)	Land (000's)	Cost Less Land (000's)	Mega Watts
Sabine	TX	15th	$ 139,784	$ 617	$ 139,167	1,543.6
Chas. Crane	MD	15th	71,885	357	71,528	399.8
J. H. Campbell	MI	15th	115,391	1,642	113,749	650.0
B. L. England	NJ	15th	96,579	336	96,243	475.6
Lea County	NM	15th	9,439	62	9,377	56.5
Canady's	SC	15th	66,138	185	65,953	489.6
Valley	TX	15th	N/R	N/R	N/R	N/R
Oak Creek	TX	15th	9,496	89	9,407	81.6
			$26,614,107	$210,421	$26,403,686	150,504.7

15 Year Average Cost Per K.W.: Cost Less Land divided by Mega Watts

$$\frac{26,403,686}{150,504.7} = 175 \text{ per K.W.}$$

SP:N7

DORSEY, WINDHORST, HANNAFORD, WHITNEY & HALLADAY

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OCT 13 1981
ADMINISTRATIVE HEARINGS

October 9, 1981

PHILIP M. CHEN
(612) 340-2991

The Honorable Jon Lunde
Hearing Examiner
Office of Administrative Hearings
Room 3
1745 University Avenue
St. Paul, Minnesota 55104

Re: In the Matter of the Proposed Adoption of Rules of the Department of Revenue Governing Valuation and Assessment of Electric, Gas Distribution, and Pipeline Companies (Utility Companies).

Dear Mr. Examiner:

Attached for your information and filing in the referenced matter are the following original copies of the following:

(1) Notice of Motion and Motion for Continuance;

(2) Memorandum in Support of Motion for Continuance; and

(3) Proposed Order.

The above documents were personally served upon Commissioner Allen, Mr. Garski and Ms. McClung. Affidavits of personal service are also attached herewith.

Very truly yours,



Philip M. Chen

PMC:lap
Attachments
cc: Ms. Diana Skelly, w/o encl.
Harry Chalupsky, Esq. w/o encl.

No. 3114½—Affidavit of Service. S. F. Miller-Davis Co., Minneapolis

State of Minnesota,

County of Hennepin } ss.

Doug Shears, being duly sworn, on oath says: that on the 9th day of October, 19 81, he served the attached Notice of Motion, Motion for Continuance, Memorandum in upon Dorothy A. McClung, Esq. therein named, personally, at Centennial Office Building in the County of Ramsey, State of Minnesota, by handing to and leaving with Dorothy A. McClung, Esq. true and correct copies thereof.

RECEIVED
OCT 13 1981
ADMINISTRATIVE HEARINGS

Subscribed and Sworn to Before Me this 9th day of October, 19 81

KAREN J. FORD
NOTARY PUBLIC—MINNESOTA
WRIGHT COUNTY
My Commission Expires Oct. 28, 1983

Karen J. Ford

Notary Public, County, Minnesota. My commission expires

No. 3114½—Affidavit of Service. S. F. Miller-Davis Co., Minneapolis

State of Minnesota,

County of Hennepin } *ss.*

Doug Shears, *being duly sworn, on oath says: that on the* 9th *day of* October, *19* 81, *he served the attached* Notice of Motion, Motion for Continuance, Memorandum in *upon* The Honorable Clyde E. Allen, Jr. *therein named, personally, at* Centennial Office Building *in the County of* Ramsey, *State of Minnesota, by handing to and leaving with* Dorothy A. McClung, Esq. *true and correct copies thereof.*

RECEIVED
OCT 13 1981
ADMINISTRATIVE HEARINGS

Subscribed and Sworn to Before Me this 9th *day of* October, 81

KAREN J. FORD
NOTARY PUBLIC - MINNESOTA
WRIGHT COUNTY
My Commission Expires Oct. 1983

Notary Public, *County, Minnesota. My commission expires*

No. 3114½—Affidavit of Service. S. F. Miller-Davis Co., Minneapolis

State of Minnesota,

ss.

County of Hennepin

Doug Shears, *being duly sworn, on oath says: that on the* 9th *day of* October, *19* 81, *he served the attached* Notice of Motion, Motion for Continuance, Memorandum in *upon* Mr. G. D. Garski *therein named, personally, at* Centennail Office Building *in the County of* Ramsey, *State of Minnesota, by handing to and leaving with* Dorothy A. McClung, Esq. *true and correct cop* ies *thereof.*

RECEIVED
OCT 29 1981
ADMINISTRATIVE HEARINGS

Subscribed and Sworn to Before Me this 9th *day of* October 19

KAREN J. FORD
NOTARY PUBLIC - MINNESOTA
WRIGHT COUNTY
My Commission Expires Oct. 28, 1983

Notary Public, *County, Minnesota.* *My commission expires*

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OCT 13 1981
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED ADOPTION) OF RULES OF THE DEPARTMENT OF REVENUE) GOVERNING VALUATION AND ASSESSMENT OF) ELECTRIC, GAS DISTRIBUTION, AND) PIPELINE COMPANIES (UTILITY COMPANIES))	NOTICE OF MOTION AND MOTION FOR CONTINUANCE

TO: DEPARTMENT OF REVENUE OR OTHER INTERESTED PARTIES

Please take notice that on October 16, 1981, at 9:00 o'clock a.m. or as soon thereafter as counsel can be heard at the Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota, the undersigned, on behalf of the Township of Bass Brook, Independent School District 318 and Itasca County, will bring a motion before Hearing Examiner Jon Lunde to continue the hearing in the above-entitled matter for at least 14 days.

Dated: October 8, 1981

DORSEY, WINDHORST, HANNAFORD,
WHITNEY & HALLADAY

By _____
William H. Hippee, Jr.
Philip M. Chen

2200 First Bank Place East
Minneapolis, Minnesota 55402
Telephone: (612) 340-2665
(612) 340-2991

Attorneys for Township of
Bass Brook, Independent School
District 318 and Itasca County.

RECEIVED
OCT 13 1981
ADMINISTRATIVE
HEARINGS

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED ADOPTION) OF RULES OF THE DEPARTMENT OF REVENUE) GOVERNING VALUATION AND ASSESSMENT OF) ELECTRIC, GAS DISTRIBUTION, AND) PIPELINE COMPANIES (UTILITY COMPANIES))

MEMORANDUM IN SUPPORT OF MOTION FOR CONTINUANCE

Background

The petitioners have moved for a continuance of the hearing in the above-entitled matter to allow them to receive and evaluate a response to their request for information directed to the Department of Revenue. Only after this evaluation will petitioners be able to effectively prepare evidence for the scheduled hearing and effectively participate therein. If petitioners are unable to effectively prepare their evidence for the scheduled hearing and be allowed to effectively participate in the hearing their rights will be prejudiced.

Argument

The Minnesota Administrative Procedure Act, Minn. Stat. §§ 15.041 et. seq., was adopted to afford participation by affected parties in the decisional and rule-making processes of agencies of the State of Minnesota. One basic thrust of the Act is to prohibit the adoption of any rules "by any agency unless the agency first holds a public hearing thereon, affording all affected interests an opportunity to participate. ..." Minn. Stat. § 15.0412 Subd. 4. In rules promulgated by the chief hearing examiner pursuant to

the power granted in Minn. Stat. § 15.052 Subd. 4 to govern conduct of rule-making hearings, this legislative purpose is reaffirmed. "Interested persons shall be given an opportunity to be heard on the proposed rule and/or to present written evidence." 9 M.C.A.R. § 2.107(I). The rules go on to say that the Hearing Examiner, consistent with law, "shall be authorized to do all things necessary and proper to the performance of the foregoing and to promote justice, fairness and economy" and includes in the broad grant of power to accomplish that end, the power to "[h]ear and rule on objections and motion." 9 M.C.A.R. § 2.107(L). It seems only logical that these powers include the power to hear and grant a motion for continuance in the interests of fairness.

Although 9 M.C.A.R. § 2.102(C)(1) requires a notice of hearing to contain a proposed date for the hearing to be held, it does not require that any such proposed date be considered immutable. The notice is to be filed with the hearing examiner among whose duties include advising "an agency as to the location at which and time during which a hearing should be held so as to follow for participation by all affected interests. ..." Minn. Stat. § 15.052 Subd. 3. Thus, the hearing examiner has the duty to advise the agency that a time certain or place certain does not allow participation by all affected parties. In addition, the duty is clear that the hearing examiner should, where the interests of a full and impartial hearing are warranted, continue the hearing so that all affected parties are allowed to participate.

A parallel situation exists in the rules for a contested case hearing. Those rules elaborate upon the

duties imposed upon the hearing examiner and specifically include the "grant or [denial of] continuances." 9 M.C.A.R. § 2.203(C)(7). Since the powers of the hearing examiner in rule-making are not limited to those enumerated in 9 M.C.A.R. § 2.107(L), there is no reason to believe that in the exercise of "justice, fairness and economy" those powers should not be extended to include the power given in contested case hearings including the power to grant a continuance.

In similar situations, it is undisputed that a trial court may entertain and grant a motion for a continuance in the interest of justice or when necessary to prevent prejudice. See, e.g., Cornfeldt v. Torgen, 262 N.W.2d 684 (Minn. 1977) (continuance deemed proper method to prevent prejudice); Dunshee v. Douglas, 255 N.W.2d 42 (Minn. 1977) (granting of continuance is within the discretion of the trial court); Baker v. Connolly Carthage Corp., 239 Minn. 72, 57 N.W.2d 657 (1953) (absent an abuse of discretion, a grant of continuance will be upheld as within discretion of the trial court). A hearing examiner in a rule-making proceeding has the same interest in justice and fairness as the examiner in a contested case hearing or a trial court. Thus, the powers granted to an examiner in a rule-making hearing, which are not limited to those specifically enumerated in 9 M.C.A.R. §2.107(L), should be interpreted to include a discretionary power to grant a continuance.

Conclusion

It is consistent with the intent of the statutory language and the rules promulgated thereunder, that a hearing examiner, in the interest of fairness and justice, shall

have the power to grant a continuance or otherwise adjourn from time to time a rule-making hearing. In a case where the denial of such a continuance would hamper the effective exercise of an affected party's right to participate, it is clearly within the scope of an examiner's power to grant a motion for continuance. Granting adequate time for preparation of a presentation at a hearing, where necessary information is not yet available to a party, is an important factor in allowing for participation of affected persons and insuring a fair, complete, and impartial hearing. Accordingly, petitioners request that the hearing examiner carry out this legislative mandate and grant a continuance in this matter.

Dated: October 8, 1981

DORSEY, WINDHORST, HANNAFORD,
WHITNEY & HALLADAY

By _____
William H. Hippee, Jr.
Philip M. Chen

2200 First Bank Place East
Minneapolis, Minnesota 55402
Telephone: (612) 340-2665
(612) 340-2991

Attorneys for Township of
Bass Brook, Independent School
District 318 and Itasca County.

RECEIVED
OCT 13 1981
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED ADOPTION) OF RULES OF THE DEPARTMENT OF REVENUE) GOVERNING VALUATION AND ASSESSMENT OF) ELECTRIC, GAS DISTRIBUTION, AND) PIPELINE COMPANIES (UTILITY COMPANIES))

ORDER FOR CONTINUANCE

WHEREAS, the Township of Bass Brook Independent School District 318, and Itasca County moved a continuance of the hearing in the above-entitled matter; and

WHEREAS, these petitioners are awaiting a reply on a request for information directed to the Department of Revenue, which reply will be influential in determining petitioners' positions on issues to be raised in the above-entitled hearing; and

WHEREAS, Minn. Stat. § 15.0412 Subd. 4 (1980) provides that all affected persons shall be afforded an opportunity to participate; and

WHEREAS, without such continuance, petitioners' opportunity for effective participation will be severely curtailed; and

WHEREAS, Minn. Stat. § 15.052 Subd. 3 makes it the duty of the hearing examiner to see to it that "all hearings are conducted in a fair and impartial manner ...;" and

WHEREAS, it appears that a continuance will best accomplish the purpose of insuring effective participation by all affected parties.

NOW, THEREFORE, it is ORDERED that the hearing in the above-entitled matter be continued until _____.

Dated: October _____, 1981

_____
Hearing Examiner

MOVANTS EX. A

File

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PHILIP M. CHEN
(612) 340-2991

October 14, 1981

Mr. Gerald D. Garski, Manager
State Assessed Properties
State of Minnesota
Department of Revenue
2nd Floor, Centennial Office Building
St. Paul, Minnesota 55145

Re: Department of Revenue Rulemaking -
"Valuation and Assessment of Electric,
Gas Distribution and Pipeline Companies"

Dear Mr. Garski:

In your September 29, 1981, letter you requested more information on the hypothetical contained in my September 24, 1981, letter to you. I do not agree that answers to all the questions in your September 29, 1981, letter are necessary in order to respond to my request concerning the effect "additional valuation from average cost per K.W." would have on two districts, one with a new plant and one with an old plant. Nevertheless, I have endeavored to provide answers to your questions.

HYPOTHETICAL

For the sake of clarity, my hypothetical answers are numbered the same as your questions in the letter dated September 29, 1981.

Question No. 1: See attachment A.

Question No. 2: See attachment B.

Question No. 3: Net Revenue

1978	$ 19,211,000
1979	15,551,000
1980	29,280,000

Question No. 4: Intrastate Only.

Question No. 5: See attachment A.

Question No. 6: See attachment A.

Question No. 7: None.

Question No. 8: Market Value - 90% for depreciable property and 100% for land and land rights.

Finally, as we are only interested at this time in determining the "Portion of Minnesota Adjusted Unit Value" or "New Market Value" each taxing district would expect under either hypothetical in my letter of September 24, 1981, it is not necessary to include information on the tax base, budgets or levy limits of each of the two hypothetical taxing districts. Simply stated, we wish to determine the effect the "additional value based on average cost per KW" as stated in the existing rule has on the valuation figures each hypothetical taxing district would receive from your office for hypotheticals (a) where the "additional value" is added to the older plant, and (b) where the "additional value" is not added to the older plant.

VALUATION OF MINNESOTA POWER & LIGHT AD VALOREM TAXES

In addition to providing me with the information requested in my September 24, 1981, letter, please provide the following information on the valuation of Minnesota Power and Light ("MP&L") for each assessement year since 1974 to present:

1. Determination of Additional Value.

   (a) Identify each MP&L Plant.
   (b) Installed capacity of each Plant.
   (c) Year in Service of each Plant.
   (d) Cost of Plant.
   (e) Cost per KW.
   (f) Average cost per KW used in calculating additional value.
   (g) Excess of average cost per KW over actual cost per KW.

(h) Additional value added per Plant.
(i) Cost indication of value weighting factor applied to each Plant.

2. Computation of Unit Value.

(a) Utility Plant cost.
(b) Construction in progress.
(c) Additional Value from average cost per KW.
(d) Total Plant.
(e) Non-Depreciable Plant (Land, Intangibles, CWIP).
(f) Depreciable Plant.
(g) Depreciation.
(h) Maximum depreciation rate used.
(i) Total Depreciated Plant Plus Non-Depreciable Plant.
(j) Net Operating Income
(k) Capitalized Income and rate.
(l) 3 year Total Capitalized Income.
(m) 3 year Average Capitalized Income.
(n) Total Depreciated Plant and weighting factor used.
(o) 3 year Average Capitalized Income and weighting factor used.
(p) Market.
(q) Unit Value.

3. Allocation of Unit Valuation of Electric Company to Minnesota.

(a) Utility Plant System.
(b) Construction Work in Progress.
(c) Total Utility Plant System.
(d) Utility Plant Minnesota.
(e) Construction Work in Progress Minnesota.
(f) Total Utility Plant Minnesota.
(g) Minnesota Plant to System Plant.
(h) Minnesota Weighted % Original Cost.
(i) Weighting Factor.
(j) Gross Revenue System.
(k) Gross Revenue Minnesota.
(l) Minnesota Revenue to System Revenue.
(m) Weighting Factor.
(n) Minnesota Weighted % Revenue.
(o) Total Minnesota Percent.
(p) Unit Value.
(q) Minnesota Portion of Unit Value.

4. Computation of Apportionable Value of Utility Company.

   (a) Minnesota Portion of Unit Value.
   (b) Excludable Items:
      (i) Land Assessed Locally.
      (ii) Land Rights.
      (iii) General Plant Item.
      (iv) Pollution Control Equipment.
      (v) Less Depreciation.
      (vi) Depreciation rate.
      (vii) Net General Plant & Pollution Control Items.
      (viii) Total Excludable Items.

5. Apportionment to Local Taxing Districts by District.

   (a) Last Limited Market Value.
      (i) Structures.
      (ii) Machinery.
      (iii) Personal Property.
      (iv) Total.

   (b) Additions Including Construction in Progress at Original Cost.
   (c) Retirements at Last Limited Market Value (Machinery).
   (d) Additional Value due to Average Cost per KW Computation less depreciation.
   (e) Depreciation rate.
   (f) Updated District Total.
   (g) Percent of Total per Taxing district.
   (h) Portion of Minnesota Adjusted Unit Value by Taxing District.
   (i) New Market Value by Taxing District.
      (i) Structures.
      (ii) Machinery.
      (iii) Personal Property.
      (iv) Total.

DEFINITION OF REAL AND PERSONAL PROPERTY

Please provide the definitions of real property and personal property used by your office as they relate to electric light and power companies. Also provide examples of each category. For example, are steam generation and turbo-generating systems considered as personal property or as improvements to real property for purposes of determining unit value, allocable value or apportionable value?

SELECTION OF ALTERNATIVE METHODS
FOR DETERMINING MARKET VALUE

Under the existing rules stated in 13 M.C.A.R. § 1.0006(c), two alternatives for determining market value of utility property are given. Is the selection of one method over the other method made for the state as a whole or is the selection made on a district by district basis? If the selection of one or the other method is made on a district by district basis, how does the Department of Revenue correlate the district by district determinations so that they add up to no more than 100%? Would not the use of a district by district selection result in a sum of market values for utility property that is greater than Minnesota's allocation of the utility's unit value?

As used in Example 5 in the existing comprehensive example stated in 13 M.C.A.R. § 1.0007, does the "new market value" (line 8) become the "last market value" (line 1) in the next following year?

KILOWATT ADJUSTMENT

We fail to find authority in the text of the existing regulation for the adjustment entitled "additional value from average cost per K.W." in line 4 of example 5, when market value is computed through the use of alternative 1 in 13 M.C.A.R. § 1.0006(c). What is the regulatory basis for this adjustment?

PROPOSED AMENDMENT OF ALTERNATIVE 2

In the proposed amendment to alternative 2 of 13 M.C.A.R. § 1.0006(c), an adjustment for the average cost per Kilowatt is made. Does this proposal represent a change from how the computation is presently made under the existing rule or is it a codification of existing department practices in computing alternative 2 of 13 M.C.A.R. § 1.0006(c)?

Please provide a calculation of Example 5 in 13 M.C.A.R. § 1.0007 using alternative 2 in 13 M.C.A.R. § 1.0006(c) rather than alternative 1 in 13 M.C.A.R. § 1.0006(c) (which is used in the present example in regulations).

Since the above information is needed by my clients to formulate a position in the upcoming rulemaking hearings, your immediate attention would be appreciated.

October 14, 1981

If you have any questions regarding this request, please contact me immediately.

Very truly yours,

Philip M. Chen

PMC:lap
Attachment

cc: Ms. Diana Skelly (w/encl.)
Henry Chalupsky, Esq. (w/encl.)

bcc: John W. Windhorst, Jr., Esq., w/encl.

ATTACHMENT A

ELECTRIC PLANT IN SERVICE
DECEMBER 31, 1980

	Plant A	Plant B	Total
Steam Production Plant			
Land & Land Rights	100,000	12,500	112,500
Depreciation Plant less Pollution Control Equip.	135,900,000	39,987,500	175,887,500
Pollution Control Equip.	4,000,000	--	4,000,000
	140,000,000	40,000,000	$180,000,000
Transmission Plant			
Land & Land Rights			300,000
Depreciable Plant			79,900,000
			$80,200,000
Distribution Plant			
Land & Land Rights			126,000
Depreciable Plant			90,174,000
			$90,300,000
General Plant			
Land & Land Rights			283,000
Structures & Improvements			7,520,000
Other Depreciable Plant			9,697,000
			$17,500,000
TOTAL UTILITY PLANT IN SERVICE			$ 368,000,000
Construction Work in Progress			20,900,000
TOTAL			$ 388,900,000
Accumulated Provision for Depreciation and Amortization			59,740,000
NET TOTAL UTILITY PLANT			$ 329,160,000

ATTACHMENT B

ACCUMULATED PROVISION FOR DEPRECIATION
AND AMORTIZATION
DECEMBER 31, 1980

	Plant A	Plant B	Total
Steam Production Plant			
Depreciable Plant Less Pollution Control Equip.	$4,077,000	$14,260,000	$18,337,000
Pollution Control Equip.	120,000	--	120,000
	$4,197,000	$14,260,000	$18,457,000
Transmission Plant			
Depreciable Plant			$13,270,000
Distribution Plant			
Depreciable Plant			$21,310,000
General Plant			
Structures & Improvements			2,825,000
Other Depreciable Plant			3,878,000
			$ 6,703,000
TOTAL ACCUMULATED PROVISION FOR DEPRECIATION AND AMORTIZATION			$59,740,000

DORSEY, WINDHORST, HANNAFORD, WHITNEY & HALLADAY

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October 2, 1981

PHILIP M. CHEN
(612) 340-2991

Mr. Gerald D. Garski
Manager
State Assessed Properties
Property Equalization Division
State of Minnesota
Department of Revenue
St. Paul, Minnesota 55145

Re: Department of Revenue Rulemaking - "Valuation" and Assessment of Electric, Gas Distribution and Pipeline Companies."

Dear Mr. Garski:

Thank you for your letter of September 29, 1981, requesting more information about the hypothetical contained in my letter of September 24, 1981. Although I am not convinced that all your requests are necessary to answer my request for information, I will attempt to gather the necessary information. Since it would be impossible for me to have answers for your questions by October 5, 1981, a meeting on that date would not be meaningful. I hope to have the information you requested sometime early in the week of October 5, 1981.

Very truly yours,

Philip M. Chen

PMC:lap
cc: Ms. Diana Skelly
Harry Chalupsky, Esq.

STATE OF MINNESOTA
DEPARTMENT OF REVENUE
CENTENNIAL OFFICE BUILDING
SAINT PAUL, MINNESOTA 55145
PHONE: (612) 296-5134

September 29, 1981

Mr. Philip M. Chen
Dorsey, Windhorst, Hannaford,
Whitney & Halladay
2200 First Bank Place East
Minneapolis, Minnesota 55402

Dear Mr. Chen:

Reference is made to your letter of September 24, 1981 wherein you request certain information from the Department relative to the tax impact on two taxing districts having major electric generating plants located within their boundaries.

In order to provide the information you request, we must have additional data. Since your request speaks to the difference in tax revenues, we must know the tax base and budgets of each of the two hypothetical taxing districts and, are there any levy limit implications in your proposed scenarios? In addition, the following questions should be answered:

1. Does the utility in question have any other assets? If so, what is the original cost of these assets?
2. What is the utility's book depreciation?
3. What were the utility's net operating revenues for the most recent three years?
4. Did the utility operate in any other states besides Minnesota? If so, what amount of the plant investment and gross operating revenues were in these other states?
5. What is the original cost of the land these two plants are built upon?
6. What is the amount of the pollution control equipment installed in each of the plants?
7. What is the amount of non-utility system personal property at each of the plant sites?
8. What is the last market value of each of the two plants?

As you can see, there is a great deal of additional data needed by our office before we can supply you with any meaningful estimates. Perhaps

it would be best for you to visit our office at your earliest convenience so that we could discuss your request at length. Any time Monday, October 5, 1981 would be open on my calendar.

Please feel free to call our office if you have any further questions.

Very truly yours,

G. D. Garski

GERALD D. GARSKI, Manager
State Assessed Properties
Property Equalization Division

GDG:vh

DORSEY, WINDHORST, HANNAFORD, WHITNEY & HALLADAY

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TEL: (1) 562-32-50

September 24, 1981

PHILIP M. CHEN
(612) 340-2991

Mr. Gerald D. Garski
Minnesota Department of Revenue
Centennial Office Building
St. Paul, Minnesota 55145

Re: Department of Revenue Rulemaking - "Valuation and Assessment of Electric, Gas Distribution and Pipeline Companies."

Dear Mr. Garski:

Thank you for the information concerning apportionment that was sent to me on June 29, 1981. Based on my review of this information, I believe that more information is needed.

Specifically, my clients question the practice of apportioning the "unit value" of utility property amongst the various taxing districts in which such property is situated. I understand your method of apportionment to comprise of three steps. The first step is valuation of all property owned by a utility regardless of where such property is located. The second step comprises of valuating such property that may be situated in the State of Minnesota irrespective of its intra-state location and establishing the state's "allocation" of the first "unit value." Finally, each taxing district valuates the property of the utility that is located with its boundaries, adding on a increment of value for older plants based upon available capacity as a function of average cost per kilowatt installed capacity. This valuation of property for each taxing district is then used to determine apportionment of revenues derived from Minnesota's allocation of the utility's total assessable "unit value."

Could you please provide information and/or calculations that would demonstrate how the relative tax revenues of two taxing districts would differ in the following hypotheticals:

	Plant A located in District A	Plant B located in District B
Capacity Installation	100 MW	100 MW
Date	1980	1960
Original Cost Installed	$140,000,000	$40,000,000

(A) Without an increment for available capacity based on an average cost per kilowatt.

(B) With an increment for available capacity based on an average cost per kilowatt.

Thank you for your assistance in this matter. Please contact me if you have any questions regarding this request for information.

Very truly yours,

Philip M. Chen

PMC:lap
cc: Ms. Diana Skelly
Harry Chalupsky, Esq.

bcc: William Hippee, Esq.

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ADMINISTRATION

Office Memorandum

RECEIVED
OCT 7 1981
ADMINISTRATIVE HEARINGS

TO : Judy Carling

DATE: August 26, 1981

FROM : Karen Boudin

PHONE: 296-6401

SUBJECT: Confirmation of Conference Room Scheduled

This is to confirm that the conference room at 500 Rice St. has been reserved for the Dept. of Revenue, from 10 AM to 4 PM on November 4, 1981.

Agency Exh. No. 15
File No. DR-82-004-JL
Date 11/4/81

ADMIN 1000

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Property Equalization

RECEIVED
OCT 7 1981
ADMINISTRATIVE HEARINGS

DATE: October 7, 1981

TO : Jon Lunde
Hearing Office
Office of Administrative Hearings

FROM : G. D. Garski
Manager of State Assessed Property
Department of Revenue

PHONE: 296-5131

SUBJECT: Documents for November 4, 1981 Hearings.

Attached please find the following material:

1. Copy of State Register Volume 6, Number 14.
2. Order for Hearing.
3. Notice of Hearing as mailed.
4. Certificate of completness and accuracy.
5. Affidavit of mailing.
6. Copy of mailing slips.
7. Names of Agency personnel who will be present at the Hearing.
8. Confirmation of conference room.
9. Notice of intent to solicit outside opinions.
10. Materials submitted following the notice to solicit outside opinions.

GDG:dlp

Agency Exh. No. 8
File No. DR-82-004-JL
Date 11/4/81

ADMIN 1000

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Property Equalization

TO : Jon Lunde
Hearing Office
Office of Administrative Hearings

DATE: October 7, 1981

FROM : G. D. Garski
Manager of State Assessed Property
Department of Revenue

PHONE: 296-5131

SUBJECT: November 4, 1981 Hearing.

The following Agency personnel will appear at this hearing:
Dorothy McClung - Department Research Attorney
Lyle Ask - Director of Property Equalization
Gerald Garski - Manager of State Assessed Property

GDG:dlp

RECEIVED
OCT 7 1981
ADMINISTRATIVE HEARINGS

Agency Exh. No. 14
File No. DR-82-004-SC
Date 11/4/81

DR-82-004-JL

RECEIVED
NOV 11 1981
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF)
OF THE DEPARTMENT OF REVENUE GOVERNING THE Utility)
AD VALOREM (PROPERTY) TAXES IMPOSED ON ~~RAILROAD~~)
COMPANIES)

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing will be held pursuant to Minnesota Statutes section 15.0412, subdivision 4, in the above-entitled matter in the Conference Room, 500 Rice Street, St. Paul, Minnesota on November 4, 1981, commencing at 10:00 A.M. and continuing until all persons or representatives of associations or other interested groups 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 Office of Hearing Examiner, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, (612) 296-6910, either before the hearing or within five working days after the close of the hearing. The Hearing Examiner may extend this time limit for a longer period; however, the extension cannot exceed 20 calendar days.

5938

The proposed rules if adopted will effectively amend the current rules of the Department of Revenue relating to ad valorem (property) taxes imposed on utilities. The present rules deal generally with the valuation, allocation and apportionment of property of electric, gas distribution, pipeline and cooperative electric companies. The proposed rules if adopted would: define certain terms; require utilities to report the cost of leased property; modify the cost approach to value by allowing electric companies an additional 1% depreciation, and gas distribution and pipeline companies an additional 2½% depreciation on the original cost of the companies' assets; increase the study period to be used when computing the "average cost per kilowatt of installed capacity" for steam and gas turbine generating plants; permit an allowance for pollution control equipment and an allowance for obsolescence to be deducted from the value added to the cost approach to value due to the computation of the "average cost per kilowatt of installed capacity" factor; detail the computation of these two allowances; modify the income approach to value by increasing the capitalization rate by .5%; specify the types of utilities that are to be valued on a "cost only" method; provide for the utilization of "obsolescence allowances" if a utility meets certain standards and detail the methods to be used to calculate these allowances; specify certain standards to be met by utilities in the retirement of property; require a utility to report certain information on property costs whenever a new taxing district is established; modify the base to be used for the apportionment of utility property to the various taxing districts; and eliminate the example section of the rules while incorporating the examples into the body of the rules.

One free copy of this Notice and the proposed rules may be obtained by writing to G. D. Garski, Manager of State Assessed Property, Property Equalization Division, Second Floor, Centennial Office Building, Saint Paul, Minnesota 55145, telephone (612) 296-5131. Additional copies will be available at the door on the date of the hearing.

The agency's authority to promulgate the proposed rules is contained in Minnesota Statutes 270.06 and 270.11, Subdivisions 1 and 6.

NOTICE IS HEREBY GIVEN that 25 days prior to the hearing a statement of need and reasonableness will be available for review at the agency and at the Office of

Agency Exh. No. 2
File No. DR-82-004-JL
Date 11/4/81

Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the statement of need and reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

NOTICE: The proposed rule is subject to change as a result of the rule hearing process. The Agency therefore strongly urges those who are potentially affected in any manner by the substance of the proposed rule to participate in the rule hearing process.

Please be advised that Minnesota Statutes Chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes section 10A.01, subdivision 11 (Supp. 1979) as any individual:

(a) Engaged for pay or other consideration, or authorized by another indifidual or association to spend money, who spends more than five hours in any month or more than $250.00, 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 $250.00, 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.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 40 State Office Building, Saint Paul, Minnesota, 55155, telephone (612) 296-5615.

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).

Dated: _____

_____
Clyde E. Allen, Jr.
Commissioner of Revenue

RECEIVED
SEP 11 1981
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of Rules of the State of Minnesota, Department of Revenue Governing the Valuation and Assessment of Electric, Gas Distribution, and Pipeline Companies (Utility Companies)

ORDER FOR HEARING

IT IS ORDERED this 31st day of August, 1981, that a public hearing on the proposed rules captioned above be held in the Conference Room at 500 Rice Street, St. Paul, Minnesota on November 4, 1981, commencing at 10:00 A.M. and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all persons who have registered their names with the State Department of Revenue for that purpose and be published in the State Register.

STATE OF MINNESOTA

_____

Commissioner of Revenue

Agency Exh. No. 3
File No. DR-82-004-JL
Date 11/4/81

SF-00006-01

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT REVENUE

TO : JON LUNDE
Office of Administrative Hearings

DATE: September 17, 1981

FROM : DOROTHY A. McCLUNG
Director of Legal Research

PHONE: 6-1022

SUBJECT: UTILITY VALUATION RULES

RECEIVED
SEP 22 1981
ADMINISTRATIVE HEARINGS

After talking to George Beck, we revised the Notice of Hearing. The corrected Notice is attached. Please note that the title of hearing was incorrect on the original Notice. This is a utility valuation hearing--not a railroad valuation hearing. Also enclosed is the encumbering document.

DAM:dlw
Enclosures

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

RECEIVED
SEP 22 1981
ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Adoption of Rules of the State of Minnesota, Department of Revenue Governing the Valuation and Assessment of Electric, Gas Distribution, and Pipeline Companies (Utility Companies)

ORDER FOR HEARING

IT IS ORDERED this 31st day of August, 1981, that a public hearing on the proposed rules captioned above be held in the Conference Room at 500 Rice Street, St. Paul, Minnesota on November 4, 1981, commencing at 10:00 A.M. and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all persons who have registered their names with the State Department of Revenue for that purpose and be published in the State Register.

STATE OF MINNESOTA

Clyde E. Allen Jr.

Commissioner of Revenue

STATE OF MINNESOTA

REQUEST FOR HEARING EXAMINERS SERVICE

Trn. No.	Acct. ID	Dept./Div.	F.Y.	Req. No.	Vendor Number	Type	Source	S. Act.	Task	Sub. Task
A4 0	924548	67120	2	07012	063 3890 002	V		112		311

Cost/Client Code	Amount	Suffix	Object	
	2000.00	01	169	$END

FOR TERMINAL OPERATOR USE ONLY

Encumbrance Present Balance _____
Amount Increase (Decrease) _____
New Balance & Amount of Entry 2,000.00

Type of Transaction: ☒ A40 ☐ A41 091181 (Date) 04380 (Tran. No.) Entered by _____

ACCOUNTING INSTRUCTIONS:

1. This is an encumbering document.
2. Establish an automatic encumbrance in the 1 group coded for purchased services for each notice of hearing.
3. One copy of this form must accompany the notice of hearing (No finance copy is necessary)
4. Charges will be processed monthly by A68 transactions.

RECEIVED
SEP 22 1981
ADMINISTRATIVE HEARINGS

DEPARTMENT Revenue

DIVISION Legal Research

HEARING LOCATION 500 Rice St.

DATE AND TIME 10:00 AM Nov 4

CASE TITLE Rules Governing Valuation of Utility Property

EXPLANATION (if necessary)

Authorization is hereby given to incur this service for the fiscal year coded. Dorothy A McClung — Authorized Signature — Date 9/11/81

Adm. Form 1060 (Rev. 9/77)

PUBLIC HEARING
ORAL STATEMENT

THROUGH THE DEVELOPMENT OF THESE PROPOSED RULES OUR AGENCY HAS BEEN OPEN AND CANDID ABOUT PROPOSED CHANGES. THE FACT THAT FOUR OPEN FORUM TYPE MEETINGS WERE HELD IS A GOOD INDICATION THAT THE RULES WERE NOT DEVELOPED UNILATERALLY, BUT WITH AS MUCH INPUT AS COULD BE ENCOURAGED. ALL OF THESE MEETINGS WERE OPEN TO ANY AND ALL INTERESTED PARTIES. ANY IDEAS AND SUGGESTIONS WHICH WERE OFFERED WERE DULY CONSIDERED BY THE AGENCY.

SOME OF THE CONCEPTS CONTAINED IN THESE PROPOSED RULES HAVE BEEN DEVELOPED AS A DIRECT RESULT OF INFORMATION OFFERED BY PARTIES OUTSIDE THE AGENCY. WE BELIEVE WE ARE DUTY BOUND TO WEIGH ALL SUGGESTIONS FROM INTERESTED PARTIES.

DRAFTS OF THE REVISED RULES TOGETHER WITH CERTAIN NUMERICAL EXAMPLES WERE AVAILABLE TO INTERESTED PARTIES THROUGHOUT THE DEVELOPMENT PERIOD.

THE AGENCY HAS ATTEMPTED TO ANSWER ANY AND ALL QUESTIONS WITHIN ITS CAPABILITY.

THE END RESULT OF THIS WORK IS A VALUATION METHOD WHICH THE AGENCY BELIEVES WILL VALUE UTILITIES FAIRLY AND EQUITABLY. WHILE IT IS POSSIBLE TO COMPARE CERTAIN PARTS OR SECTIONS OF THE VALUATION METHOD WITH THOSE METHODS IN USE BY OTHER STATES AND FIND DIFFERENCES, IT MUST BE KEPT IN MIND THAT THE FINAL RESULT, THE ESTIMATED MARKET VALUE, IS THE ONLY PROPER BASIS OF COMPARISON. ALL OTHER POINTS ARE MERELY MEANS TO AN END. IF THE ESTIMATED MARKET VALUE IS CORRECT, THEN THE

METHOD IS VIABLE AND SHOULD BE APPROVED.

IT IS NOT POSSIBLE TO UNDERTAKE A PROJECT OF THIS SCOPE AND EXPECT THAT THE FINAL RESULT WILL BE ALL THINGS TO ALL PEOPLE. THERE ARE TAXING AUTHORITIES AND UTILITIES WHICH WOULD LIKE TO SEE THE EXISTING AND PROPOSED RULES REVISED IN CERTAIN AREAS; HOWEVER, THESE ARE SPECIAL INTERESTS WHICH ARE DIFFICULT IF NOT IMPOSSIBLE TO SATISFY. THE GENERAL CONSENSUS AMONGST THE INTERESTED PARTIES IS THAT THE PROPOSED RULES APPEAR TO BE THE BEST SOLUTION AT THIS TIME, IN DEVISING A WORKING FORMULA FOR THE VALUATION AND ASSESSMENT OF UTILITIES, WE STRONGLY URGE THAT THEY BE ADOPTED AS PROPOSED.

RECEIVED
SEP 22 1981
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF)
THE DEPARTMENT OF REVENUE GOVERNING VALUATION AND) NOTICE OF HEARING
ASSESSMENT OF ELECTRIC, GAS DISTRIBUTION, AND)
PIPELINE COMPANIES (UTILITY COMPANIES))

NOTICE IS HEREBY GIVEN that a public hearing will be held pursuant to Minnesota Statutes, § 15.0412, Subdivision 4, in the above-entitled matter in the Conference Room, 500 Rice Street, St. Paul, Minnesota on November 4, 1981, commencing at 10 a.m. and continuing until all persons or representatives of associations or other interested groups 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 Jon Lunde, Office of Administrative Hearings, Room 300, 1745 University Avenue, Saint Paul, Minnesota, 55104, telephone (612) 296-5938, either before the hearing or within five working days after the close of the hearing. The Hearing Examiner may extend this time limit for a longer period; however, the extension cannot exceed 20 calendar days.

The rule hearing procedure is governed by Minnesota Statutes, §§ 15.0411 to 15.0417 and 15.052, and by 9 MCAR §§ 2.101 to 2.113 (Minnesota Code of Agency Rules). Any questions about procedure may be directed to the Hearing Examiner, Jon Lunde.

The proposed rules if adopted will effectively amend the current rules of the Department of Revenue relating to ad valorem (property) taxes imposed on utilities. The present rules deal generally with the valuation, allocation and apportionment of property of electric, gas distribution, pipeline and cooperative electric companies. The proposed rules if adopted would: define certain terms; require utilities to report the cost of leased property; modify the cost approach to value by allowing electric companies an additional 1% depreciation, and gas distribution and pipeline companies an additional 2 1/2% depreciation on the original cost of the companies' assets; increase the study period to be used when computing the "average cost per kilowatt of installed capacity" for steam and gas turbine generating plants; permit an allowance for pollution control equipment and an allowance for obsolescence to be conducted from the value added to the cost approach to value due to the computation of the "average cost per kilowatt of installed capacity" factor; detail the computation of these two allowances; modify the income approach to value by increasing the capitalization rate by 0.5%; specify the types of utilities that are to be valued on a "cost only" method; provide for the utilization of "obsolescence allowances" if a utility meets certain standards and detail the methods to be used to calculate these allowances; specify certain standards to be met by utilites in the retirement of property; require a utility to report certain information on property costs whenever a new taxing district is established; modify the base to be used for the apportionment of utility property to the various taxing districts; and eliminate the example section of the rules while incorporating the examples into the body of the rules.

One free copy of this Notice and the proposed rules may be obtained by writing to G. D. Garski, Manager of State Assessed Property, Property Equalization Division, Second Floor, Centennial Office Building, Saint Paul, Minnesota, 55145, telephone (612) 296-5131. Additional copies will be available at the door on the date of the hearing.

The agency's authority to promulgate the proposed rules is contained in Minnesota Statutes §§ 270.06 and 270.11, Subdivisions 1 and 6.

NOTICE IS HEREBY GIVEN that 25 days prior to the hearing, a statement of need and reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the statement of need and reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

NOTICE: The proposed rule is subject to change as a result of the rule hearing process. The Agency therefore strongly urges those who are potentially affected in any manner by the substance of the proposed rule to participate in the rule hearing process.

Please be advised that Minnesota Statutes, Chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, § 10A.01, Subdivision 11 (Supp. 1979) as 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 $250, 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.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 40 State Office Building, Saint Paul, Minnesota, 55155, telephone (612) 296-5615.

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).

Dated: Sept. 18, 1981

Clyde E. Allen Jr.

CLYDE E. ALLEN, JR.
Commissioner of Revenue

RECEIVED
OCT. 6 1981
ADMINISTRATIVE HEARINGS

State of Minnesota
Department of Revenue

In the Matter of the Proposed Rules of the Department of Revenue Governing the Valuation and Assessment of Electric, Gas Distribution and Pipeline Companies (Utility Companies)

Statement of Need and Reasonableness

The above-captioned rules are being proposed in order to update and revise the current Rules and Regulations of the Department of Revenue Relating to Ad Valorem (Property) Taxes. The current rules have been in effect since 1975. They have been revised twice. Once in 1976, and once in 1979; however, it is the announced intention of the Department of Revenue to revise the rules whenever conditions, economic or otherwise, dictate a need for revision. This intention is clearly expressed in 13MCAR § 1.0001, Introduction, of the current rules, "The methods, procedures, indicators of value, capitalization rates, weighting percents, and allocation factors will be used as described in 13MCAR §§ 1.0003 - 1.0007 for 1979 and subsequent years, or until, in the opinion of the Commissioner of Revenue, different conditions justify a change." (emphasis supplied) It is now the opinion of the Commissioner of Revenue that the rules should be revised.

This document has been prepared as a verbatim affirmative presentation of the facts necessary to establish the statutory authority, need for, and reasonableness of the proposed new rules. It is submitted pursuant to 9MCAR § 2.104 requiring a Statement of Need and Reasonableness.

A Notice of Intent to Solicit Outside Information or Opinions in the preparation of these proposed rules was published in the State Register on November 10, 1980 (5SR 762). Open forum type discussion meetings were held on November 5, 1980, February 5, May 13, and June 14, 1981. These meetings were attended by members of the Department of Revenue together with city and county assessors and representatives of various utility companies. Lists of those in attendance, agendas, meeting notes, and correspondence received relative to these meetings will be submitted by the Department to the Hearings Office at the time of the Hearing. Various suggestions and comments made at these meetings were received and duly considered by the agency.

Authority to Adopt Rules

The agency published a Notice of Intent to Adopt Rules without a Public Hearing in the April 6, 1981 edition of the State Register (5SR1572-1582). This notice concerned basically the same rules which are now being proposed for adoption at hearing. The Notice of Intent solicited enough interest to warrant a public hearing. Accordingly, the agency withdrew its request to adopt the proposed rules without a public hearing and now proposes to adopt the rules utilizing the public hearing process. Copies of all material pertinent to the adoption of the rules without a public hearing; in addition to all comments received from interested parties will be submitted to the Hearing Office at the time of Hearing.

Minn. Stat. § 270.06 (14) states that the ..."Commissioner of Revenue may promulgate rules and regulations for the administration and enforcement of the property tax. Such rules and regulations shall have the force and effect of law..." The above captioned rules are encompassed within this authority.

Agency Exh. No. 5
File No. DR-82-004-JR
Date 11/4/81

Further, Minn. Stat. § 270.11, Subd. 1 and 6 gives the Commissioner of Revenue the authority to review, modify, revise, raise or lower the assessed valuation of any real or personal property of any individual, copartnership, company, association or corporation. The Commissioner of Revenue is also charged with the responsibility under Minn. Stat. §§ 273.33, Subd. 2; 273.37, Subd. 2; and 273.38 of assessing the... "personal property, consisting of the pipeline system of mains, pipes and equipment attached thereto, of pipeline companies and others engaged in the operations or business of transporting natural gas, gasoline or other petroleum products by pipelines... transmission lines of less than 69kv, transmission lines of 69kv and above located in an unorganized township and distribution lines, (of electric companies) and equipment attached thereto, having a fixed situs outside the corporate limits of cities... the distribution lines, and the attachments and appurtenances thereto, (of electric companies) used primarily for supplying electricity to farmers at retail...".

Adoption of Proposed Rules
Need and Reasonableness

13MCAR § 1.0002 Definitions: This section has been revised by the addition of two new terms. The words "throughout" and "standard" have been added to the alphabetical list of terms which already make up the definition section of the existing rules. These new definitions are needed in order to establish a common language for the obsolescence section of the proposed rules. The language used in defining the terms is as straightforward and simplistic as possible while still conveying the necessary meaning.

The agency has also made two non-substantive revisions to the Definitions section. One change has inserted the word "means" after the term defined rather than three dashes (—). This change brings the rules into conformity with the format prepared by the Office of Administrative Hearings. The second change involves the re-codifying of some established definitions. This change is necessary because the inclusion of the new definitions changes the alphabetical order of the existing definitions.

The agency believes that all the revisions made to the Definition section are necessary, useful and reasonable and should be adopted as proposed.

13MCAR § 1.0003 Valuation, Cost Approach. This section has been revised in a number of areas. The first change requires the utilities to report to the commissioner the original cost of any leased utility property. The second change increases the amount of depreciation allowed to electric, gas and pipeline companies. The third change increases the study period to be used in computing the "average cost per kilowatt of installed capacity" factor for steam and gas turbine electric generating plants from ten years to fifteen years. A fourth change is the addition of two allowances; one allowance for pollution control equipment, and an allowance for obsolescence; which will be used to adjust any added value which would accrue to a utility plant due to the use of the "average cost per kilowatt of installed capacity" factor. The need for, and reasonableness of these revisions is explained below.

The first revision is an attempt to correct an oversight in the present rules. A careful reading of the definitions contained in 13MCAR § 1.0002 will disclose that definition L. "Operating Property" means any property owned or leased except land, that is directly associated with the generation, transmission, or distribution of electricity, natural gas, gasoline, petroleum products or crude oil. Note that the

words owned or leased appear in the definition of operating property. It is this operating property the rules attempt to value.

The valuation of the operating property is accomplished by using two indicators of value. Any income earned by the use of leased property would be included in the income indicator of value; however, leased property is normally not reported as part of a utility's system plant. A special reporting or listing is necessary so that this property may be included in the cost indicator of value thus retaining the compatibility of the two approaches to value. The agency believes that this is a necessary provision if the two valuation methods are to reflect the value of similar property.

During the course of our meetings with representatives of the utility industry it was learned that a lessee does not always have access to the cost of property which it is leasing. The agency did not want to jeopardize the lessee-lessor relationship by the imposition of these rules; therefore, the proposed rule provided for an estimate to be made by the commissioner in the event that cost information is not available. This cost estimate will be made based on capitalized lease payments. This process is not unique and is recognized as a valid method for making estimates of cost throughout the appraisal field.

The agency believes that this proposal is reasonable and is necessary in order to calculate an accurate cost indicator of value for utilities having leased property.

The second proposed change in the rules concern the amount of depreciation which will be allowed as a reduction of the cost of the utility's property. There are several types of cost which are used in the appraisal of utilities:

1. Original Cost - Original cost is the actual cost of a property when it was first acquired or constructed.
2. Book Cost - Book cost is the original cost of a property less accrued depreciation.
3. Reproduction Cost - Reproduction cost is the present dollar cost to reproduce a replica of the existing property, i.e. what the property would cost today. Reproduction cost is obtained by trending known costs up or down, depending on whether current construction costs are greater or less than when the property was first constructed.
4. Replacement Cost - Replacement cost is the present dollar cost to replace a property with one having similar or equal usefulness.

The estimation of value by use of the cost approach requires the use of the proper type of cost, and then computing the loss in value due to depreciation.

Depreciation is made up of three factors:

1. Physical deterioration which is the loss in value from original cost caused by normal use and wearing out of the property.
2. Functional obsolescence which is a loss in value because of functional deficiencies or inadequacies within the property itself. Normally, functional obsolescence would result from technological changes which result in better, more efficient techniques.
3. Economic obsolescence which is a loss in value caused by factors outside the property itself.

In the case of electric utilities the various elements of depreciation are considered by the Federal Energy Regulatory Commission which then specifies what rates of depreciation are to be used by the various utilities for different classes of assets.

The four major electric utilities operating within Minnesota are currently at the following depreciation level:

Original Cost of Plant in Service	$3,592,007,278
Accrued Depreciation	871,345,766
Book Cost of Plant in Service	2,720,661,512
Ratio of Depr. to Original Cost	(Approx.) 24%

The rules propose to allow the electric companies a maximum of 19% depreciation. The difference between 24% and 19% is the agency's method of calculating replacement cost for the utility's property and acts as a hedge against inflation.

Minn. Stat. § 273.11, Subd. 1 requires that ..."all property shall be valued at its market value." With most types of property the concept of market value equates to replacement cost. The owner of a 20 year old three bedroom, 1000 square foot rambler does not have his property valued by the local assessor at the original cost of $15,000; neither does the assessor use book cost. The assessor would use some form of either reproduction or replacement cost. When the house was built in 1960 construction costs must have been approximately $15 per square foot; hence, the selling price, (maket value, original cost) of $15,000. Today, inflation has pushed these same construction costs to $60 per square foot, so the market value or replacement cost of the property is $60,000.

The agency recognizes that a multimillion dollar utility does not sell in the same way a three bedroom rambler might. It also recognizes that in most instances the utility is limited in its earnings by its rate base; (rate base is normally original cost less depreciation). However, it is readily apparent that because of inflation the cost of replacing the facilities at today's prices would be more than the original cost at the time of installation. Our holding of the depreciation at a specified maximum attempts to recognize both the wearing out and obsolescence of the facilities together with the fact that to replace or reproduce the facility would produce more value. The agency believes that the proposed maximum depreciation allowance is a reasonable and viable method of accomplishing both these objectives.

The pipeline and gas distribution companies have the following depreciation levels.

Original Cost of Plant in Service	$4,139,665,100
Accrued Depreciation	1,660,591,335
Book Cost of Plant in Service	2,479,073,765
Ratio of Depr. to Original Cost	40%

The proposed values would allow pipeline and gas distribution companies a maximum of 47.5% depreciation. The overall industry average depreciation rate of 40% does not exceed the maximum allowable depreciation as in the case of electric utilities. The agency is aware of this difference. We believe that because of the dissimilarity between the industries that the depreciation rates are proper. The electric industry is constantly updating and replacing its property so that overall depreciation rate is fairly low. In the pipeline industry, on the other hand, it is common practice to build a line and leave it in place for years. Since the pipes are normally buried

they are not easily accessible as are electric wires. In addition, the state of the art in the pipeline industry changes much more slowly than in the electric industry. There are only so many ways you can design a pipe, while new and different ways for transmitting electricity are regularly being discovered. (Witness the change from transporting electricity in A.C. form to the D.C. mode.) There is very little replacement and updating in the pipeline field. Minnesota has operating pipelines which were built in the 1940's. Because of this longer life span of pipeline property, a larger depreciation allowance is necessary to adequately reflect the loss in value of the property. The same rationale holds true in most instances for gas distribution companies.

There is a further consideration to be looked at as well. It is an acknowledged fact that the need for electricity will go on for the foreseeable future. The demand for electric power can be met in a number of ways; by hydro power, nuclear energy or coal fired generating plants. In short, the electric industry is here to stay. Gas and oil in the other hand are not quite as stable or certain. It may well be that a pipeline may not have nearly as long a life as the builder intended either because the source of supply is exhausted, or is cut off for political or economic reasons. This of course, has a decided effect on the market value of the property. A prospective buyer would be much more willing to pay a higher price for a long term monopoly utility, than for a relatively short term speculative utility. The larger depreciation allowance given to pipelines and gas distribution companies is one of the agency's methods of recognizing this fact. We believe the proposal to be reasonable in its concept, and necessary if we are to find a realistic estimate of market value for these types of utilities.

The third change in 13MCAR § 1.0003 concerns adjusting electric utility property to take into account the effect of inflation on property values. This change is aimed at a specific type of electric utility asset, the major generating plants. The adjustment is accomplished through the use of a special study called the "Average Cost per Kilowatt of Installed Capacity."

The "Average Cost per Kilowatt of Installed Capacity" is a method of replacement cost which computes the national average cost, over a specified term of years, of building a major generating plant. This average is then applied to all major plants operated by a utility. If the national average is higher than the original cost of the plant the original cost is increased to that of the average; if the national average is lower no adjustment is made.

The reason this average is computed and used can best be explained by again using the homeowner as a comparison. The appraiser can best estimate the value of the three bedroom rambler by using two methods; 1) comparable sales, and 2) cost per square foot of construction. It is apparent that major utility generating plants do not sell frequently on the open market. Therefore the comparable sales avenue of appraisal is not generally available to us. Major generating plants are not built on a square foot basis, but rather on a capacity basis. They are measured and classed as to how many kilowatts they can produce operating at maximum capacity. Therefore, instead of using the square foot construction costs of generating plants to estimate current worth, as we would in the case of a house, we utilize cost per kilowatt.

We feel that this is a fair and workable technique of calculating an accurate measure of replacement cost for a number of reasons.

1. It follows accepted appraisal techniques of comparing construction costs for like properties.
2. It makes no adjustment on smaller standby units which are often kept in working condition by a utility for emergency use only.
3. By using the national average, the utility in Minnesota receives the benefit of warm weather building methods which are usually less costly.
4. The method gives the utility the advantage of the most advanced technology used in building power plants, and refutes the argument "We wouldn't build a plant like that today."
5. It typically produces an additional value only for older plants and does not produce an across the board increase for the newer plants.

The proposed revision would lengthen the study period for computing the national average from ten to fifteen years for both steam and gas turbine plants. The agency believes that this revision is both necessary and reasonable because it provides a broader study base and eliminates drastic yearly fluctuations which are inherent in a small sample base.

Attached to this document is a schedule showing a sample calculation of the fifteen year national average cost per kilowatt for steam generating plants. Note that a ten year study encompasses only 122 steam plants while the fifteen year study uses 181 plants or almost 50% more plants. A sample gas turbine generating plant study would show 311 plants in a ten year study and 349 or 12% more plants in a fifteen year study. While the base for gas turbine plants does not expand as dramatically as that for steam plants, both studies are expanded to a significant degree, and this broader base gives the study better stability.

The agency recommends this revision very strongly because it will promote stability in the assessment of major generating plants. Most of these plants have a dynamic effect on the fiscal policies of local taxing districts. Values must be kept stable to protect the taxing districts. In addition to this change affecting the average cost per kilowatt of installed capacity, the agency is also proposing two additional revisions to the current rules. The revisions both concern allowances which will be applied to the gross additional value to be added to a plant because of the application of the average cost per kilowatt of installed capacity factor. The first allowance concerns pollution control equipment and the second an allowance for obsolescence.

It is a well accepted fact that a substantial portion of the construction costs of modern day power plants are expended for the abatement of pollution. The national average cost per kilowatt study mentioned above does not differentiate between dollars spent for pollution control and dollars spent for ordinary costs of construction; therefore, if an additional amount is added to a power plant as a result of the application of the average cost per kilowatt of installed capacity computation, part of the additional amount represents pollution control expenditures.

Minn. Stat. § 272.02, Subd. 1, Clause (b) grants a property tax exemption to... "real and personal property used primarily for the abatement and control of air, water, or land pollution to the extent that it is so used." This exemption is recognized in the valuation formula in 13MCAR 1.0005D; however, under current rules no recognition is given to the pollution control expenditures which are part of the added value given to a power plant due to the average cost per kilowatt computation.

The agency proposes to rectify this fact through the use of an allowance for pollution control equipment which is to be applied to the gross additional added value. The

computation of this allowance is very simple. A total of the plant costs, excluding land, of all major generating plants within Minnesota will be made. The computation will be by type of plant; steam, hydro or gas turbine. Another total of the cost of the pollution control equipment installed in these plants, by type of plant, which has been approved for property tax exemption by the Department of Revenue, will also be made. This total cost of the pollution control equipment will be divided by the total of the plant costs and this percentage will be deducted from the gross additional value added to each major generating plant affected by the average cost per kilowatt of installed capacity computation.

Only Minnesota generating plants will be used for this computation because each state has unique pollution control laws and regulations. It is not possible to apply Minnesota pollution standards to plants in other states and expect to gain a meaningful result. The agency believes that the computation of the pollution control allowance and its application to Minnesota generating plants only, is reasonable and necessary. It recognizes the intent of Minn. Stat. § 270.02, Subd. 1, Clause (b), while still employing accepted appraisal principles in estimating market value for major generating plants.

The other allowance which the agency proposes to apply to the additional value to be added to a generating plant because of the application of the average cost per kilowatt of installed capacity factor is an obsolescence allowance. This obsolescence allowance is to be applied only to hydro and steam type generating plants.

Gas turbine plants will not be eligible for this allowance because the design and operation of these units has not changed appreciably from their introduction to the present time. These units were first introduced in the mid-1960's and are normally purchased in a packaged form much as one would buy an auxillary generator, the only difference being the size. The cost per kilowatt of installed capacity of these units has varied only slightly over the years and the operating characteristics of all the units is fairly uniform since most are based on a relatively standard aircraft type jet engine. The agency believes that at this time there is no need to apply an obsolescence allowance to the plants; however, this position may change in the future if technological discoveries advance the state of the art to a point where obsolescence is warranted.

The age and operating characteristics of hydro and steam plants varies a substantial amount. If the intent of the average cost per kilowatt of installed capacity concept is to bring the cost per kilowatt of older plants up to relatively present day levels then the agency believes that it is only proper and reasonable to recognize the fact that even though an older plant may generate, or be capable of generating, as much power as a newer plant it may well do so with much less efficiency. Since this lack of efficiency, or obsolescence, would have an effect on the plant's market value, the agency believes that an allowance should be made for this fact. The example of the residential home can again be used to illustrate this point. A home of 1,000 square feet with a very fuel efficient heating system would be worth more than a comparable size home with an outdated, inefficient furnace.

The agency proposes to measure this obsolescence by establishing a standard and comparing the specific plant to the standard. The amount the specific plant varies from the standard is the amount the plant is obsolete.

One of the standards used for this measurement of obsolescence is called the "plant factor." The plant factor compares how much electrical energy a generating plant

actually produced in a year to the maximum amount of energy it could have produced. For example, if a plant could have produced 1,000,000 KWH but only produced 500,000 KWH it was operating at a plant factor of 50%.

The plant factor is a good indicator of a generating plant's obsolescence because it actually measures obsolescence in two ways, economic and functional. If there is a low demand for a generating plant's product, electricity, then the plant will be operated at less then full capacity; hence a low plant factor. This lack of demand, or economic obsolescence, impacts a property's market value in much the same manner as a hotel built on a secondary road would most likely have a lower market value than one built near a busy freeway.

The plant factor would also recognize the downtime a generating plant experiences for maintenance and repair. It is logical to assume that an older plant would experience more time out of service for repair than a new one; simply because the component parts of the older plant have been exposed to more wear and tear, or are of an outmoded design which is not as reliable as a newer design. Another term for this frequency of repair and maintenance would be functional obsolescence. Thus, the more a generating plant is down for maintenance, the lower its plant factor would be, and the more functional obsolescence would be applied to this plant.

In order to compute the standard factor, the agency again proposes to look at those plants which were used to compute the national average cost per kilowatt of installed capacity. Since these are the plants which serve to make up the basis of the additional value, it is only reasonable to use the operating characteristics of these same plants to compute the standard plant factor. The proposed rules detail how this standard is to be computed, and it is a very simple mathematical formula. The formula multiplies the installed capacity of the various plants in kilowatt hours (KWH) times the number of hours in a year; the product of this computation is the maximum amount of power the plant could have generated in a year. The amount of KWH the plant actually produced is then divided by this optimum generation amount and a percentage developed. This computation is done for all generating plants within the specified 15 year study period. The ten plants with the highest or best plant factor are then selected out of the study and an average computed of their plant factor. The use of ten plants insures that a stable index will be used each year without abrupt fluctuations due to one or two plants operating under highly unusual circumstances. This then becomes the standard. Plant factors are then computed in the same manner for each hydro or steam generating plant which would have additional cost dollars added to it because of the application of the average cost per kilowatt of installed capacity computation. Plant factors are computed for the most recent three years, and then averaged. A three year time span is used in order to minimize the downtime effect a major overhaul or repair due to an accident might have on the net generation of a plant. This three year average plant factor is then compared to the standard plant factor. The amount or percent the three year average deviates from the standard is the amount of obsolescence measured by the application of this method. This percentage will then be used to reduce the gross additional value added to the hydro-electric plants. Steam-electric plants will have an additional obsolescence factor computed.

Hydro-electric plants differ from steam plants in that hydro plants essentially use no fuel, they are powered by the movement of water. Steam electric plants on the other hand must burn a fuel to create heat to make steam; just as their name implies. Therefore, one of the measures of the efficiency of such a plant is the amount of fuel needed to produce a unit of electric power. This is called the "thermal

efficiency factor." Since the fuels used in steam-electric plants vary; coal, oil, natural gas; the only common attribute of the various fuels is that they all contain British Thermal Units (BTU). The computation of the thermal efficiency factor measures the numbers of BTU's a plant would require to produce one KWH of electric power. This measure of a steam plants efficiency is a very viable measure of obsolescence, particularly in light of current costs of energy. A plant which requires a greater amount of fuel to produce a KWH would be less attractive to a buyer than one which could generate a KWH using a very small amount of fuel.

The thermal efficiency standard will be computed by again selecting the ten plants using the least amount of fuel or BTU's to produce a KWH from all those plants which comprise the 15 year study period used to calculate the average cost per kilowatt of installed capacity. This standard will then be compared to the actual thermal efficiency of the subject steam electric plants.

There is no need to use a three year average thermal efficiency factor because the operating characteristics of a plant do not vary from year to year with respect to the utilization of fuel. The plants are much like an automobile in that a particular model of car may be rated at 20 MPG; one year it may actually get 18 MPG, another 22 but it would not suddenly jump up to 40 MPG. The amount or percentage that the subject plant deviates from the standard is the amount of obsolescence in the subject plant as measured by this thermal efficiency factor.

These two measures of obsolescences for steam electric plants; plant factor and thermal efficiency factor, are then averaged and this average obsolescence percentage is used to reduce the gross additional value added to the plant.

The calculation of all of these averages and allowances may seem very complex and technical but in essence it can be reduced to a few simple facts or statements. The agency is proposing that 1) to build a major generating plant today would cost a minimum amount of dollars per kilowatt 2) if a generating plant has construction costs which are less than this minimum the construction costs will be raised to meet the minimum 3) any additional dollars added to the cost will be reduced by an allowance for pollution control expenditures which are an intergal part of any power plant and 4) additional allowances will be made to the added cost to recognize the fact that older plants are not as efficient in their operating characteristics as are new plants. The agency bases all of these proposal in sound appraisal practice. We believe that these proposals are extremely reasonable in their concept and necessary to the proper estimation of market value for electric companies.

13MCAR § 1.0003 D. The revision in this section concerns the income approach to valuation.

This approach utilizes the capitalization of income in a mathematical process in an attempt to derive a value which represents the present worth of the future earnings of the property. The capitalization process has two major factors: 1) the income to be capitalized and 2) the captialization rate. We propose to change one of these factors to more accurately reflect current economic conditions.

We currently use three years of net utility operating income as the income to be capitalized. This is the income after expenses, depreciation and taxes, but before interest expense. This level of income is usually referred to as the income developed by the regulatory agency. It excludes all income from operations and investments that are not directly related to the operation of the company. This particular

income stream is preferred by most utility appraisers, and has the most acceptance throughout the country.

The agency uses three years of these net utility operating earnings in order to level out the peaks and valleys inherent in income determination. This leveling out provides for a relatively stable value, rather than a value which would vary widely from year to year. At present the three years are weighted 40% for the first year's income, 35% for the second and 25% for the third. This weighting of income provides for the most attention to be paid to the most recent performance of the company and attempts to strike a balance between stable income and the recognition of current economic conditions effecting a company.

A capitalization rate is then applied to this weighted income. The capitalization rate is an anticipated rate of return from an investment; a rate at which income is processed (capitalized) to indicate the probable capital value. Usually this rate is commensurate with the risk of the business venture.

In developing a capitalization rate three basic methods are available. They are:

1. The Summation Method - which uses the "safe rate" (usually that of government bonds) and adds to it an allowance for management, non-liquidity, and risk. This method is usually considered to be the least reliable and is not in common use by appraisers of utility property.

2. The Comparative Method - which computes a capitalization rate by measuring the actions of purchasers in the market place. However, since utilities very seldom sell as a unit there are few market transactions from which a rate can be developed. For this reason this method is rarely used in the field of utility valuation.
3. The Band of Investment Method - which is the combination of the rate applicable to the portion of the capital structure represented by debt with the rate applicable to the portion of the capital structure represented by equity. The rate developed is a weighted average, the weighting representing percentages of the mortgage and equity position or bands of investment. This method, which is currently used by the agency, is the most generally accepted method of developing a capitalization rate for use in the appraisal of utilities.

The computation of the capitalization rate using the band of investment method is done on the basis of an average utility within an industry; that is, all companies within one industry (i.e. electric, gas distribution, pipeline) share the same rate. This is done as a matter of convenience due to the agency's lack of time and personnel. It is common practice for utility appraisers all across the country to apply a single capitalization rate to companies within the same industry.

The information used in the computation of the cap rate is taken from the latest edition of Moody's Public Utility Manual and includes the following techniques:

1. A determination of what percent of the capital structure of the average utility is made up of long term debt, preferred stock and common equity.
2. A determination of the average interest rate for contracted indebtedness, commonly referred to as the embedded cost of debt. This average interest rate will make up the debt portion of the capitalization rate.
3. A determination of the average dividend rate of the outstanding preferred stock. This dividend rate will make up the preferred stock portion of the capitalization rate.

4. A determination of the rate of return for common equity; which will make up the equity portion of the cap rate.
5. The application of the determined rate to the various bands of investment to develop the capitalization rate for the average utility.
6. The final step is to assign a risk factor to each type of utility to establish a cap rate for that particular industry.

Attached to this document is an example of the application of these techniques. You will note that the average utility cap rate as computed is 8.75%. We have adjusted this rate to allow for risk as follows:

1. Electric utilities - adjusted to 8.50% because they have lower than average interest rates and better than average earnings stability.
2. Gas distribution utilities - no adjustment made. This group represents the average utility.
3. Pipeline companies - adjusted to 9.00% because they have a higher risk factor than the average utility. Pipelines usually pay a slightly higher rate of interest, and because they do not have a monopoly, as do electric and gas companies, their earnings are less stable.

The agency believes that the amending of the present rules to incorporate these revisions to the current capitalization rates is both reasonable and logical. The major factor causing the proposed changes in the capitalization rates, over those currently in use, is the increase in the interest rates. It is a matter of record that these rates have risen steadily over the past few years.

Interest rates may be advertised which would tend to indicate that our proposed capitalization rates are too low and should be adjusted to even higher levels; however, it must be kept in mind that the interest rates in question are those currently in effect. The income which comprises the income stream is an average of three year's historical income. The capitalization rate proposed by the agency is also based on historical information. It is paramount in appraisal practice to match the correct income stream to the corresponding capitalization rate. In the agency's judgment the rates as now proposed accurately reflect the proper capitalization rate to be applied to the weighted income stream. The combination of these two elements into the income indicator of value will produce an equitable estimate of the worth of a utility. The agency is committed to a policy of review and change, as it witnessed by our introductory statement on page 1 of this document. As economic conditions change, the computation of both the capitalization rate and the income stream may well change. At this time, however, the agency believes the rates as proposed should be adopted.

13MCAR § 1.0003 Valuation F. The agency proposes to delete the existing language of the rules and add expanded language together with a numerical example. The old language addressed specifically the method to be used in the valuation of cooperative associations. Since these associations do not have "profits" in the usual business sense, only the cost indicator of value could be used in the valuation process. The agency has found that there are other types of utility property which are also not operated for profit. A good example of this type of utility is a private pipeline which transports only its own product and does not function as a common carrier. New language has been added to this rule detailing how this type of utility is to be valued.

The agency believes that this proposed language is both reasonable and necessary. It is reasonable because it prescribes that only cost will be used when making valuations of certain types of utility property. Certainly this is reasonable because income cannot be used if the utility has no income to capitalize. The proposed rule is necessary in that it enables the agency to accomplish its task of valuing these utilities.

13MCAR § 1.003 Valuation, G. Obsolescence allowance. This proposal is the most extensive revision to the existing rules. The agency believes that it is an important revision because it deals with an important issue, the energy situation in the United States. The proposal addresses the manner in which a pipeline or a gas distribution company could receive a lower estimated market value through the use of an obsolescence allowance. The agency believes this is a critical area because it is charged with the responsibility of estimating the market value for these properties. It is reasonable to assume that a property would have a lower market value if a prospective buyer knows that in a few years the property's ability to generate income would be greatly diminished. This is the situation that some pipelines are finding themselves in at the present time. The certainty of a continuing source of supply for some pipelines is very unsure and this fact does have a decided impact on their market value. The agency proposes to recognize this fact and discharge its responsibility through the use of obsolescence allowance.

Obsolescence in the valuation process normally takes two forms; functional or economic. Functional obsolescence is a loss in value because of functional deficiencies or inadequacies within the property itself. Normally, functional obsolescence would result from technological changes which result in better and more efficient techniques; however, in the case of a pipeline it could be typified by a pipeline which was constructed of 10 inch pipe in order to handle 1,000,000 barrels of oil and now finds itself restricted to 500,000 barrels of oil. This pipeline appears to be overbuilt and functionally obsolete.

Economic obsolescence is usually defined as a loss in value caused by factors outside the property itself. A prime example of this type of obsolescence has occurred with the Canadian restriction on oil and natural gas exports. This restriction had a definite impact on the earnings and consequent market value of pipelines and gas distribution companies carrying these products. The agency has drawn up a proposal to recognize this shift in value.

The agency's first proposal in this matter is that the utility must meet certain standards or criteria. The agency has done considerable research on these standards and believes that they represent fair and reasonable benchmarks of a company which is faced with obsolescence. The first standard is self explanatory. The second and third standards concern depreciation. The agency believes that so long as the utility is able to lower its cost indicator of value by applying accrued depreciation to its original cost each year it has no need of an additional obsolescence allowance. It is only when a company has reached the maximum of 47.5% depreciation, as specified by 13MCAR 1.0003, C., that a special allowance should be computed.

The agency also believes that if a utility expects to be out of business within the near future, it will take steps to insure that its property is fully depreciated at that time. This is only good business practice, and it insures that the utility must convince a separate regulatory body that it truly does expect to go out of business soon.

The fourth and fifth standards are also only a reflection of common business sense. If a utility is expecting to terminate operations soon, it is reasonable to assume that they would not make major capital investments, or incur any long term debt. If either of these standards have not been met, the utility must explain the rationale for this action to the commissioner. There may be certain circumstances which would offer an explanation for these actions; however, if a reasonable explanation is not offered, the commissioner must assume that the utility is not going out of business, and no allowance for obsolescence will be made.

The agency believes that it is important that these standards be made part of the rules. The intent is not to lower the market value of every pipeline or gas distribution company, but rather to adjust the value of those truly in need of such an adjustment. Only by prescribing specific criteria can the agency make this adjustment in a fair and equitable manner. We believe the standards are reasonable in their concept and necessary to the purpose of this section of the rules. We urge they be adopted as proposed.

If a utility qualifies for an obsolescence allowance, this allowance may take the form of one of three methods proposed by the agency. We have proposed three methods because we foresee different circumstances which would fit one method but not another. For example: one pipeline could be in a situation whereby it was authorized to export 1,000,000 barrels of oil per year until its export permit expired in three years; at which time it could export none. Another pipeline might be faced with decreasing sources of supply: 1,000,000 barrels per year to 900,000, to 800,000, and so on; until final cessation of supply in ten years. Obsolescence allowance method #3 might work best for the first pipeline while method #1 would be more applicable to the latter situation. Each case will be examined, researched and the facts weighed; the commissioner will then determine which of the three methods best suit the situation.

Method 1 would adjust the cost indicator of value in a situation where the utility was experiencing declining throughput. The method is reasonable in both its concept and mathematical application. It accomplishes the desired result of adjusting the utility's market value in certain circumstances.

Method 2 also would lower a utility's market value by lowering the cost indicator of value. It too is simple in its concept and application. It would probably be used in the case of a pipeline which was almost fully depreciated.

Method 3 is a bit more complex in its theory but it follows sound appraisal practice. The method converts the capitalization rate specified in 13MCAR § 1.0003 D from one which assumes that the utility will continue in business indefinitely, to a rate for a specific term of years. The theory of capitalized income indicator of value expresses how much a buyer would pay for a company at the present time in anticipation of future benefits or profits. Obviously, if a buyer believed that a company would continue in business for a long time he would pay more for it than one which had only a few years of viability. Method 3 attempts to measure or recognize this difference.

The agency believes that all the proposed methods are reasonable in their construction, and are a necessary means to accomplish the end of adjusting market values of utilities to allow for obsolescence.

13 MCAR § 1.0003 Valuation 4. Retirements. The agency has proposed new language pertaining to the retirement of utility property. This language has been added to the existing body of the rules in order to protect both the utilities and the taxing districts. The section spells out what constitutes an "in place" retirement of utility property; specifies what takes property out of the utility's system and places it in the category of non-utility property. By specifying the conditions and requirements necessary for this type of retirement the utility company has certain and definite procedures to follow if it wishes to retire its operating property from utility usage while still retaining the physical structure and capability of the property. This will eliminate disagreement over what is, or what is not, retired. If the retirement meets the proposed criteria, the property can be considered to be effectively retired, if the standards are not met and the procedures are not followed, the property will continue to be valued and taxed as operating utility property.

The taxing districts are also protected in that the proposal calls for advance notification of any major retirement. In some instances the value of utility property makes up as much as 90% of the tax base within a community. This notification will put taxing districts on notice of any pending shifts or decreases in the tax base. Tax impacts of this potential magnitude require advance notice and planning. The agency believes that the proposed rule will provide a mechanism to provide this advance notice to impacted taxing districts.

The agency has written the rule in such a form as to make the administrative burden to the utility company as small as possible while still retaining some type of documentation. The agency further has given the utility the option of temporarily retiring a facility in place pending future developments. In these times of critical energy supplies, the agency believes this to be a reasonable and rational attempt to save sources of energy production, internal combustion generating plants for instance, by not imposing a unreasonable tax on these facilities.

It is most important to recognize the fact that the proposed rules do not attempt to exempt any property from taxation; merely to distinguish between utility and non-utility property. The agency believes that the rule is both reasonable in its conception and necessary in its application. We urge that it be adopted as proposed.

13MCAR § 1.0006 Apportionment B. 6. New wording has been proposed to the regulations addressing to the matter of reporting property information for newly created taxing districts. The Legislature in Minn. Stat. § 444.16 through 444.21 gave municipalities the authority to create special storm sewer taxing districts. The advantage of these taxing districts over the impositions of a special assessment is that the municipality does not have to prove that any property is specifically benefited, rather they are able to levy a specified millage on all property within the district.

This situation has caused some reporting problems for the utilities and the proposed language is intended to remedy this situation. The utilities have a difficult time under certain circumstances developing costs by specified area on items of distribution plant such as poles, wires and gas pipes. The proposed language enables the utilities to make estimates of the costs if it is apparent that the development of actual costs would be too burdensome. The mill rate imposed by the special taxing districts is usually limited to less than two mills. Therefore, so long as the estimates are reasonable, no adverse fiscal impact will be felt by either the utilities or the taxing districts.

The agency believes that the adoption of this language is both necessary to eliminate an existing problem area, and reasonable in its concept. We believe that its adoption will benefit taxing districts and utilities alike.

13MCAR § 1.0006 Apportionment C2. The agency has proposed to alter this section by an addition of a schedule which over the period of ten years will equalize all taxing districts utility plant costs for purposes of apportionment at 100% of original cost. The rules now in force have an inconsistency in that the older utility properties are taken into account at something less than 100% of original cost in the apportionment formula; usually 75% of original cost. The newer utility properties; however are taken into account at more than 75%, the newest properties may use as much as 100% of original cost. This fact gives the newer properties a disproportionate share of the unit value of the utility being valued.

The reason for this inconsistency is historical and dates back to the time that the unit value concept was first used to value utility property. At that time, the rules provided that the taxable unit value of a utility would be distributed to the various taxing districts based on the last market value of the utility property within a taxing district. We chose this method when the regulations were first adopted in 1975 for one major reason - stability. One of the agency's primary aims has always been to protect the taxing districts from major fluctuations in value. The use of the last market value basis accomplished this purpose in 1975; changes in value were small, no county varying by more than plus or minus 10% in comparable property from 1974 to 1975.

The agency subsequently made one change in the basis of distribution from the last market value, to the original cost of the property x 75% or the last market value - whichever is greater. We believed that this change was necessary due to the fact that the first system seemed to be creating inequities in the distribution of utility values.

The agency, after studing the way in which this revised apportionment method distributed value is still not convinced that an inequity does not exist. Thus, in keeping with our policy of revising the rules whenever conditions justify a change we are proposing a slightly different apportionment method described in the proposed rules.

The inequity the agency perceives stems from the fact that the older properties, those built prior to 1975, have a market value which is based on depreciated original cost. The method which was employed to value utility property prior to 1975 specified that original cost of each utility's property within a taxing district was to be depreciated 2 1/2% per year for ten years. This produced a maximum of 25% depreciation and a residual value of 75% of original cost. A property having an original cost of $1,000,000 in 1965 would have a market value of $750,000 in 1974. The distribution of the unit value in 1975 would be based on this $750,000 figure not the $1,000,000. The newer properties, those built after 1975, do not have this depreciation factor; therefore, their basis for distribution is larger. A property built in 1979 for $2,000,000 would have as its basis for distribution the total original cost of $2,000,000; no depreciation reduces this cost.

Another factor which further compounds this problem is that of inflation. A utility may have two identical properties; for example electrical substations; both having the same capacity, both having the same function. If these two substations are built ten years apart; one in 1965, one in 1975; not only will the depreciation factor

come into play but inflation will have pushed the cost of the substation built in 1975 to perhaps twice that of the earlier one. Thus, the new property receives an even greater share of the unit value.

In order to attempt to remedy this situation the agency proposes to bring the older properties back to 100% of their original cost over a period of years. The schedule proposed would change the percent of original cost to be used in the apportionment process only 2.5% per year until 100% parity is reached. This narrows the gap between the old and new properties yet it protects the taxing districts by minimizing any drastic shifts in value. The agency believes this change to be a reasonable and equitable method of correcting a problem which experience has brought to our attention.

An important fact to bear in mind is that the unit value concept presupposes that all parts of the unit are equally important in determining the value of the entire entity. One piece of a pipeline is just as important as any other piece if the integrity and completness of the pipeline system is to be maintained. The agency believes this same fact to be true in apportionment as in valuation. All parts of the unit are important and the basis of apportionment should be uniform for all. We believe our proposal to be reasonable, rational and necessary if equity and equality are to be achieved by our apportionment system.

13MCAR § 1.0006 Apportionment E. The agency proposes to take this section out of the existing rules. Note that the statuatory reference cited in the rules, Minn. Stat. § 273.11, Subd. 2, is that portion of the law which referred to limited market values. The 1979 Legislature repealed this provision of the law. The agency proposes to bring the rules into conformity with the current statutes. The agency believes that this proposal is both necessary and reasonable if the rules are to be consistent with the law.

13MCAR § 1.0007 Comprehensive example. The agency is also proposing to delete this narrative together with the entire comprehensive example from a special section of the rules and incorporate the examples into the body of the rules. The examples we have employed throughout the existing rules, have been used only to inform and to illustrate. The examples were never intended to be rules in and of themselves. The agency believes that those persons effected by the rules will be much better served by having the numerical examples in close proximity to the narrative of the rule, rather than having to turn to a special section and search for the appropriate example. We believe this layout is much more reasonable in its design and is necessary if the clarity and readability of the rules is to be improved.

SP:N6

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September 11, 1981

RECEIVED
SEP 11 1981
ADMINISTRATIVE HEARINGS

Mr. Gerald D. Garski, Manager
State Assessed Properties Section
Department of Revenue
2nd Floor, Centennial Office Bldg.

Dear Mr. Garski:

We are enclosing copies of a draft of your rule request relating to Valuation and Assessment of Electric, Gas Distribution, and Pipeline Companies (Utility Companies).

Our office has approved the incorporations by reference contained in the attached rules because we have determined that the documents are conveniently available to the public.

Mr. Duane Harves, Chief Hearing Examiner, recommended that we disapprove the incorporations by reference on the grounds that no publication dates are included in the references.

This is to advise you that during the rule adoption process, the incorporations may be challenged as unconstitutional delegations of authority.

If there are any changes, please return a copy with your instructions for redrafting.

If you have any questions, please do not hesitate to call.

Very truly yours,

Janet C. Rahm
Assistant Revisor

JCR/rl
Enclosure
RD74

Ex 4 attached

RECEIVED
SEP 11 1981
ADMINISTRATIVE HEARINGS

Agency Exh. No. 4
File No. DR-82-004-JL
Date 11/4/81

Rules as Proposed

Chapter One: Valuation and Assessment of Electric, Gas Distribution, and Pipeline Companies (Utility Companies)

13 MCAR S 1.0001 Introduction. On October 19, 1973, the Minnesota Supreme Court in Independent School District No. 99, et al. v. Commissioner of Taxation, 297 Minn. 378, ruled that in estimating the market value of utility properties for ad valorem tax purposes, the assessing authorities must consider every element and factor affecting market value. The assessment formula used to value operating utility property since 1962, based solely on the original cost less limited depreciation and commonly known as the "Hatfield Formula," was thus invalidated as a rule of general application.

These ~~regulations~~ rules are promulgated to fill that void and reflect the manner in which the value of utility property will be estimated by utilizing data relating to the cost of the property and the earnings of the company owning or utilizing the property.

Since the Commissioner of Revenue is by statute the assessor of some of the utility property in the State of Minnesota and has supervisory powers ~~of~~ over all assessments of property, and may raise or lower values pursuant to Minn. Stat.~~,~~ S 270.11, he

will estimate the valuation of the entire system of a utility company operating within the state. The entire system will be valued as a unit instead of valuing the component parts, and the resulting valuation will be "allocated" or assigned to each state in which the utility company operates. Finally, by the process of apportionment, the portion allocated to Minnesota will be distributed to the various taxing districts within the state. ~~All~~ Most of the data used in the valuation, allocation, and apportionment process will be drawn from reports submitted to the Department of Revenue by the utility companies. These reports will include Minnesota Department of Revenue Annual Utility Reports (UTL Forms), Annual Reports to the Federal Energy Regulatory Commission and Annual Reports to the Interstate Commerce Commission. Periodic examinations of the supporting data for these reports will be made by the Department of Revenue.

The methods, procedures, indicators of value, capitalization rates, weighting percents, and allocation factors will be used as described in 13 MCAR SS 1.0003-~~1.0007~~ 1.0006 for ~~1979~~ 1982 and subsequent years, or until, in the opinion of the Commissioner of Revenue, different conditions justify a change.

As in all property valuations the Commissioner of Revenue reserves the right to exercise his judgment whenever the circumstances of a valuation estimate dictate the need for it.

13 MCAR S 1.0002 Definitions. As used in this chapter, the following words, terms and phrases shall have the meanings given to them by this ~~regulation~~ rule, except where the context clearly indicates a different meaning.

A. Allocation. "Allocation" means the process of dividing the unit value of a utility company among the states in which the utility operates.

B. Apportionment. "Apportionment" means the process of distributing that portion of the utility company's unit value which has been allocated to Minnesota to the various taxing districts in which the utility company operates.

C. Book depreciation. "Book depreciation" means the depreciation shown by a utility company on its corporate books, and allowed the company by various regulatory agencies.

D. Capitalization rate. "Capitalization rate" means the relationship of income to capital investment or value, expressed as a percentage.

E. Electric company. "Electric company" means any company engaged in the generation, transmission, or distribution of electric power, excluding cooperatives and municipal corporations.

F. Gas distribution company. "Gas distribution company" means any company engaged in the distribution of natural or synthetic gas, excluding cooperatives and municipal corporations.

G. Installed capacity. "Installed capacity" means the number of kilowatts a power plant is capable of producing as shown by the nameplates affixed to the generators by the manufacturer.

H. Integrated company. "Integrated company" means any company engaged in two or more utility operations within Minnesota, such as electric distribution and gas distribution, within the framework of one corporate structure.

I. Major generating plant. "Major generating plant" means any steam-electric power plant capable of generating 25,000 KW (kilowatts) or more; or any hydro-electric, internal combustion, or gas turbine power ~~plan~~ plant capable of generating 10,000 KW or more.

J. Net operating earnings. "Net operating earnings" means earnings from the system plant of the utility after the deduction of operating expenses, depreciation, and taxes, but before any deduction for interest.

K. Non-formula assessed property. "Non-formula assessed property" means property of a utility which is valued by the local or county assessor rather than by the Commissioner of Revenue.

L. Operating property. "Operating property" means any property, owned or leased, except land that is directly

associated with the generation, transmission, or distribution of electricity, natural gas, gasoline, petroleum products, or crude oil. Examples of operating property include, but are not limited to, substations, transmission and distribution lines, generating plants, and pipelines. Land, garages, warehouses, office buildings, pole yards, radio communication towers, and parking lots are examples of non-operating property.

M. Pipeline company. "Pipeline company" means any company engaged in the transmission of natural gas, gasoline, petroleum products, or crude oil via a fixed line of pipes.

N. Standard factor. "Standard factor" means the number used as the basis of comparison when measuring the degree or amount of obsolescence inherent in the property (generating plant) being valued.

O. System plant. "System plant" means the total tangible property, real and personal, of a company which is used in its utility operations in all states in which it operates.

P. Throughput. "Throughput" means the amount of product measured in barrels, gallons, or cubic feet which passes through a pipeline.

~~O.~~ Q. Unit value. "Unit value" means the value of the system plant of a utility company taken as a whole without any regard to the value of its component parts.

~~P.~~ R. Weighted pipe line miles. "Weighted pipe line miles" means the product obtained by multiplying the number of miles of each size of a pipeline by the diameter in inches of each size. Example: a 6 mile pipeline ~~having~~ 3 miles ~~with~~ a of which is 10 ~~inch~~ inches in diameter and 3 miles ~~with~~ a of which is 30 ~~inch~~ inches in diameter would have a weighted miles product of 120.

13 MCAR S 1.0003 Valuation.

A. General. Because of the unique character of public utility companies, such as being subject to stringent government regulations over operations and earnings, the traditional approaches to valuation estimates of property (cost, capitalized income and market) must be modified when utility property is

valued. Consequently, for the ~~1979~~ 1982 and subsequent assessment years, until economic and technological factors dictate a change, the value of utility company property will be estimated in the manner provided in this chapter.

B. Market approach. Market value implies a price for which an entire public utility enterprise might reasonably change hands between willing and informed buyers and sellers. The term presupposes a market of normal activity, no urgency to buy or sell on the part of either buyer or seller, and continued operation of the utility as a single entity. Public utility property is seldom transferred as a whole unit under these circumstances. Consequently, after consideration of this approach, it has been decided that valuation of utility properties by this approach is speculative and unreliable and will not be employed as a method of valuation for utility property at this time.

C. Cost approach. The cost factor that will be considered in the utility valuation formula is the original cost less depreciation of the system plant, and improvements, plus the original cost of construction work in progress on the assessment date. The original cost of any leased operating property used by the utility must be reported to the commissioner in conjunction with the annual utility report. If the original cost of the leased operating property is not available, the commissioner shall make an estimate of the cost by capitalizing the lease payments. Depreciation will not be allowed on construction work in progress. Depreciation will be allowed as a deduction from cost in the amount allowed on the accounting records of the utility company, as such records are required to be maintained by the appropriate regulatory agency.

Depreciation, however, shall not exceed the prescribed percentage of cost: for electric companies, ~~18~~ 19 percent; for gas distribution companies, ~~45~~ 47.5 percent; pipeline companies, ~~45~~ 47.5 percent.

~~When valuing electric company property the "average cost per kilowatt of installed capacity" will also be considered.~~ Any

excess of average cost per kilowatt of installed capacity over the actual cost of production plan (except land) multiplied by the kilowatts of installed capacity will be added to the original cost of the plant, and reduced by the same rate of depreciation applicable to the original cost. The average cost per kilowatt of installed capacity is computed by averaging the construction costs of production plant (except land) for major generating plants in the Continental U.S. by type of plant, as shown in the latest issues of the United States Department of Energy publications, Hydro-Electric Plant Construction Cost and Annual Production Expenses and Steam-Electric Plan Construction Cost and Annual Production Expenses and Gas Turbine Electric Plant Construction Cost and Annual Production Expenses. Average cost per kilowatt of installed capacity will be determined after excluding, federally constructed, multi-purpose projects, and nuclear electric generating plants. The periods to be used for computing the average will be as follows: hydroelectric plants, 15 years; steam electric plants, 10 years; gas turbine plants, 10 years.

The following examples illustrate this procedure. In both examples assume that the study of the most recent construction data available from Federal Power Commission publications indicates that the average cost per kilowatt of installed capacity in a fossil fuel steam plant is $150 per kilowatt. Each of the two plants is of this type.

1.	Plant	#1	#2
2.	Installed capacity	100,000 KW	50,000 KW
3.	Year in Service	1960	1940
4.	Cost of Plant	$15,200,000	$3,500,000
5.	Cost per KW	$152	$70
6.	Average cost per KW	$150	$150
7.	Excess (line 6 - 5)		$80
8.	Additional value (line 7 x 2)		$4,000,000

A modification to the cost approach to value will be considered by the commissioner when valuing electric utility

property. The original cost of an electric utility's major generating plants will be increased if the cost of the plant falls below a certain standard. The standard to be used will be a national average of the cost per kilowatt of installed capacity. The cost per kilowatt of installed capacity is the total construction cost of the generating plant divided by the number of kilowatts the plant is capable of producing. The national average to be used will be computed by totaling the construction costs, excluding the cost of land, for major generating plants within the 48 contiguous United States. The total cost of the plants will be divided by the total generating capacity of the same plants to arrive at an average cost per kilowatt of installed capacity. A separate average will be computed for each of the following types of plants: gas turbine, hydro-electric, and steam-electric. The plants used in the calculation will exclude federally constructed, multi-purpose projects, and nuclear electric generating plants. The information used to compute the average will be drawn from the latest issues of the following United States Department of Energy publications: Hydro-Electric Plant Construction Cost and Annual Production Expenses, Steam-Electric Plant Construction Cost and Annual Production Expenses, and Gas Turbine Electric Plant Construction Cost and Annual Production Expenses.

The plants which will be used in the computation of the national average will be those plants built during the most recent 15 years included in the above named publications.

An example of this computation of the national average cost per kilowatt of installed capacity is as follows:

Steam-Electric Generating Plants

Plant	Plant Cost Excluding Land	Plant Capacity
A	$ 14,000,000	100,000 kw
B	13,000,000	90,000 kw
C	17,000,000	110,000 kw
D	14,500,000	80,000 kw

E	18,000,000	120,000 kw
F	10,000,000	70,000 kw
G	19,000,000	130,000 kw
H	9,000,000	60,000 kw
I	20,000,000	140,000 kw
J	8,000,000	50,000 kw
	$142,500,000	950,000 kw

Total plant cost ($142,500,000) divided by total plant capacity (950,000 kw) equals $150 average cost per kilowatt of installed capacity.

The national average cost per kilowatt of installed capacity will be compared to the specific cost per kilowatt of installed capacity for each of the major generating plants owned by the utility being valued. If the national average cost per kilowatt is greater than the subject plant cost, the subject plant will have additional dollars incorporated into its cost in order to raise its cost per kilowatt to the national average. If the subject plant's cost per kilowatt equals or exceeds the national average, no cost will be added.

The following example illustrates this procedure:

XYZ Utility

Steam-Electric Generating Plants

1. Plant	#1	#2
2. Installed Capacity	100,000 kw	50,000 kw
3. Year in Service	1970	1950
4. Cost of Plant		
(Exclusive of Land)	$15,200,000	$5,000,000
5. Specific Plant		
Cost per kw	$152	$100
6. National Average		
Cost per kw	$150	$150
7. Deficiency	none	$ 50
8. Additional Cost		
(Line 7 x Line 2)	none	$2,500,000

This additional cost to be added to the original cost of the

specific plant will be reduced by two factors: an allowance for pollution control equipment and an allowance for obsolescence.

The allowance for pollution control equipment will be computed annually by totaling the construction costs, exclusive of land, of all major generating plants within Minnesota by type of plant. A total will also be made of the cost of the equipment in these plants which has been approved for tax exempt status in accordance with Minn. Stat. S 272.02, subd. 1, clause (15). This total will also be computed by type of plant. The total of the approved pollution control equipment will be divided by the total construction cost, exclusive of land, of the plants in order to calculate a percentage. This percentage will be the ratio of dollars spent for pollution control equipment to total dollars spent to construct a specific type of power plant. This percentage will then be used to reduce the gross additional cost to be added to the cost of the specific generating plant, as computed above. An example of this process is as follows:

Steam-Electric Plants Within Minnesota

Plant	Plant Cost Excluding Land	Cost of Approved Pollution Control Equipment
A	$15,200,000	$1,500,000
B	10,000,000	1,000,000
C	5,000,000	700,000
D	20,000,000	2,000,000
E	16,500,000	1,470,000
	$66,700,000	$6,670,000

Total cost of approved pollution control equipment ($6,670,000) divided by total plant cost ($66,700,000) equals 10% ratio of pollution control equipment expenditures to total expenditures for generating plant construction.

XYZ Utility

Steam-Electric Plant #2

1. Additional Cost Due to Computation of

Average Cost per kw of Installed Capacity	$2,500,000
2. 10% Allowance for Pollution Control Equipment	250,000
3. Additional Cost to be Added after Adjustment for Pollution Control Equipment	$2,250,000

The allowance for obsolescence which will be applied to the additional plant construction cost will be computed annually for hydro-electric and steam-electric generating plants. The information needed to compute the obsolescence factors will be drawn from the same publications that are used to compute the national average cost per kilowatt of installed capacity figure. Gas turbine plants will not have any obsolescence allowance applied to the additional cost added to the plants.

The obsolescence allowance for hydro-electric plants will be calculated through the use of a "plant factor." The plant factor is computed by dividing the number of kilowatt hours a generating plant actually produced in a year by the number of kilowatt hours the plant was capable of producing. The plant factor is normally expressed as a percentage. The mathematical expression of this factor is: net generation (kwh) divided by annual installed capacity (hours in a year X installed capacity (kw)). A standard plant factor will be computed for hydro-electric plants by averaging the ten plants within the 15 year study period used to compute the average cost per kilowatt of installed capacity with the highest plant factor. This standard will then be compared to an average of the most recent three years' plant factor of the subject plant. The amount the subject plant deviates from the standard is the amount of obsolescence which will be applied to the added cost.

An example of this obsolescence allowance computation is shown below.

Hydro-Electric Plants

Plant	Net Generation kwh (000)	Plant Capability kwh (000)	Plant Factor

A	400,150	755,000	53 %
B	300,040	577,000	52 %
C	250,000	480,000	52 %
D	600,000	1,250,000	48 %
E	896,000	1,600,000	56 %
F	700,000	1,400,000	50 %
G	507,000	975,000	52 %
H	450,000	1,000,000	45 %
I	376,000	800,000	47 %
J	810,000	1,800,000	45 %
		Average	50 %

XYZ Utility

Hydro-Electric Plant #4

Year	Net Generation kwh (000)	Plant Capability kwh (000)	Plant Factor
19XX	400,000	1,000,000	40 %
19XX	500,000	1,000,000	50 %
19XX	450,000	1,000,000	45 %
		Average	45 %

Hydro-electric plant #4 plant factor (45%) divided by standard plant factor (50%) equals 90%. Therefore, hydro-electric plant #4 deviates from the standard by 10%, or is 10% obsolete.

The obsolescence allowance for steam-electric generating plants will be computed annually using two indicators. The first indicator will be the plant factor. The plant factor for steam-electric plants will be computed and applied in the same manner as the computation specified for hydro-electric plants above. The only difference will be that the information used for the computation will be drawn from the latest Steam-Electric Plant Construction Cost and Annual Production Expenses publication rather than the Hydro-Electric Plant publication. Plant factors of the ten best steam-electric generating plants within the 15 year study period will be averaged. This average will be compared to the most recent three year average plant

factor for the subject plant. The subject plant's deviation from the standard plant factor is the amount of indicated obsolescence.

The second indicator which will be used to compute an obsolescence allowance for steam-electic generating plants will be a thermal efficiency factor. The source of information for this computation will also be the latest issue of the United States Department of Energy's publication, Steam-Electric Plant Construction Cost and Annual Production Expenses. Thermal efficiency for a generating plant is measured by the number of British thermal units (B.T.U.) required to produce one kilowatt hour. This efficiency rating can be obtained by dividing the number of kilowatt hours produced by a generating plant by the number of B.T.U.'s needed to produce this power. The number of B.T.U's used can be obtained by multiplying the units of fuel burned by the generating plant - tons of coal, gallons of oil, or cubic feet of gas - by the average B.T.U. content of the fuel unit. The standard thermal efficiency factor will be computed by averaging the thermal efficiency factor of the ten most efficient steam-electric generating plants within the 15 year study period used to compute the average cost per kilowatt of installed capacity. This standard thermal efficiency factor will then be compared to the thermal efficiency factor of the subject plant. The amount the subject plant deviates from the standard is the amount of obsolescence indicated by this factor.

The two obsolescence figures for the subject plant as indicated by both the plant and thermal efficiency factors will then be averaged. This resulting average is the obsolescence allowance which will be applied to the cost added to the subject plant as a result of the average cost per kilowatt of installed capacity computation. In no instance shall the original cost of a generating plant be reduced by an allowance for obsolescence unless its cost is increased through the use of the average cost per kilowatt of installed capacity computation.

The following examples illustrate the computation of: the standard thermal efficiency factor; obsolescence indicated by

the application of this factor to the subject plant; average obsolescence for steam-electric generating plants; and obsolescence allowance adjustment of the added cost due to the use of the average cost per kilowatt of installed capacity for the subject plant.

Steam-Electric Generating Plants

Plant	Net Generation kwh (Millions)	BTU's Used (Millions)	BTU's per kwh
A	2,000	18,400,000	9,200
B	6,000	53,400,000	8,900
C	8,000	72,000,000	9,000
D	5,000	45,500,000	9,100
E	3,000	26,400,000	8,800
F	1,000	9,000,000	9,000
G	4,000	36,600,000	9,150
H	9,000	80,550,000	8,950
I	7,000	61,950,000	8,850
J	5,000	45,250,000	9,050
		Average	9,000

XYZ Utility Company

Steam-Electric Plant #2

Net Generations kwh (Millions)	BTU's Used (Millions)	BTU's per kwh
2,000	21,600,000	10,800

Steam-electric plant #2 thermal efficiency factor (10,800 BTU's per kwh) divided by standard thermal efficiency factor (9,000 BTU's per kwh) equals 120%. Therefore, steam-electric plant #2 deviates from the standard by 20% or is 20% obsolete.

XYZ Utility Company

Steam-Electric Plant #2

1. Obsolescence Indicated by Plant Factor	10%
2. Obsolescence Indicated by Thermal Efficiency Factor	20%
3. Obsolescence Allowance (Average of 1 and 2)	15%

4. Additional Cost due to Computation of Average Cost per kw of Installed Capacity	$2,500,000
5. 15% Obsolescence Allowance	375,000
6. Additional Cost to be Added after Adjustment for Obsolescence	$2,125,000

The cost indicator of value computed in accordance with this ~~regulation~~ rule will be weighted for each ~~class~~ type of utility company as follows: electric companies, 85 percent; gas distribution companies, 75 percent; and pipeline companies, 75 percent.

The following example illustrates how the cost indicator of value would be computed for an electric company:

1. Utility Plant (Cost)	$200,000,000
2. Construction in Progress	5,500,000
3. Additional Value From Average Cost per K.W. Computation	2,000,000
4. Total Plant	207,500,000
5. Non-Depreciable Plant (Land, Intangibles, C.W.I.P.)	17,500,000
6. Depreciable Plant	190,000,000
7. Depreciation (Maximum 19%)	36,100,000
8. Total Cost Indicator of Value	171,400,000

D. Income approach to valuation. The income indicator of value will be estimated by weighting the net operating earnings of the utility company for the most recent three years as follows: most recent year, 40 percent; previous year, 35 percent; and final year, 25 percent. After considering, as far as possible, all conditions that may exist in the future that may affect the present annual return, including risk, life expectancy of the property, and cost of money, the capitalization rates used to compute value for the assessment will be: electric companies, ~~8.00~~ 8.5 percent; gas distribution companies, ~~8.25~~ 8.75 percent; and pipeline companies ~~8.50~~ 9 percent. The income indicator of value computed in accordance with this ~~regulation~~ rule will be weighted for each class of utility company as follows: electric companies, 15 percent; gas

distribution companies, 25 percent; and pipeline companies, 25 percent.

The following example illustrates how the income indicator of value would be computed for a pipeline company:

	1980	1981	1982
1. Net Operating Income	$ 468,000	$ 385,700	$ 450,000
2. Capitalized Income @ 9%	5,200,000	4,285,600	5,000,000
3. Weighting Factor	25%	35%	40%
4. Weighted Capitalized Income	1,300,000	1,500,000	2,000,000
5. Total Income Indicator of Value			4,800,000

E. Unit value computation. The unit value of the utility company will be the total of the weighted ~~indicator~~ indicators of value.

The following is an example of the computation of the unit value for a pipeline company:

1. Cost Indicator of Value....$5,000,000 x 75% = $3,750,000
2. Income Indicator of Value..$4,800,000 x 25% = $1,200,000
3. Unit Value of Pipeline Company 100% $4,950,000

~~F. Valuation of utility property of cooperatives. Cooperative associations shall have their utility property valued on the basis of historical cost only since they do not operate on the tradition profit making basis. Depreciation will be allowed as a deduction from cost at increments of 2.5 percent per year but the maximum shall not exceed 25 percent of property used in the generation, transmission or distribution of electric power.~~ Valuation of utility property of cooperatives and other non-common carrier or non-regulated utilities. Cooperative associations and other types of utilities which do not operate in the traditional profit making mode, are not common carriers, or are non-regulated, will have their utility property valued on the basis of historical cost only. Depreciation will be allowed as a deduction from the historical cost in increments of 2.5 percent per year, but the maximum depreciation allowed shall not

exceed 25 percent of the cost of the utility operating property. Additions to existing utility property will be depreciated 2.5 percent per year until they reach the 25 percent maximum. Retirements of utility property will be deducted from the cost basis at the appropriate depreciation level of the retired property.

The following example illustrates this process for an electric cooperative association:

1. Cost of Substation	$1,000,000
2. Value 1st year @ 97.5%	975,000
3. Value 2nd year @ 95%	950,000
4. Value 3rd year @ 92.5%	925,000
5. Value 4th year @ 90%	900,000
6. Value 5th year @ 87.5%	875,000
7. Value 6th year @ 85%	850,000
8. Value 7th year @ 82.5%	825,000
9. Value 8th year @ 80%	800,000
10. Value 9th year @ 77.5%	775,000
11. Value 10th year @ 75%	750,000
12. Value 11th and succeeding years at 75%	750,000

G. Obsolescence allowances. The commissioner may adjust the value calculated pursuant to this rule through the use of an obsolescence allowance. This allowance is intended to be used in order to recognize the effect the curtailment or termination of a pipeline's source of supply may have on its value. In order for a pipeline or a gas distribution company to be eligible for such an allowance they must meet certain criteria or standards. These standards are listed below. It is mandatory that standards 1, 2 and 3 be met by the utility. It is highly desirable that standards 4 and 5 also be met.

1. The utility must adequately demonstrate, to the satisfaction of the commissioner, that its source of supply for gas or oil will be terminated within the next ten years.

2. The utility must be at, or above, the maximum depreciation allowance as specified by C.

3. The utility must have made application to the

appropriate regulatory agency for increased depreciation allowances, and the application must not have been denied or rejected.

4. The utility must not have made any major capital expenditures within the last three years.

5. The utility must not have sold any long term bonds or signed any long term notes within the last three years.

If the utility has made major capital expenditures or entered into long term debt obligations within the last three years, a satisfactory explanation of the rationale for these actions must be made to the commissioner before an allowance for obsolescence will be granted.

The obsolescence allowances which may be applied to the utility's value will be calculated in the following manner:

Method 1. A 5 year average of the utility's annual throughput will be calculated. The throughput for the assessment year will be compared to this average and a percentage calculated. This percentage will be applied to the cost indicator of value calculated pursuant to C. in order to adjust the indicator for obsolescence. The adjusted cost indicator of value will be used in the calculation of the unit value pursuant to E. The following is an example of this procedure:

Year	Throughput in Barrels
1977	1,200,000
1978	1,300,000
1979	1,150,000
1980	1,100,000
1981	1,050,000
	5,800,000 Total
	1,160,000 Average Throughput

1. 1982 Throughput	1,000,000 Barrels
2. Percent of 1982 Throughput to 5 Year Average Throughput	86%
3. Cost Indicator of Value	$6,300,000
4. Cost Indicator Adjusted	

for Obsolescence		$5,418,000

Method 2: The book depreciation shown on the books and accounts of the utility will be compared to the depreciation allowed by C. If the book depreciation exceeds the maximum depreciation allowance, 50% of the excess depreciation will be used in the calculation of the cost indicator of value. An example of this calculation is as follows:

1. Book Depreciation	$6,000,000	
2. Maximum Allowable Depreciation	4,750,000	
3. Excess Depreciation	1,250,000	
4. 50% of Excess Depreciation	$ 625,000	
5. Utility Plant		$11,000,000
6. Construction Work in Progress		50,000
7. Total Plant		11,050,000
8. Non-Depreciable Plant (Land, CWIP)		1,050,000
9. Depreciable Plant		10,000,000
10. Depreciation (Maximum 47.5%)		4,750,000
11. Obsolescence Allowance		625,000
12. Cost Indicator of Value		5,675,000

Method 3. The income indicator of value computed in accordance with D. will be calculated by capitalizing the utility's 3-year weighted net operating earnings for a specific term of years rather than into perpetuity. The term of years to be used will be the number of years remaining until the expected expiration of the utility's source of supply for product (oil, gas), or the number of years remaining until the utility's major assets (pipeline, pump stations, storage tanks, and similar assets) are fully depreciated, whichever is greater. An example of this capitalization process is as follows:

	1979	1980	1981
1. Net Operating Earnings	$1,320,000	$1,000,000	$800,000
2. Weighting	25%	35%	40%
3. Weighted Net Operating Earnings	$330,000	$350,000	$320,000
4. Total Weighted Net			

Operating Earnings	$1,000,000	
5. Terms of years until major assets are fully depreciated		8
6. Capitalization rate pursuant to 13 MCAR S 1.0003 D.		9%
7. Capitalization rate converted to term of 8 years		18.0674%
8. Capitalized Income/Income Indicator of Value		$5,534,831

The commissioner shall apply to the valuation process whichever of the three obsolescence methods is most appropriate in order to equitably recognize the effect of obsolescence on the utility's value.

H. Retirements. Utility operating property may be retired from the utility system while still in place if certain criteria are met:

1. The property must be physically disconnected from the utility system. In the case of electrical plants, the disconnection or dismantling of wires, cables, connectors, or transformers would constitute physical disconnection. In the case of pipelines, the disconnection of pipes, valves, or fittings would be evidence of physical disconnections.

2. An affidavit of retirement should be filed by the utility with the commissioner at least 30 days prior to the assessment date. This affidavit should indicate the facility being retired and the date it was taken out of service.

The utility should make every effort to inform the commissioner of pending major retirements. The commissioner in turn shall notify the county assessor of impending major retirements as soon as this information becomes available to the department.

Utility property which is retired in place shall continue to be taxed for ad valorem purposes; however, its market value shall not be determined on the basis of its value as utility operating property.

If a utility should choose to temporarily retire a facility

pending the development of an alternate fuel, greater demand, increased source of supply or some other valid reason, the cost of this facility must be transferred to the appropriate regulatory agency's account entitled "Held for Future Use." Standby facilities will not be considered to be temporarily retired unless their costs are carried in this account. Temporarily retired utility facilities will be valued taking into account a number of factors including: age of the facility, type of facility, amount of maintenance and additional costs needed to restore the facility to operational status, length of retirement, and earning potential of the facility. In no instance shall a temporarily retired facility be valued lower than if the facility were considered non-operating utility property.

13 MCAR S 1.0004 Allocation.

A. General. After the unit value of the utility property has been estimated, the portion of value which is attributable to Minnesota must be determined. This process of dividing the unit value of a utility company among the states in which the utility operates is called allocation. Each of the factors in the allocation formula is assigned a weighted percentage to denote the relative importance assigned to that factor. The resulting sum of the weighted factors multiplied by the unit value yields the valuation of the utility property which will, after the adjustments described in 13 MCAR S 1.0005, be subject to ad valorem tax in the State of Minnesota.

The factors to be considered in making allocations of unit value to Minnesota for the utility companies and the weight assigned to each factor for each class are specified in this ~~regulation~~ rule.

B. Electric companies. The original cost of the utility property located in Minnesota divided by the total original cost of the property in all states of operation is weighted at 90 percent. Gross revenue derived from operations in Minnesota divided by gross operations revenue from all states is weighted

at ten percent.

The following example illustrates this formula, assuming a unit value of $20,000,000.

1.	Minnesota Plant Cost.....	~~($115,000,000)~~	x .90 = 50.49%
2.	System Plant Cost.....	~~($205,000,000)~~	
3.	Minnesota Gross Revenue....	~~($ 40,000,000)~~	x. 10 = 3.8 %
4.	System Gross Revenue.....	~~($105,000,000)~~	
5.	Total Percentage Allocable to Minnesota.....		54.29%
6.	Unit Value of System Plant.....		$20,000,000
7.	Amount of Value Allocable to Minnesota....		$10,858,000

C. Gas distribution companies. The allocation of value of gas distribution companies shall be made considering the same factors as are used to determine the allocation of value of electric companies. The weight given to the original cost factor will be 75 percent, and gross revenue shall be weighted 25 percent.

D. Pipeline companies. In addition to the cost factor and the gross revenue factor, the factor of weighted pipeline miles shall be considered in allocating the value of pipeline companies. Weighted pipeline miles means the number of miles of pipeline multiplied by the diameter of the pipe, measured in inches. To illustrate, a pipeline 6 miles long has 3 miles of pipe with a diameter of 10 inches and 3 miles of pipe with a diameter of 30 inches. The weighted pipeline miles is 120.

3 miles x 10" diameter	= 30
3 miles x 30" diameter	= 90
Weighted pipeline miles	= 120

The following example ~~illustrate~~ illustrates the allocation of value of property of a pipeline company and the weights given to each factor:

1.	Minnesota Plant Cost.....	~~($13,500,000)~~	x .75 = 25.76%
2.	System Plant Cost.....	~~($39,300,000)~~	
3.	Minnesota Gross Revenue....	~~($ 2,980,000)~~	x .05 = 1.60%
4.	System Gross Revenue.....	~~($ 9,300,000)~~	

5.	Minnesota Weighted Pipeline Miles.....	~~(9,500)~~	
6.	System Weighted Pipeline Miles..	~~(27,100)~~	x .20 = 7.01%
7.	Total Percentage Allocable to Minnesota.....		34.37%

13 MCAR S 1.0005 Adjustments for non-formula assessed or exempt property.

A. After the Minnesota portion of the unit value of the utility company is determined, any property which is non-formula assessed or which is exempt from ad valorem tax, will be deducted from the Minnesota portion of the unit value. Only that qualifying property located within the State of Minnesota may be excluded.

B. The following properties will be valued by the local or county assessor and, therefore, the formula provided herein for the valuation of utility property will not be applicable for such property:

1. Land;
2. Non-operating property;
3. Rights of way.

C. The Minnesota portion of the unit value will be reduced by the original cost of ~~these items except that~~ land and rights of way. In the case of non-operating property, the deduction shall be original cost, less the rate of depreciation applicable in the valuation process pursuant to 13 MCAR S 1.0003.

D. A deduction from the Minnesota portion of the unit value shall also be made for property, real or personal, which is exempt from ad valorem tax. For instance, pollution control equipment for which an exemption has been granted is exempt. A deduction from the Minnesota portion of the unit value shall be made at original cost, less the applicable rate of depreciation used in the valuation process pursuant to 13 MCAR S 1.0003. The value of personal property, such as office machinery and vehicles, which is not taxed, shall also be excluded from the Minnesota portion of the unit value. The deduction shall be at original cost less the applicable rate of depreciation utilized

in the valuation process.

The following example illustrates how these items are deducted from the Minnesota portion of the unit value.

1. Minnesota Portion of Unit Value			$5,000,000
2. Excludable Items - Nondepreciable			
a. Land Assessed Locally			3,000
b. Land Rights			2,000
3. Excludable Items - Depreciable			
a. General Plant Items	$10,000		
b. Pollution Control Equipment	10,000		
c. Gross Depreciable Items	20,000		
d. Depreciated at 25%	5,000		
e. Net Depreciable Excludable Items			15,000
4. Total Excludable Items			20,000
5. Minnesota Apportionable Value			4,980,000

E. The utility company shall have the burden of proof to establish that the value of any property should be excluded from the Minnesota portion of the unit value. Accordingly, the utility company shall have the responsibility to submit, in the form required by the Commissioner of Revenue, such schedules of exempt or non-formula assessed property as he may require.

13 MCAR S 1.0006 Apportionment.

A. After the unit valuation of the utility company has been allocated to the State of Minnesota and has been adjusted pursuant to 13 MCAR S 1.0005, the determined amount shall be apportioned or distributed to the taxing districts in Minnesota in which the company operates. This apportionment will be made by the Commissioner of Revenue on the basis of information submitted by the utility companies in annual reports filed with the commissioner.

B. The following information must be submitted for each taxing district:

1. The market value of the company's operating property by classification, as reflected in the last assessment,

including the cost of leased taxable property.

2. The original cost of the company's operating property by classification, including the cost of leased taxable property.

3. The original cost of any new additions since the last assessment, including work in progress on the assessment date.

4. The market value of any retirements made after the last assessment, as reflected in that assessment.

5. The original cost of any retirements made after the last assessment.

6. Whenever a new taxing district is established, the information submitted by the utility companies for the taxing district must be submitted in the same form as enumerated in 1.-5. If the utility, because of administrative difficulty, is forced to make estimates of values and costs for property within new taxing districts, these estimates must be approved by the commissioner.

C. The total market value of each company's operating utility property in Minnesota shall be divided by the ~~larger~~ greater of:

1. The last market value of ~~each~~ the company's operating utility property in each taxing district, plus original cost of new construction, reduced by the last market value of property retired since the last assessment.

2. The original cost ~~x 75 percent~~ together with any additional cost computed in accordance with 13 MCAR S 1.0003 C. of ~~each~~ the company's operating utility property in each taxing district plus original cost of new construction reduced by the original cost of property retired since the last assessment multiplied by the percentage as specified below.

For the 1982 assessment year the original costs shall be multiplied by 77.5%.

For the 1983 assessment year the original costs shall be multiplied by 80%.

For the 1984 assessment year the original costs shall be multiplied by 82.5%.

For the 1985 assessment year the original costs shall be

multiplied by 85%.

For the 1986 assessment year the original costs shall be multiplied by 87.5%.

For the 1987 assessment year the original costs shall be multiplied by 90%.

For the 1988 assessment year the original costs shall be multiplied by 92.5%.

For the 1989 assessment year the original costs shall be multiplied by 95%.

For the 1990 assessment year the original costs shall be multiplied by 97%.

For the 1991 assessment year the original costs shall be multiplied by 100%.

D. For this purpose, the last market value and the last assessment shall mean the latest assessment immediately prior to the current assessment. The portion of unit value to be assigned to each taxing district will be the resulting percentage multiplied by the Minnesota portion of the unit value, as adjusted pursuant to ~~13 MCAR S 1.0006~~ this rule.

~~E. If the market value of any parcel of property assessed pursuant to this chapter is increased, the increase entered on the assessment books shall be subject to the limitation provided in Minn. Stat. S 273.11, Subd. 2. The amount of decrease in market value of such property, exclusive of property retired or destroyed since the last assessment, shall not exceed ten percent of the value in the preceding assessment.~~

Repealer. Rule 13 MCAR S 1.0007 is repealed.

OFFICE OF THE REVISOR OF STATUTES
PROPOSED RULES

Agency Department of Revenue

Division

Agency Contact Jerry Garski Phone Number 6-5134

Title:

Type of Rules: Permanent X Temporary

Incorporations by References:

Rule Number	Material Incorporated
13 MCAR S 1.0003 (first listing)	

Titles: Hydro-Electric Plant Construction Cost and Annual Production Expenses
Steam-Electric Plant Construction Cost and Annual Production Expenses
Gas Turbine Electric Plant Construction Cost and Annual Production Expenses

Author: United States Department of Energy, Energy Information Administration, Office of Energy Data, Washington, D.C., Published Annually.

Available from Government Documents, Wilson Library, University of Minnesota. Also available at nominal cost from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

See Additional references on back Yes No X

Duplication of Statutory Language.

Rule Number	Statutory Section Duplicated

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Name: Janet C. Rahm

Title: Assistant Revisor

Phone: 296-0952

STEAM PLANTS STUDY

Agency Exh. No. 6
File No. DR-82-004-JL
Date 11/4/81

Average Cost Per K.W. of Installed Capacity - 15 Year Study
Source: Steam Electric Plant Construction Cost and Annual Production Expenses
Published by the U. S. Department of Energy

Plant Name	Location	Study Year	Total Cost (000's)	Land (000's)	Cost Less Land (000's)	Mega Watts
Phoenix	AZ	1st	$ 63,337	$ 12	$ 63,325	396.0
Hayded No. 2	CO	1st	97,587	105	97,482	275.4
Manatee	FL	1st	339,810	3,469	336,341	1,726.6
Wansley No. 1	GA	1st	292,350	2,493	289,857	952.0
Duck Creek	IL	1st	208,718	6,755	201,963	416.5
Canal No. 2	MA	1st	122,453	-	122,453	529.6
Sherburne Co.	MN	1st	363,219	835	362,384	1,440.0
Rusn Island	MO	1st	361,808	750	361,058	1,241.0
Southwest	MO	1st	N/R			
Mansfield Br.	PA	1st	794,589	998.5	784,604	1,827.5
Harrington	TX	1st	106,062	193	105,869	360.0
New Haven Har.	CT	2nd	135,782	3,832	131,950	464.6
Gibson	IN	2nd	273,979	2,856	271,123	1,336.0
Rodemacher	LA	2nd	68,587	2,189	66,398	445.5
Waterford	LA	2nd	125,639	2,821	122,818	891.0
Mystic #4 Unit #7	MA	2nd	134,648	-	134,648	617.0
B. F. Cleary	MA	2nd	22,021	167	21,854	110.0
Big Stone #1 #2	SD	2nd	164,455	708	163,747	455.8
Colstrip No. 1	MT	2nd	296,568	3,108	293,460	716.7
Leland Olds No. 2	ND	2nd	105,309	-	105,309	460.0
Miami Fort No. 7	OH	2nd	120,751	1,486	119,265	557.1
West Loraine	OH	2nd	47,183	197	46,986	235.3
Winyah No. 1	SC	2nd	67,346	1,481	65,865	315.0
Columbia #1 #2	WI	2nd	146,567	537	146,030	544.7
Neal #2 #3	IA	2nd	139,013	-	139,013	549.8
Gaston E.C. #5	AL	3rd	166,352	10	166,342	952.0
Navajo	AZ	3rd	657,875	-	657,875	2,409.5
Santan	AZ	3rd	58,808	149	58,659	414.0
Anclote	FL	3rd	101,327	1,037	100,290	556.2

Plant Name	Location	Study Year	Total Cost (000's)	Land (000's)	Cost Less Land (000's)	Mega Watts
Ghent	KY	3rd	$ 242,104	$ 2,737	$ 239,3678	1,113.3
G. Andrews	MS	3rd	110,441	330	110,111	781.5
Newington	NH	3rd	80,950	404	80,546	414.0
Gilbert	NJ	3rd	81,164	238	80,926	340.2
Roseton	NY	3rd	324,102	605	323,497	1,242.0
Belews Creek	NC	3rd	349,254	14,123	335,131	2,160.0
J. M. Gavins	OH	3rd	583,220	2,712	580,508	2,600.0
Riverside	OK	3rd	107,776	1,248	106,528	945.0
B. M. Davis	TX	3rd	98,711	3,104	95,607	703.8
Ft. Phanton	TX	3rd	47,364	114	47,250	363.6
Huntington #2	UT	3rd	147,955	2,186	145,769	446.4
Jim Bridger	WY	3rd	536,933	1,223	535,710	1,581.5
Monticello	TX	3rd	204,732	5,631	199,101	1,186.8
T. C. Ferguson	TX	3rd	58,029	270	57,759	446.4
Comanche	CO	4th	197,160	207	196,953	778.5
Edge Moor	DE	4th	75,818	-	75,818	446.4
La Cynge	KS	4th	434,990	3,503	431,487	1,578.6
Conesville #4	OH	4th	132,636	69	132,567	841.5
Comanche	OK	4th	31,406	346	31,060	290.0
Brunot Island	PA	4th	74,056	394	73,662	355.9
Williams	SC	4th	94,831	676	94,155	632.7
Cumberland	TN	4th	434,593	2,082	432,511	2,600.0
Station II	KY	4th	71,317	N/R	71,317	360.0
Erickson	MI	4th	33,759	498	33,261	160.0
San Juan	NM	4th	197,608	131	197,477	676.4
Mill Creek	KY	5th	116,906	842	116,064	711.0
Big Lajan	LA	5th	33,639	593	33,046	230.4
New Madrid	MO	5th	143,907	1,123	142,784	650.0
Bowline Point	NY	5th	251,733	1,124	250,609	1,242.0
Montour	PA	5th	258,948	2,837	256,111	1,641.7
O. W. Sommers	TX	5th	92,633	5,364	87,269	892.8
Harrison	WV	5th	390,765	5,423	385,342	2,052.0
Centralia	WA	5th	317,680	1,881	315,799	1,460.0
McClellan	AK	5th	17,285	79	17,206	136.0
Powerton	IL	5th	374,822	3,297	371,525	1,785.6
Mohave	NV	6th	211,815	772	211,043	1,636.2

Plant Name	Location	Study Year	Total Cost (000's)	Land (000's)	Cost Less Land (000's)	Mega Watts
Ormond Beach	WI	6th	$ 180,453	$ 7,563	$ 172,890	1,612.8
A. B. Hepkins	FL	6th	37,347	N/R	37,347	118.3
Bowen	GA	6th	440,093	1,319	438,774	3,498.6
Monroe	MI	6th	589,778	3,443	586,335	3,279.6
Mitchell	WV	6th	249,670	761	248,909	1,632.6
Seminole	OK	6th	154,086	1,653	152,433	1,724.6
E. Joslin	TX	6th	29,723	320	29,403	261.0
Jones	TX	6th	53,953	522	53,431	5,120
Naughton #3	WY	6th	53,117	-	53,117	326.4
J. E. Amos	WV	6th	521,222	1,832	519,390	2,932.6
Big Brown	TX	6th	153,688	2,333	151,355	1,186.8
Morgontown	MD	7th	198,639	473	198,166	1,251.0
Big Bend	FL	7th	277,375	4,597	272,778	1,336.5
Baldwin	IL	7th	374,551	2,588	371,963	1,892.1
Warrick	IN	7th	36,399	1	36,398	380.0
Cayuga	IN	7th	161,766	425	161,341	1,062.0
Asbury	MO	7th	27,168	125	27,043	212.8
Lewis Creek	TX	7th	56,170	3,205	52,965	542.9
La Bodie	MO	7th	441,919	540	441,379	2,482.0
M. R. Young	ND	7th	43,160	871	42,289	256.5
J. M. Stuart	OH	7th	379,484	1,269	378,215	2,440.8
Cheswick	PA	7th	130,290	1,021	129,269	565.3
Conemauch	PA	7th	238,726	1,338	237,388	1,872.0
Jefferies #3 & #4	SC	7th	43,123	7	43,116	345.6
Wateree	SC	7th	102,211	378	101,832	771.8
Lake Hubbard	TX	7th	82,104	1,710	80,394	927.5
Paradise B	TN	7th	158,813	301	158,512	1,150.2
Tombigbee	AL	8th	14,545	96	14,449	75.0
Four Corners #4 & #5	NM	8th	184,133	44	184,089	1,636.2
F. E. Ratts	IN	8th	43,306	82	43,224	233.2
Coleman	KY	8th	73,704	175	73,529	521.3
Pathfinder	SD	8th	16,392	342	16,050	75.0
W. C. Beckjord	OH	8th	61,434	27	61,407	460.8
Homer City	PA	8th	484,856	3,188	481,668	2,011.5
Hatfield's Ferry	PA	8th	261,542	242	261,300	1,728.0
New Genoa	WI	8th	52,553	376	52,177	345.6

Plant Name	Location	Study Year	Total Cost (000's)	Land (000's)	Cost Less Land (000's)	Mega Watts
Edgewater #4	WI	8th	$ 46,608	$ 266	$ 46,342	351.0
Dallman	IL	9th	N/R			
Prairie Creek	IA	9th	24,588	133	24,455	148.8
Burlington	IA	9th	25,364	81	25,283	212.0
Canal	MA	9th	60,874	236	60,638	542.5
Allen S. King	MN	9th	84,446	566	83,880	598.4
S. E. Corette	MT	9th	21,781	66	21,715	172.8
Fort Churchill	NV	9th	33,783	45	33,738	210.0
R. W. Miller	TX	9th	47,468	44	47,424	391.5
Naughton No. 2	WY	9th	35,744	-	35,744	217.6
Turkey Point	FL	10th	59,264	2,187	57,077	804.1
Kinkaid	IL	10th	161,959	5,796	156,163	1,319.4
Petersburg	IN	10th	403,691	464	403,227	1,298.8
Stanton	ND	10th	24,916	151	24,765	172.0
Sioux	MO	10th	142,688	363	142,325	1,099.6
Maddox	NM	10th	11,597	26	11,571	113.6
Northport	NY	10th	313,709	2,089	311,620	1,548.4
Cardinal Units #1 & #2	OH	10th	480,137	1,372	478,765	1,880.5
Keystone	PA	10th	210,317	4,044	206,273	1,872.0
Bull Run	TN	10th	143,201	2,083	141,118	950.0
Fort Martin	WV	10th	144,888	97	144,971	1,152.0
Carl Bailey	AR	11th	11,055	39	11,016	120.0
Crystal River	FL	11th	107,419	1,688	105,731	964.3
Northside	FL	11th	138,680	367	138,313	1,158.7
Quindaro No. 3	KS	11th	33,052	-	33,052	239.1
B. F. Cleary	MA	11th	4,236	47	4,189	28.3
Baxter Wilson	MS	11th	147,516	411	147,105	1,327.6
Thomas Hill	MO	11th	61,721	40	61,681	470.0
Roxboro	NC	11th	229,586	8,064	221,522	1,813.1
Leland Olds No. 4	ND	11th	35,628	394	35,234	240.0
Grainger #2	SC	11th	N/R			
P. H. Robinson	TX	11th	N/R			
V. H. Braunig	TX	11th	65,336	1,456	63,880	894.0
Greene County	AL	12th	75,010	165	74,845	568.5
Hayden #1	CO	12th	40,032	312	39,720	190.0
Cape Canaveral	FL	12th	58,815	804	58,011	804.1

Plant Name	Location	Study Year	Total Cost (000's)	Land (000's)	Cost Less Land (000's)	Mega Watts
Smith Lansing	FL	12th	$ 63,604	$ 204	$ 63,400	2340.0
Branch Haritee	GA	12th	166,866	221	166,645	1,746.2
Coffeen	Il	12th	162,047	727	161,320	1,005.5
Robert Reid	KY	12th	12,527	243	12,284	81.6
Cooper	KY	12th	48,158	533	47,625	344.0
New Boston	MA	12th	78,403	138	78,265	717.7
Ried Gardner	NV	12th	116,203	819	115,384	340.9
Marshall	NC	12th	216,018	777	215,241	2,000.0
Colbert B	AL	12th	80,403	114	80,289	550.0
San Angelo	TX	12th	11,285	55	11,230	133.5
Sim Gideon	TX	12th	50,619	463	50,156	612.0
Mt. Storm	WV	12th	302,873	865	302,008	1,662.5
Apache	AZ	13th	13,236	40	13,196	92.9
Chalk Point	MD	13th	277,948	822	277,126	1,328.6
Neal Nos. 1 & 2	IA	13th	73,895	141	73,754	501.8
Wilkes	TX	13th	59,527	172	59,355	881.5
Sunrise	NV	13th	13,498	88	13,410	81.6
Hudson	NV	13th	210,853	412	210,441	1,114.5
Asheville	NC	13th	55,995	2,168	53,827	413.6
Mooreland	OK	13th	50,824	97	50,727	351.0
Rio Pecos	TX	13th	14,722	73	14,649	141.5
Four Corners	NM	14th	109,259	64	109,195	633.6
Fitzhugh	AR	14th	7,383	62	7,321	59.8
McDonough	GA	14th	72,986	663	72,323	598.4
Marion	IL	14th	21,085	1,036	20,049	99.0
Cimmaron River	KS	14th	9,033	12	9,021	65.0
McPherson	KS	14th	3,564	22	3,542	32.0
Big Sandy	KY	14th	162,534	1,051	161,483	1,096.8
Brayton Point	MA	14th	296,889	806	296,083	1,600.2
Tracy	NV	14th	47,330	410	46,920	238.0
Ravenswood	NY	14th	289,754	3,273	286,481	1,827.7
Paradise A	KY	14th	204,097	416	203,681	1,408.0
Naughton #1	WY	14th	33,540	327	33,213	163.2
Cholla	AZ	15th	27,900	241	27,659	113.6
Haynes	CA	15th	208,610	1,041	207,569	1,606.0
Bailly	IN	15th	96,140	142	95,998	615.6

Plant Name	Location	Study Year	Total Cost (000's)	Land (000's)	Cost Less Land (000's)	Mega Watts
Sabine	TX	15th	$ 139,784	$ 617	$ 139,167	1,543.6
Chas. Crane	MD	15th	71,885	357	71,528	399.8
J. H. Campbell	MI	15th	115,391	1,642	113,749	650.0
B. L. England	NJ	15th	96,579	336	96,243	475.6
Lea County	NM	15th	9,439	62	9,377	56.5
Canady's	SC	15th	66,138	185	65,953	489.6
Valley	TX	15th	N/R	N/R	N/R	N/R
Oak Creek	TX	15th	9,496	89	9,407	81.6
			$26,614,107	$210,421	$26,403,686	150,504.7

15 Year Average Cost Per K.W.: Cost Less Land divided by Mega Watts

$$\frac{26,403,686}{150,504.7} = 175 \text{ per K.W.}$$

SP:N7

Agency Exh. No. 7
File No. DR-82-004-JC
Date 11/4/81

CAPITALIZATION OF AVERAGE UTILITY WORKSHEET

ALL INFORMATION FROM
1980 MOODY'S PUBLIC UTILITY MANUAL: SPECIAL FEATURES SECTION

10 YEAR STUDY - HOW THE AVERAGE UTILITY IS CAPITALIZED

	YEAR	% OF DEBT	% OF PREFERRED	% OF COMMON
ELECTRIC COMPANIES	1970	55.8%	10.9 %	33.3 %
	1971	54.8	11.7	33.5
	1972	53.8	12.4	33.8
	1973	53.8	12.4	33.8
	1974	55.0	12.7	32.3
	1975	53.5	12.8	33.7
	1976	52.5	12.9	34.6
	1977	50.9	13.1	36.1
	1978	50.5	12.9	36.6
	1979	51.4	12.7	35.8
AVERAGE		53.2%	12.5 %	34.4 %
TRANSMISSION COMPANIES	1970	63.2%	7.4 %	29.4 %
	1971	62.1	6.5	31.4
	1972	60.4	6.5	33.0
	1973	60.2	6.3	33.4
	1974	59.6	5.8	34.6
	1975	58.3	5.3	36.4
	1976	55.5	5.5	39.1
	1977	51.9	4.9	43.2
	1978	52.4	5.5	42.1
	1979	52.4	5.3	42.3
AVERAGE		57.6%	5.9 %	36.5 %
DISTRIBUTION COMPANIES	1970	55.9%	9.4 %	34.7 %
	1971	53.6	9.9	36.6
	1972	54.0	9.1	36.9
	1973	53.8	8.5	37.6
	1974	56.0	8.3	35.8
	1975	54.9	8.8	36.4
	1976	53.0	9.4	37.6
	1977	51.0	9.9	39.1
	1978	48.3	10.3	41.3
	1979	47.1	9.8	43.1
AVERAGE		52.8%	9.3 %	37.9 %
ROUNDED AVERAGE OF THREE INDUSTRY AVERAGES		55 %	9 %	36 %

PUBLIC UTILITY STOCK YIELD WORKSHEET

ALL INFORMATION FROM 1980 MOODY'S PUBLIC UTILITY MANUAL: SPECIAL FEATURES SECTION

20 YEAR STUDY
PREFERRED STOCK YIELD

YEAR	YIELD IN %
1960	5.43
1961	5.16
1962	4.63
1963	4.72
1964	4.74
1965	N/A
1966	5.37
1967	6.03
1968	6.44
1969	7.55
1970	9.01
1971	7.74
1972	7.53
1973	7.50
1974	9.95
1975	10.63
1976	9.12
1977	8.43
1978	9.03
1979	9.76
AVERAGE	7.30

10 YEAR STUDY
COMMON STOCK YIELD AND GROWTH IN EARNINGS

YEAR	AVERAGE MARKET PRICE	DIVIDENDS PER SHARE	DIVIDEND YIELD %	EARNINGS PER SHARE	5 YEAR MOVING AV. EARN. PER SHARE	% EARN. PER SHARE INCREASE	INDICATED RATE
1970	$79.06	$4.70	5.94%	$6.89	$6.69	2.92%	8.86%
1971	84.16	4.77	5.67	7.14	6.86	2.54	8.21
1972	80.20	4.87	6.07	7.73	7.07	3.06	9.13
1973	71.21	5.01	7.04	7.55	7.25	2.54	9.58
1974	48.26	4.83	10.01	7.63	7.39	1.93	11.94
1975	51.25	4.97	9.70	7.77	7.56	2.30	12.00
1976	60.10	5.18	8.62	7.86	7.71	1.98	10.60
1977	67.55	5.54	8.20	8.83	7.93	2.85	11.05
1978	63.54	5.81	9.14	8.59	8.16	2.64	11.78
1979	60.28	6.22	10.32	8.95	8.42	3.19	13.51
AVERAGE	$66.56	$5.19	8.07%	$7.90	$7.51	2.62%	10.69%

PUBLIC UTILITY

15 YEAR COST OF MONEY STUDY

YEAR	AVERAGE YIELD ALL UTILITY BONDS	AVERAGE YIELD NEWLY ISSUED UTILITY BONDS	AVERAGE YIELD NEW, GAS, LIGHT, POWER BONDS
1965	4.68%	4.37%	4.61%
1966	5.61	4.97	5.53
1967	6.01	5.35	6.07
19[illegible]	6.72	6.41	6.80
1969	7.99	7.07	7.98
1970	8.85	8.76	8.79
1971	7.71	7.47	7.70
1972	7.46	7.16	7.50
1973	7.88	7.45	7.91
1974	9.21	8.36	9.59
1975	9.76	8.90	9.97
1976	8.80	9.06	8.92
1977	8.35	8.17	8.43
1978	9.22	9.21	9.30
1979	10.64	10.39	10.85
AVERAGE	7.93%	7.82%	8.00%

AVERAGE OF 3 COST OF MONEY INDICATORS: 7.92%

COMPUTATION OF AVERAGE CAPITALIZATION RATE

1)	AVERAGE UTILITY DEBT COST	7.92%
2)	AVERAGE DEBT % OF CAPITALIZATION	55.00%
3)	WEIGHTED DEBT CAP. RATE FACTOR	4.36%
4)	AVERAGE UTILITY PREFERRED STOCK YIELD	7.30%
5)	AVERAGE PREFERRED STOCK % OF CAPITALIZATION	9.00%
6)	WEIGHTED PREFERRED STOCK CAP. RATE FACTOR	.66%
7)	AVERAGE UTILITY EQUITY RETURN	10.69%
8)	AVERAGE EQUITY % OF CAPITALIZATION	36.00%
9)	WEIGHTED EQUITY CAPITALIZATION RATE FACTOR	3.85%
	AVERAGE UTILITY CAP RATE	8.87%
	IN THE APPRAISAL FIELD IT IS CUSTOMARY TO ROUND CAP RATES; THEREFORE, SAY	8.75%

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INTERNORTH

Public Exh. No. A
File No. DR-82-004-3L
Date 11/4/81

November 3, 1981

Mr. Jon Lunde, Hearing Officer
Office of Administrative Hearings
1745 University Avenue - Room 300
St. Paul, Minnesota 55104

Dear Mr. Lunde:

Enclosed is a copy of a paper dealing with the valuation of pipeline companies which was presented at the 1981 meeting of the Midwestern States Association of Tax Administrators. This paper may serve as useful background material in your review of the proposed rules of the Department of Revenue relating to the valuation of utility companies.

Sincerely,

PROPERTY TAX DEPARTMENT

Robert M Foster

R. M. Foster
Director

RMF/lh

Enclosure

Valuation of Interstate Natural Gas Transmission Pipelines for Property Tax Purposes

Robert M. Foster
Director, Property Taxes
InterNorth, Inc.

Midwestern States Association of Tax Administrators
Annual Meeting - Aug. 13-14, 1981, Lincoln, NE

As an industry representative I appreciate the opportunity to participate in your program. I would like to discuss the valuation process from the standpoint of an interstate natural gas pipeline company. I cannot speak for railroads or utilities, but I believe many of the ideas or viewpoints would be applicable to any of the state-assessed companies.

We support the fair market value concept and the use of the unit valuation procedure to determine fair market value. The use of generally accepted appraisal practices will result in a unit valuation which can be allocated among the several states where the property is located so as to fairly distribute the value, but not result in a total taxable value greater than the indicated value of the company.

The three approaches to value -- cost, income and market -- are independent of each other. The indicators should, however, be supportive of each other. If one indicator varies significantly from the other two, then the appraiser should examine his work to determine the reason for the variance. It may be necessary to consider some adjustments to that indicator, or it may need to be discarded or given less weight in the correlation of the indicators to arrive at the unit value.

Northern Natural Gas Company, Division of InterNorth, Inc., is regulated by the Federal Energy Regulatory Commission. This regulation includes prescribed accounting practices and the setting of maximum rates of return as well as approving new construction or the sale or retirement of property.

The cost indicator of value for a strictly regulated pipeline such as Northern should be no greater than original cost of the property less accrued depreciation. The regulatory body has approved all these costs and the net book investment in property is the major item in the rate base that the company is allowed to earn on. We believe that if net plant is the basis of future earnings then it is the proper cost indicator. Some states do not recognize book depreciation, but instead set an arbitrary floor for allowed depreciation. One argument for setting an arbitrary limit on depreciation is that this gives some recognition to replacement costs which would be higher than the original cost. We believe this results in valuing property which does not exist at the time of the appraisal. If net book is the base for earnings, then it should represent the upper limit of value for a regulated company.

The reason I believe net book investment is the upper limit of value for a cost indicator is that it does not give any recognition to economic obsolescence. If the regulatory agency has set an allowed rate of return at a level less than that demanded in the market place, then there is economic obsolescence in the cost indicator. In other words, the net book figure must be reduced to where the net utility operating income reflects a market rate of return. The regulatory agency allows the company to recover its cost of interest on long-term debt and the necessary dividends on preferred stock, so the economic obsolescence would apply only to the portion of net plant represented by equity. The amount of obsolescence would reflect the difference between the equity rate of return allowed by the F.E.R.C. and the current market demand for a return on equity.

One further comment relating to the cost indicator of value and the validity of original cost less depreciation as representing value. Under F.E.R.C. regulation, sales of utility property generally are made at net book. The reason for this is that F.E.R.C. requires the purchaser to record the property on its books on the same basis that it had for the seller. F.E.R.C. will not allow a purchaser to earn on anything more than net book. If the purchaser pays more than net book for some plant, it must set the premium aside in a separate account -- Acquisition Adjustment -- and that investment is excluded from the rate base.

The income indicator of value is viewed by many appraisers as the most important and most reliable indicator of value. The income indicator is a determination of the present worth of a future stream of income to be realized from the property being valued. Any purchaser of property is going to measure the limit of his willingness to invest by the amount of income to be realized from the investment.

For regulated utilities the net utility operating income as prescribed by the accounting practices of the regulatory agency is accepted as a level of income to be capitalized. Some states use the historic income of the past three or five years. Some times the income is weighted to give greater emphasis to the most recent years. There is some recognition of the fact that a purchaser is buying future income, so a projection of income may be made to take into account an estimate of the income to be realized from the assets being valued.

It must be recognized that the net utility operating income includes income earned on rate base assets which are not a part of the utility plant being appraised. This requires an adjustment in the income stream or the income indicator to arrive at a value that is comparable to the cost indicator. Rate base items contributing to income include intangibles such as working capital and advance payments for gas. Most states exempt intangibles from property taxation so income should be adjusted for these items. In some states personal property such as

inventories are exempt from property tax. If inventories of gas stored and materials and supplies are not in the cost indicator, then an adjustment of the income or income indicator must be made to produce comparable values. Some states also exempt pollution control equipment, and if the investment in this property is excluded from cost, then income must be adjusted accordingly.

The determination of a capitalization rate is generally arrived at by use of the band of investment approach. The ratio of capitalization to be used usually reflects an average capitalization for companies in a segment of the utility field, that is, different ratios would be used reflecting capitalization for electric companies, pipeline companies and railroads. The cost of capital should be current costs in the market since the appraiser is to determine a current value of the utility property. Some appraisers use imbedded costs for debt on the theory that a purchaser will be able to assume the outstanding debt at its original coupon rate. If that coupon rate is less than current market then the debt will be selling at a discount in the market and as a result we believe current costs of money should be used for both debt and equity in the band of investment to arrive at an overall capitalization rate.

A capitalization rate that does not reflect the current costs of debt and equity is artificially low and results in an overstatement of the income indicator of value. Six of the states where we operate had capitalization rates ranging from 11.25% to 14.50%. In comparison to these rates, Minnesota is using 8.5%. We believe this rate is entirely too low even when applied to a three-year weighted average income.

The market indicator of value is generally arrived at using the stock and debt approach to value. This theory is based on the fact that the liability side of the balance sheet equals the asset side. Market value is substituted for book value of the stock and debt of the company and the balance of the liabilities are taken at book value.

After establishing this total value of the company, the appraiser must allocate a portion of this to represent the utility property to be valued. The non-utility part of this value must be eliminated. There are various ways to allocate a portion of the total stock and debt value to the utility property. A ratio of the book value of utility assets to total assets could be used or the relationship of utility operating income to total income might be utilized. The appraiser should attempt to make sure that his allocation ratio recognizes not only quantity but quality, since these two ratios are somewhat deficient. It has been our experience at InterNorth that the regulated utility business earns a lower rate of return than does the unregulated non-utility businesses in which we are engaged. Recognition needs to be given to the lower earning capacity of the utility assets. The utility portion of the stock and debt indicator will need to be adjusted downward to reflect the diminished value due to regulation.

In arriving at the stock and debt value, the appraiser should use an average of stock and debt prices over a period of time. Many appraisers use an average of monthly high and low prices for the past year. A six-month or three-month average might also be used to give greater emphasis to the most recent market transactions. The use of a single day's market price, such as the year-end closing is not realistic as it would represent such a small segment of the total securities of the company being traded. A single day's trading might be influenced by some unusual circumstances that would be negated by the use of average prices over time. These averages will still closely reflect the market's opinion of value of the company in question. The stock and debt indicator of value has been viewed as the least reliable indicator of value by most appraisers. The investor in the market may be influenced by many factors which will affect the price at which securities are traded. The resulting prices determined in the market are not a reliable measure of the value of the utility plant the appraiser is attempting to value. Many companies such as InterNorth have diversified in recent years so that the investor

is no longer looking just at a natural gas pipeline company. What influence does our liquid fuels business, our petrochemical business or other areas of investment have on the purchaser of InterNorth stock? We believe these outside influences should be discounted and only nominal weight given to the stock and debt indicator of value.

After the appraiser has arrived at his three indicators of value, they must be correlated to arrive at a unit value. As pointed out earlier the income indicator is generally regarded as the most reliable indiator, with cost next and stock and debt the least reliable. The appraiser may place specific weights on the three indicators or he may just use his judgement and not acknowledge any specific weight to an indicator.

The last step in the appraisal process is to allocate the unit value to the state in question. Since the purpose of the appraisal is to value property for property tax purposes, I believe a proper allocation can be determined by using the ratio of gross plant in the state to gross plant, system. Some appraisers use net plant or an average of gross and net plant ratios. Other appraisers want to give some weight to other comparative ratios such as traffic units, pipeline miles or gross revenues. I do not believe these ratios are relevant to the value of the property. These ratios often result in the importation of value into a state from the balance of the system. If ratios other than plant investment are used, it is my opinion that they should be given only nominal weight and the principal weight should be given to the property factors.

I hope this has given you a brief idea of how we look at the appraisal process from our side of the table. Obviously the utility tax representative and the state appraisers are not going to agree on all the different phases of the appraisal process -- but that's what makes life interesting and challenging.

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INTERNORTH

Exh. No. A
File No.
Date

November 4, 1981

Mr. Jon Lunde, Hearing Officer
Office of Administrative Hearings
1745 University Avenue, Room 300
St. Paul, Minnesota 55104

Re: Proposed Rules of the Department of Revenue Governing Valuation and Assessment of Utility Companies

Dear Sir:

In response to the Department of Revenue's proposal to change certain parts of the present rules governing the valuation of utility companies, InterNorth, Inc. would like to make the following comments on behalf of it's operating divisions, Northern Natural Gas Company, a transmission pipeline company and Peoples Natural Gas Company, a gas distribution company.

13 MCAR 5.10003 Valuation

C. Cost Approach

It is proposed by the Department of Revenue to increase the allowed depreciation for gas distribution companies and pipeline companies from 45% to 47½%.

This is an arbitrary limitation which should be set aside and the rules should allow the use of book depreciation as recorded by the individual companies. On page 3 of the Statement of Need and Reasonableness, the Department describes four types of cost. The Department is presently recognizing original cost less depreciation, except this depreciation has arbitrarily been limited to 45% of original cost. We believe that book cost is the proper measure of the cost indicator for regulated utilities. Northern Natural Gas Company is regulated by the Federal Energy Regulatory Commission. The F.E.R.C. has established accounting procedures which we must adhere to in the recording of original cost of property and they have prescribed the rate and basis for recording depreciation on that property. The difference between this original cost and the accumulated depreciation is called net book investment and it is the major item of Northern's rate base on which we are allowed to earn income. The F.E.R.C. does not recognize reproduction cost or

C. Continued

replacement cost in computing the value of the investment in property on which the company can earn.

On page 4 of the Statement of Need and Reasonableness, the Department attempts to justify their limitation of depreciation by introducing an example of residential property which has appreciated in value over the years due to the inflationary market for residential property. We contend this has no relationship to the valuation of a utility because the residential property is operating in a relatively free market, completely unregulated. Utility companies, on the other hand, are subject to very strict regulations regarding earnings, accounting, and construction or abandonment of property. As property wears out or becomes inefficient, it is replaced with new property at current costs. The higher cost of new facilities is reflected on the books of the Company at the time of replacement. The Department's statement that the limit on depreciation "attempts to recognize both the wearing out and obsolescence of the facilities, together with the fact that to replace or reproduce the facility would produce more value" is in fact a valuing of property which does not exist. At such time as a facility is replaced, the new cost (replacement) will be recorded on the books. This rule attempts to attribute value to a future facility which does not now exist and which may be replaced at some time in the future.

Since the regulating agency allows the company to earn only on the net book investment in property, we believe this is an indication of what the property is worth. In fact, the net book investment represents the upper limit of the cost indicator of value. Because the rate of return allowed by the regulatory agency is less than the market requirements for a rate of return on comparable investments, there is economic obsolescence which is not recognized when using only book depreciation.

The Minnesota Public Utilities Commission which regulates Peoples Natural Gas Company has very similar regulations relating to the recognition of original cost, book depreciation and earnings allowed on net book investment.

C. Continued

The Department states that residential property built 20 years ago is selling for much more today than its original cost, and this current selling price is used to establish a current value of comparable properties. In the case of utility property, there are only a few comparable sales which can be used; but when sales do take place, the buyer generally pays the seller the net book value as recorded on the books of the seller. The reason for this is that the regulatory agency requires that the buyer must record the property on his books at the same value it had when originally built by the seller, less the accumulated depreciation, and this is the only basis the buyer will be allowed to earn on.

The regulatory agency will not allow utility property to be recorded at artificially inflated prices. They will not let a buyer earn income on an inflated price. Northern Natural Gas Company sold some of it's Minnesota transmission and distribution property to Northern States Power Company in 1977. The sale was consummated at net book investment. In 1980 Northern Natural Gas Company sold some Minnesota transmission property to Minnesota Gas Company. Again the sale was made at net book investment. Peoples Natural Gas Company has just concluded a trade with Greeley Gas Company whereby Peoples has taken over all of Greeley Gas Company's distribution property in Minnesota (four towns) and in exchange Greeley has acquired seven towns from Peoples in Colorado. This transaction has been made based on the net book investment in the property of both companies.

Utility companies do not operate in a free market. Due to the strict regulation by federal and state agencies as to the earnings which will be allowed, the maximum indication of market value of utility property is equivalent to its original cost when constructed less accumulated depreciation.

13 MCAR 5 1.0003 Valuation

D. Income Approach to Valuation

D. Continued

The Department of Revenue on Page 9 of the Statement of Need and Reasonableness explains the philosophy of this approach to valuation of property which states that property is worth what it will earn in the future. The capitalization process is a highly recognized appraisal technique which arrives at a value for property represented by the present worth of future earnings.

The proposed rules call for the weighting of the most recent three years net operating earnings. This is one of the generally accepted levels of income used by knowledgeable appraisers.

Net utility operating income of a utility company is generated by an allowed rate of return on an approved rate base. The State of Minnesota has exempted certain types of properties from property taxation such as intangible property and inventories. In the case of Northern Natural Gas Company, we have considerable investment in intangible property such as cash working capital and advance payments for gas. We also have a considerable investment in inventories of gas stored underground and inventories of materials and supplies. These items are all a part of the earnings base and they have contributed to the net utility operating income. The items of intangibles and inventories are not included as a part of the cost indicator of value. We would suggest that it is necessary to be certain that the stream of income used in the capitalized income approach is related to the cost indicator of value so that the comparison of the two indicators to arrive at a conclusion of value is valid and is not a comparison of apples and oranges. Therefore, it is our recommendation that the rule read as follows at lines 23-26, page 14, "The income indicator of value will be determined by weighting the net operating earnings of the utility company as adjusted, if necessary, to reflect a return on the investment of property subject to valuation, for the most recent three years as follows:"

The other part of the capitalization of income process is the determination of a proper capitalization rate to be

D. Continued

applied to the income stream to arrive at the income indicator of value. The Department of Revenue has proposed using the Band of Investment method which is recognized as the most generally accepted appraisal technique for utility companies, and we support the use of this method.

The first step in the Band of Investment computation is the establishment of the capital structure. The Department has recommended the following capital structure:

Long-Term Debt	55%
Preferred Stock	9%
Common Stock Equity	36%
	100%

The first exhibit in the Statement of Need and Reasonableness shows the Department's computation using 10 year historical data from Moody's Public Utility Manual. The Department has averaged together the ratios of electric companies, transmission companies and distribution companies. We believe there is a distinct difference in these types of companies and the way they are financed. There has also been a difference in the composition of the capital structures over time.

In 1970, 63.2% of transmission companies capital was long-term debt. By 1979 that was down to 52.4%. In 1970 the common stock portion of the capital was 29.4% and by 1979 this had increased to 42.3%. For Northern Natural Gas Company as of year-end 1980, our capital structure was:

Long-Term Debt	45.30%
Preferred Stock	1.75%
Common Stock	52.95%
	100.00%

While the Department may not be able to use separate capital structures for each company, we do recommend that separate capital structures be used for each of the three distinct and separate industries in order to recognize the differences and the changing composition of each industry. Since the Department is using three years of income in the capitalization process, we believe that three years experience of capitalization ratios

D. Continued

should be used in arriving at the required structure of the three industries. Our recommendation is as follows:

	Year	% of Debt	% of Preferred	% of Common
Electric Companies	1977	50.9	13.1	36.1
	1978	50.5	12.9	36.6
	1979	51.4	12.7	35.8
	Average	50.9	12.9	36.2
Transmission Companies	1977	51.9	4.9	43.2
	1978	52.4	5.5	42.1
	1979	52.4	5.3	42.3
	Average	52.2	5.2	42.6
Distribution Companies	1977	51.0	9.9	39.1
	1978	48.3	10.3	41.3
	1979	47.1	9.8	43.1
	Average	48.8	10.0	41.2

The final item to consider regarding the capitalized income approach is the discount or capitalization rate which is applied to the stream of income.

The capitalization rate used to capitalize income is subjective in nature. As indicated by the Department, the calculation of a capitalization rate by comparing income to the sales price of comparable property is practically non-existant for utilities because of the lack of sales. Consequently, it is necessary to arrive at a capitalization rate based on judgement of the factors a prospective purchaser would use in determining a rate of capitalization.

A review needs to be made of the investor requirements for each of the three components of the capital structure -- long-term debt, preferred stock and common stock.

Preferred stock is generally not being issued by transmission or distribution companies. Little preferred stock is being used by any utility as a means of raising funds. As a result, there is not available reliable current market costs for preferred stock issues. In more recent years, preferred stock

D. Continued

premium rates have tended to equal or exceed long-term debt costs for utilities. While we believe a 20-year review of preferred stock yields for all utility companies, as suggested by the Department, is meaningless, we acquiesce to the 7.30% weight assigned to this component of the capital structure.

As we are all painfully aware and as the Department of Revenue indicates in the Statement of Need and Reasonableness, interest rates on bonds and the corresponding cost of long-term debt over the last five years has skyrocketed.

Evidence is available in the market place which demonstrates that these rates approach 12-14% and even higher. While the Department of Revenue states that a portion of the costs of debt must be those costs in issues which are 15 years old, we feel the rate of the long-term debt component of the capital structure is completely out of line with the indicators in the market. It is true that due to the high cost of debt financing in the current market, no prudent buyer would consider a purchase of a gas transmission business unless the buyer could be assured of assuming the currently outstanding debt. However, this does not preclude the investor from demanding a current market rate of return on his equity investment.

InterNorth, Inc. has an A rating on its debentures which is a result of being a diversified business. If we were only in the natural gas transmission and distribution business, the debentures rating would, in our opinion, be Baa, because of the gas supply situation and an estimated reserve life of only 10 years. As a result, the length of any debenture or bond issue would probably not exceed 10 years.

During 1980 there were no long-term debt offerings by a Baa rated natural gas transmission company. The cost of A rated long-term debt for natural gas transmission companies in 1980 ranged from 10.92% to 15.52%.

By combining all utilities (electric companies, power generating companies, telephone companies, even water works companies) it is our opinion the Department has misstated the return required by the investor. It is also our opinion, that with the extreme gyrations the bond market has seen in the past few years, that a 15-year comparison is unreasonably long.

D. Continued

While we contend the use of all utilities averaged together is improper, we would be willing to recognize the information used by the Department if it was limited to the most current five years only and did not reflect averages over a fifteen year period.

This suggestion, while still not recognizing the degree of expense as evidenced in the market, would result in the following cost component in the long-term portion of the capital structure:

Year	Average Yield All Utility Bonds	Average Yield Newly Issued Utility Bonds	Average Yield New,Gas,Light Power Bonds
1975	9.76	8.90	9.97
1976	8.80	9.06	8.92
1977	8.35	8.17	8.43
1978	9.22	9.21	9.30
1979	10.64	10.39	10.85
Average	9.35	9.15	9.49

Average of above: 9.33%

The Department of Revenue staff is suggesting that the percentage of dividend yield added to the percentage of change in the earnings per share results in the indicated rate of return required by an equity investor. To arrive at this number, the staff has looked at 24 public utilities over the last 10 years as found in Moody's Public Utility Manual. Of the companies analyzed in developing this rate none of them are gas transmission or integrated natural gas companies and only four are partially involved in gas distribution. All of the companies reviewed are either partially or exclusively power generating companies or electric companies.

An alternative investment or opportunity cost method can be used as the basis for determining the required return on common stock. This procedure states that in determining the proper rate of return for common stock, the purchaser will look at alternative investments. This rate of return must be adequate in order to attract capital on reasonable terms and to allow the company to maintain its credit and

D. Continued

financial integrity.

One measure of the rate of return for the common stockholder is the relationship between the earnings per share and the selling price of the security. Beside the "public utilities" section in Moody's, there is also a section on "natural gas common stock averages" which indicates the following. In this case, the review is made using information from nine gas transmission companies. This information is also available for gas distribution companies and for integrated companies.

Year	Earnings Per Share	Average Market Price	Rate of Return
1970	6.59	72.31	9.11%
1971	7.21	80.81	8.92
1972	7.58	82.03	9.24
1973	8.60	78.16	11.00
1974	11.07	63.40	17.46
1975	11.90	71.34	16.68
1976	13.59	90.66	14.99
1977	14.48	99.50	14.55
1978	14.37	91.81	15.65
1979	17.36	111.37	15.59

As previously mentioned while discussing the review period for long-term debt and preferred stock, we feel a 10-year analysis is too long and tends to distort the information coming from the market place. Five years ago people were only developing the idea of a money market certificate like we know it in the market today. Using the average rate of return for the last five years, we find the investor requiring a 15.5% overall rate of return on his investment. Part of that return is paid back to the investor in the form of dividends and part of that return is retained by the company to further enhance its growth and development.

Even this information seems contrary to the current market. As you are aware, an investor can earn upwards of 16% on a relatively risk-free investment by investing in money market

D. Continued

certificates. The funding provided by the sale of common stock is in competition for those same dollars so why does an investor put his money in public utility stock? The answer is the future. Over the long haul the investor is betting his investment will out-perform the fixed rate of a money market certificate. Without this incentive, he'd buy the sure thing.

Using the previously suggested capital structure and the previously discussed rates for each component, the band of investment would develop a capitalization rate for gas transmission companies as follows:

	Capital Structure	Indicated Rate	Weighted Rate
Long-term debt	52.2%	9.3%	.049%
Preferred stock	5.2%	7.3%	.004%
Common stock	42.6%	15.5%	.066%
			.119% say 12%

We would recommend that an overall capitalization rate of 12% for gas transmission lines is more in line with indicators received from the market place and that this rate be incorporated in the proposed rules as being more reasonable.

We do not believe there is enough difference in the risk associated with transmission companies and gas distribution companies to warrant any difference in the capitalization rate. We would therefore recommend that the 12% capitalization rate be used for gas distribution companies also.

13 MCAR 5 1.0006 Apportionment C2

The Department has proposed a rule change which would apportion the market value of the utility, which has been allocated to Minnesota, back to the local taxing jurisdictions on the basis of original cost of the property located in each tax jurisdiction. We support the Department's proposal to accomplish this change over a period of time.

November 4, 1981

INTERNORTH

Mr. Jon Lunde, Hearing Officer
Page Eleven

13 MCAR 5 1.0006 Apportionment C2 - Continued

Under the present rules the apportionment of value to the various tax districts is unequal, unfair and unreasonably complex in administration by the Department.

Property placed in service prior to 1975 has a basis for apportionment ranging from 75% of original cost to 97½% of original cost. Property placed in service since 1975 has a basis of apportionment of 100% of original cost. Property built since 1975 has higher costs than property built prior to 1975 due to higher costs of materials and labor. Consequently, newer property automatically receives a larger share of the apportionment due to the higher original cost. We believe older properties should not be penalized by having a basis of apportionment which is even less than the original cost of the property and can find no justification for the continued inequality resulting from the present rule. The Department, in their Statement of Need and Reasonableness, has explained the inequity of the present rule and the justification for their proposed change. We believe this change is long over due and support the adpption of the revised rule.

Thank you for the opportunity to present our suggestions and opinions relating to the rules governing the valuation of utility property. We believe the unit valuation approach is the best method of determining fair market value of complex utility properties and is so recognized by knowledgeable appraisers throughout the country.

Sincerely,

PROPERTY TAX DEPARTMENT

R. M. Foster
Director

RMF/lh

Public Exh. No. B
File No. DR-82-004-JL
Date 11/4/81

NORTHERN STATES POWER COMPANY

TESTIMONY SUBMITTED IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF REVENUE GOVERNING VALUATION AND ASSESSMENT OF ELECTRIC, GAS DISTRIBUTION, AND PIPELINE COMPANIES (UTILITY COMPANIES)

NOVEMBER ~~11~~ 4, 1981

ROBERT J. DOLAN
MANAGER PROPERTY TAX

Mr. Hearing Examiner

For the record, my name is Robert Dolan, Manager of the Property Tax Department, for Northern States Power Company.

The purpose of the hearing today is to receive testimony from interested parties relative to recommended revisions to the rules and regulations for the valuation of utility property that have been proposed by the Department of Revenue.

In the property appraisal process, there are three accepted approaches to value:

1. Cost
2. Market
3. Income

Because of the lack of market data relative to sales of utility property, greater reliance is placed on the cost and income approaches.

Integral to any cost approach is a cost of replacement factor used to adjust the property's value to current market indicators. It is a means by which the value of a property may be brought up to date by considering the cost necessary to replace that facility. The use of cost of replacement factor is an accepted appraisal practice but the appraiser uses only one such factor. My testimony will show that the Department of Revenue uses three cost of replacement factors in the valuation process which unfairly increases utility values resulting in higher taxes and places an undue burden on our customers.

The department's use of the "average cost per kilowatt of installed capacity"

constitutes one cost of replacement, the use of a restricted rate of depreciation in the cost approach constitutes another cost of replacement and the use of an unrealistic capitalization rate in the income approach is still a third cost of replacement factor. The department uses all three of these cost of replacement indicators in the valuation process which is redundant and punitive and results in an inflated market value that cannot be substantiated by the best available information.

For the purpose of clarity, I would like to divide my testimony into three parts:

I Average Cost per Kilowatt of Installed Capacity
II Rate of Depreciation
III Rate of Capitalizing Net Operating Income

I

The average cost per kilowatt factor was developed by the Department of Revenue as an addition to the cost approach primarily for the adjustment of older hydro-electric plants. It was not meant to adjust steam generating plant or gas turbine generating plant values. Minnesota is the only state to adopt this principle. The method used to value utility property prior to the adoption of the unitary valuation method in 1975 left hydro-electric generating plants undervalued in the eyes of the court because cost less an allowance for depreciation was the only factor considered and because of the age of the facility, depreciated cost was thought to provide an inadequate measure of value. The court ruled that income must also be used in the valuation process. The department evidently felt that even the unitary valuation system, which is used in almost all of the states for valuing utility property, was not capable of producing an appropriate value. The Department of Revenue

has expanded the use of this factor to include all generating facilities except nuclear on the apparent theory that established formulas alone do not accurately value electric generating plants.

The average cost per kilowatt factor adds to the value of our steam-electric generating plants an automatic escalator producing a value far in excess of true value as computed by the unitary valuation method, particularly during inflationary periods. It produces a value in excess of what the property could be sold for. Federal regulations prohibit earning on any price in excess of net book or original cost less depreciation.

Exhibit I is a study prepared by NSP based upon the best available information which shows the estimated cost per kilowatt on a national basis for ten years from 1982 to 1991. The exhibit also shows the current undepreciated investment in the plants and the amount of additional value which would result from the use of this factor.

The most compelling argument against the continued use of this approach, aside from the impact on our consumers, is that the dollars added back are fictitious dollars. The added value does not represent any actual additional plant or equipment, it values property that doesn't exist; nor does it become part of our rate base, it only becomes part of the tax base and therefore is truly arbitrary and confiscatory.

The Department of Revenue has proposed that the average cost per kilowatt factor be modified to moderate the anticipated future effects of using this factor. Although the proposed modifications are an honest effort to reduce the obviously unacceptable inequities, the entire concept remains as an arbitrary valuation technique which we cannot support.

Our recommendation is that the steam-electric plants and gas turbine generating plants be removed from the "average cost per kilowatt of installed capacity" factor. Removing this burden would in no way jeopardize the integrity of the unitary valuation formula but it would restore some equity in valuing steam-electric plants.

II

It is possible to value income producing property by using the cost approach; i.e., original cost less depreciation. The conflict between parties occurs in determining what is to be the rate of depreciation. Since the adoption of the unitary method, the Department of Revenue has provided that utilities shall be allowed to use their actual reserve for depreciation providing the rate does not exceed a specific rate predetermined by the department. The proposal advanced by the Department of Revenue indicates that the rate of depreciation be increased to 19 percent for electric companies and 47.5 percent for gas distribution companies. In effect the utilities, all utilities, are limited in the amount of depreciation they are allowed to deduct in computing the value on the cost approach.

When utility property is purchased by another utility the price that is paid is the original cost less book depreciation. As I said before, federal regulations do not allow earning on any amount that exceeds net book. It follows, therefore, that the value for tax purposes should also be based on original cost less book depreciation.

The difference between the rate allowed by the Department of Revenue and the actual reserve for depreciation is the second cost of replacement factor used. In support of this I would like to submit a letter dated May 31, 1962, signed by the then Commissioner of Taxation, Roland Hatfield, in which he states:

"By allowing only 25% depreciation, we are recognizing appreciation in value of older property." Exhibit II shows the difference in market value by using the limited rate for depreciation and the actual reserve for depreciation for NSP. The study also shows the amount of additional property taxes that result from using the limited rate for depreciation. As indicated, the total increased market value because of the rate differential since the first year the unitary value system was used is $491 million. This resulted in a total of $16.7 million in additional taxes our customers have had to pay.

Equality in valuation would be far more achievable if each utility were allowed to use its individual actual reserve for depreciation rather than being limited to a predetermined rate set by the Department of Revenue. There is considerable logic for individual company rates being allowed, and that logic revolves around whether it is fair. The rate that is set by the department does not mean the same to all companies, to some the financial pattern of investment is completely different from that of another company, some companies have a relatively low rate of depreciation because the company's growth rate and expansion of facilities occupies a different time frame. And to some, the reserve for depreciation is high for those same reasons. To some companies, therefore, the 19 percent rate may be a benefit and to some it may not. In effect, the state is asking us to ignore part of the past depreciation which has already occured.

Our recommendation relative to depreciation rates is that each utility be allowed to use their actual reserve for depreciation in computing total plant less depreciation. This rate has been reviewed and approved by the Minnesota Public Utilities Commission for rate making purposes and should be acceptable.

III

The capitalization of net income is the process of converting income into value. It is the method of identifying how much a prudent investor would pay for the right to a particular stream of income. Outside of the "average cost per kilowatt of installed capacity", the cap rate is probably the most controversial of all factors in the unitary approach, coincidentally, it is also the most reliable.

Dr. Alfred Ring, economist with H. Zinder & Associates, holds that, "Logically, a rate of capitalization cannot be lower than the rate applicable to bonded indebtedness or the prime rate of borrowing for the industry and not higher than the rate or monetary cost of equity (common stock) capital."[1]

The apparent logic behind depressed cap rates is that appraisers and tax administrators failed or refused to recognize the changes in economic conditions affecting regulated industries. Our financial needs are as vulnerable to inflation and interest rates as other industries. In fact because of the capital intensive nature of the utility industry inflation and high interest rates are particularly devastating. Our rate of return however is not flexible but highly regulated, utilities lack the freedom in establishing the rate of return considered necessary as is evident in other segments of industry.

The cap rate determined through the Band of Investment method is a function of the ratio between debt and equity in the company's capitalization structure. A careful examination and appraisal of each factor is required if an accurate and equitable rate is to be determined. As part of the Department of Revenue's calculation is the evaluation of utilities' embedded debt, that is, the history of the company's short and long term debt. Embedded debt may indeed reduce the rate of capitalization because the older mortgage rates are lower but the

[1] National Tax Journal, Vol. XXV, No. 2, June 1972, p 293.

appraisal should not penalize the utility because of wise management or unwise management. In evaluating embedded debt the Department of Revenue used the historical data that makes up the composite of the debt structure of all utilities and assigned similar weights to each year in the study period. Naturally, the older the debt the lower the rate of interest and the newer the debt the higher the rate of interest. The disparity between the rates for the old and new debt is significant and it MUST be recognized and evaluated if a valid capitalization rate is to be set.

Exhibit III is an analysis of NSP's capitalization structure which shows the ratio of debt and equity and the results reveal a cap rate significantly higher than that recommended in the proposed rule changes.

Our recommendation for a rate for capitalizing net income is that the rate of 14.0 percent be adopted for the 1982 assessment year.

Mr. Examiner, I would like to summarize our recommendation for establishing equalization in the process of valuing utility property as follows:

1. Remove the steam-electric plants from the "average cost per kilowatt of installed capacity" factor because that class of property was not part of the original litigation and therefore should not be included in the resolution of the problem.

2. Allow each reporting utility to use the Actual Reserve for Depreciation as indicated on their records rather than limiting it to an artificial rate.

3. Establish a rate for capitalizing net income at 14.0 percent.

Mr. Examiner, this concludes our testimony.

EXHIBIT I

ESTIMATED ADDITIONAL VALUE ADDED TO INDIVIDUAL PLANTS BECAUSE OF AVERAGE COST PER KW

(Figures are in Thousands)

Assessment Year Average Cost	Undepr Original Cost 12-31-80	1982 $225	1983 $254	1984 $320	1985 $382	1986 $446	1987 $498	1988 $624	1989 $714	1990 $797	1991 $886	Total
Wilmarth/25,000	11,313	800	1,525	3,175	4,725	6,325	7,625	10,775	13,025	15,100	17,325	80,400
Red Wing/23,000	6,786	---	138	1,656	3,082	4,554	5,750	8,648	10,718	12,627	14,674	61,847
Black Dog/486,655	81,222	33,093	47,206	79,325	109,497	140,643	165,949	227,268	271,067	311,459	354,771	1,740,278
Minn Valley/46,000	11,981	1,426	2,760	5,796	8,648	11,592	13,984	19,780	23,920	27,738	31,832	147,476
A S King/598,400	109,653	50,266	67,619	107,114	144,214	182,512	213,629	289,027	342,883	392,550	445,808	2,235,622
High Bridge/396,835	67,378	27,778	39,287	65,478	90,082	115,479	136,114	186,116	221,831	254,768	290,086	1,427,019
Riverside/383,850	69,845	29,173	40,304	65,638	89,437	114,003	133,964	182,329	216,875	248,735	282,897	1,403,355
Sherco/1,440,000	286,859	---	---	90,720	180,000	272,160	---	262,080	463,680	649,600	848,960	2,767,200
TOTAL		142,536	198,839	418,902	629,685	847,268	677,015	1,186,023	1,563,999	1,912,577	2,286,353	9,863,197

EXHIBIT II

Comparison of Market Value Between the Allowable Rate of Depreciation and NSP's Actual Reserve for Depreciation

Assessment Year	Department of Revenue		Northern States Power Company			
	Allowable Rate of Depreciation	Market Value	NSP Reserve for Depreciation	Market Value	Increase	Additional Taxes
1975	15%	1,224,286,276	20.04%	1,159,898,430	64,387,846	$ 2,245,000
1976	17%	1,289,915,932	21.91%	1,229,935,073	59,980,859	2,164,000
1977	17%	1,452,154,574	21.56%	1,387,459,185	64,695,389	2,212,000
1978	17%	1,537,645,902	21.94%	1,460,532,230	77,113,672	2,593,000
1979	18%	1,535,051,807	24.19%	1,439,477,992	95,573,815	3,192,000
1980	18%	1,620,852,020	25.90%	1,491,927,699	128,924,321	4,270,000
Total					490,675,902	$16,676,000

EXHIBIT III

Analysis of the Component Costs
of NSP's Capital Structure

	% of Total Capitalization	Cost (%)	Weighted Cost (%)
Short-Term Debt	2.10	14.52	.30
Mortgage Bonds	39.82	13.91	5.54
Tax Exempt	5.71	10.23	.58
Preferred Stock	10.72	11.30	1.21
Common Equity	41.65	16.0	6.66
	100.00		14.29

Public Exh. No. C
File No. DR-82-0011-JL
Date 11/4/81

S T A T E M E N T

BEFORE THE

OFFICE OF HEARING EXAMINERS

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF REVENUE GOVERNING THE VALUATION AND ASSESSMENT OF ELECTRIC, GAS DISTRIBUTION, AND PIPELINE COMPANIES (UTILITY COMPANIES)

Minnesota Power
Bruce E. Gangnon, Manager-Taxes
November 4, 1981

Minnesota Power & Light Company (MP&L), an investor-owned electric utility, wishes to take this opportunity to submit comments concerning the existing rules governing ad valorem taxes imposed on utility companies and the present proposals to change these rules.

13 MCAR 1.0003 Valuation, paragraph C, cost approach, sets forth the procedure by which the cost factor will be determined using original cost less depreciation. The proposed rules provide that electric utilities be limited to a maximum depreciation allowance of 19 percent. We request that the proposed limitation be removed and that a depreciation allowance of 25 percent be allowed for determination of the cost factor.

MP&L's operations and accounting are subject to regulation by the Federal Energy Regulatory Commission (FERC) and the Minnesota Public Service Commission (MPSC). These regulatory bodies require that the original cost of utility plant less book depreciation accruals be used as the basis for determination of rate base on which earnings levels are allowed. A buyer of utility property is required to assume the same cost basis and accumulated depreciation as the seller for rate purposes, which establishes net book value as the upper limit for the market value of utility property.

The Department of Revenue's Statement of Need and Reasonableness states that "our holding of the depreciation at a specified maximum attempts to recognize both the wearing out and obsolescence of the facilities together with the fact that to replace or reproduce the facility would produce more value. The Agency believes that the proposed 19 percent maximum depreciation allowance is a reasonable and viable method of accomplishing both the objectives."

13 MCAR 1.0003F provides "that cooperative associations and other types of utilities which do not operate in the traditional profit making mode shall have their utility property valued on the basis of historical cost only since they do not operate on the traditional profit making basis. Depreciation will be allowed as a deduction from cost at increments of 2.5 percent per year but the maximum shall not exceed 25 percent of the cost of the utility operating property."

The apparent reason for valuing the utility property of cooperatives and other non-regulated utilities differently than that of investor-owned utilities is that they do not operate on a profit motive basis. This distinction does not explain why the maximum depreciation allowance, which is for wearing out and obsolescence, on similar property should be different only because of ownership. The use of different depreciation allowances for the same type of property is considered discriminatory.

Depreciation rates used by the utilities must be approved by the FERC and the MPSC and reflect estimated useful life, salvage and cost to retire. Utilities in Minnesota currently have depreciation reserves equal to approximately 24 percent of original installed cost even though they are in an era of major construction at inflated dollars. The 25 percent maximum allowance set in the formula for cooperatives is considered to be a more reasonable limit.

13 MCAR 1.0003C also provides for an adjustment to the value of major generating units to increase the cost of a Company's facilities by the difference between the actual installed cost per KW and the national average cost per KW.

The reason for the addition of this factor is to increase recorded historical cost to approximate the replacement cost of such facilities. While replacement cost may be a consideration in the attempted determination of market value of property, replacement cost cannot be considered an appropriate factor in the determination of the value of utility property. Utilities in Minnesota are subject to rate regulations by state and federal regulators which require that the original cost of utility plant less book depreciation accruals be used as the basis for determination of rate base on which earnings are allowed. A buyer of utility property is required to assume the same cost basis and accumulated depreciation as the seller for rate purposes. Obviously, therefore the most a willing buyer would pay for utility property is the original cost depreciated since this is the maximum amount that can be recovered from ratepayers. In addition the inclusion of this factor results in a double allowance for replacement cost. This occurs because as stated in the Department of Revenues Statement of Need and Reasonableness "The rules propose to allow the electric companies a maximum of 19% depreciation. The difference between 24% and 19% is the agency's method of calculating replacement cost for the utility's property and acts as a hedge against inflation." Accordingly, we recommend that the average cost of KW factor be eliminated.

Another area of concern to MP&L is the capitalization rate to be used in determining the income indicator of value in the proposed rules. In determining the capitalization rate set forth in the purposed rules, the Department has used a 20 year study of preferred stock yields and a 15 year bond yield study. The capitalization of current income based on 15 and 20 year averages of capital cost to arrive at an income indicator of current value is inappropriate. It simply does not acknowledge "current economic conditions". It assumes equal distribution of a company's long-term debt and preferred stock over the 15 and 20 year interval. Electric utilities have engaged in massive construction programs over the past five years to accommodate the growth placed in their systems. Inflation coupled with the regulatory requirements for pollution control facilities has added significantly to the construction costs which have required utilities to seek significant amounts of new capital. This creates a shift in the average embedded cost of debt and preferred stock toward the more recent yields shown on the 10 and 15 year schedules.

As we have testified in the past, the Company strongly believes that the use of a 10 year average in determining the cost of equity capital understates the present day required return on equity needed by utilities to attract investors. MP&L recommends that the average return on equity be determined consistent with the method used to determine the level of net operating income to be capitalized. As the return on equity is directly related to operating income, the same periods should be applied in the calculation of both factors. Applying historical equity factors to present day income requirements is not an equitable approach. It is not a distribution problem as was the case with preferred stock and long-term debt. The "embedded" cost of common equity is the current market cost for all equity on a company's books. The use of a ten year average for the cost of common equity grossly understates this cost.

Attached you will find 1981 allowed rates of return to electric utilities through July 31, 1981. Looking at the attached schedule indicates that the average allowed return for 1981 is well above 15%. Considering the return of 13.51% for 1979 and a conservative estimate of 15% for 1981 would indicate that 14% would be a representative three year average for the cost of equity.

Using the recommended method for determining the average capital cost using a three year average and the ten year average capital structure, the resulting capitalization rate would be as follows:

	Percent of Capitalization	Cost	Weighted Cost
Average Utility Debt	55.0%	9.40%	5.17%
Average Utility Preferred Stock	9.0%	9.07%	.82%
Average Utility Common Equity	36.0%	14.00%	5.04%
Average Utility Cap. Rate			11.03%

It is therefore recommended that the capitalization rate for the determination of the income indicator of value by set at 11%.

MP&L appreciates this opportunity to respond to the proposed rules which are now under consideration.

MINNESOTA POWER & LIGHT COMPANY

1981 ALLOWED RATES OF RETURN TO JULY 31

Line No.		Date	Return on Equity
31	Arkansas Power & Light	5-81	15.00
32	Wisconsin Public Service	5-81	14.00
33	Long Island Lighting	5-81	16.00
34	Public Service Company of New Mexico	6-81	15.50
35	Iowa-Illinois Gas & Electric	6-81	14.67
36	Public Service Company of Indiana	6-81	16.75
37	Southwestern Electric Power	6-81	16.33
38	Kansas City Power & Light	6-81	14.40
39	Consumers Power Company	6-81	13.50
40	Wisconsin Power & Light	6-81	14.75
41	Commonwealth Edison Company	7-81	17.50
42	Illinois Power Company	7-81	15.50
43	Rochester Gas & Electric	7-81	16.00
44	Union Electric	7-81	14.60
45	Central Hudson Gas & Electric	7-81	16.90
46	Dayton Power & Light	7-81	16.00
47	Detroit Edison Company	7-81	14.00
48	Jersey Central Power & Light	7-81	15.00
49	Otter Tail Power	7-81	15.00

Range	No. of Decisions	%
Under 14%	4	8
14% - 14.99%	9	18
15% - 15.99%	18	36
Over 16% *	19	38
	50	100

* Includes two 17% to 17.5%

Source: Respective Regulatory Commissions
* Granted 100% of requested increase

Public Exh. No. D
File No. DR-82-004-JL
Date 11/19/81

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

In the Matter of the Proposed) Rules of the Department of) Revenue Governing the Valuation) and Assessment of Electric, Gas) Distribution and Pipeline) Companies (Utility Companies).)	CHANGES TO THE PROPOSED RULES SUGGESTED BY THE TOWNSHIP OF BASS BROOK, INDEPENDENT SCHOOL DISTRICT NO. 318, AND THE COUNTY OF ITASCA

DISCUSSION

Changes to the Rules as Proposed by the Department of Revenue governing valuation and assessment of electric, gas distribution, and pipeline companies (utility companies) are suggested by the taxing districts named in the caption.

We suggest changes in the manner in which the average cost/kw adjustment of the "cost factor" of an electric company under 13 MCAR § 1.0003C is taken into account in the apportionment of the Minnesota unit value among the various taxing districts under 13 MCAR § 1.0006.

Two factors are used in computing the value of the operating property of an electric company--a cost factor (which is weighted 85%) and an income factor (which is weighted 15%). In general, the cost factor is measured by original cost less limited depreciation. However, 13 MCAR § 1.0003C of both the existing and the proposed rules provides that the cost factor will be modified in cases where

the original cost of a generating plant is less than "a national average for cost per kilowatt of installed capacity." The modification takes the form of attributing additional value to such a plant in accordance with a formula set forth in the existing and proposed rules. The modification typically applies to older plants built when price levels were lower than they have been in recent years.

Under both the existing and the proposed rules, the average cost/kw adjustment is also taken into account in apportioning the Minnesota unit value of the utility among the various taxing districts. In this process, however, the Minnesota unit value allocated to taxing districts with older plants is increased through the average cost/kw adjustment by an amount in excess of the increase in the Minnesota unit value which results from the adjustment. This aberration, which reduces the Minnesota unit value allocated to the other taxing districts, arises from the fact that the average cost/kw adjustment passes through an elaborate series of formulas between the point when it is first taken into account in determining the cost factor and the point when Minnesota unit value is determined. The suggested changes would limit the increase in value allocated to the districts with old plants as a result of the average cost/kw adjustment to the increase in Minnesota unit value which results from the adjustment. The other districts, therefore, would not lose value as a result of the adjustment.

The difference between an apportionment made with an average cost/kw adjustment and one made without such an adjustment is evident in the attached examples derived from the current rules. The average cost/kw adjustment in Example 1, line 3, in the amount of $4,000,000 (derived from Example 2), results in a total unit value of approximately $3,000,000 more than a computation made without an average cost/kw adjustment, as shown in line 16. As shown in Example 3, however, the use of an average cost/kw adjustment in the amount of $4,000,000 results in a net increase of only about $1,500,000 in the Minnesota portion of the total value shown in line 17. Similarly, in Example 4, the average cost/kw adjustment results in an increase of only $1,532,346 in the Minnesota apportionable value as shown in line 3. The Minnesota apportionable value is the amount allocated among the taxing districts in Example 5. (We have included two versions of Example 5. The first shows the computation made under the Department's proposal and the second shows the computation under our proposed changes.)

In Example 5, District 1 is the only district that contains a plant subject to the average cost/kw adjustment. Taking that adjustment into account under the existing and proposed rules results in the allocation of $20,047,441 of value to District 1. If the adjustment were not made in determining unit value or in the apportionment among taxing districts,

the value allocated to District 1 would be $17,075,636 (See line 6 of the second version of Example 5). The adjustment thus increases the value of District 1 by $2,971,805 even though the adjustment has increased Minnesota apportionable value by only $1,532,346. The difference between these two amounts, or $1,439,459 of value, has effectively been transferred to District 1 from Districts 2, 3 and 4 as a result of the adjustment.

Our suggested changes eliminate this inequity by (1) requiring computation of an electric company's Minnesota apportionable value both (a) with an average cost/kw adjustment and (b) without such an adjustment to the extent that the adjustment is attributable to a plant or plants located in Minnesota; (2) apportioning Minnesota apportionable value (computed without the adjustment attributable to Minnesota plants) among the taxing districts in accordance with a formula that does not reflect the adjustment; and (3) adding to the value of each district qualifying for the average cost/kw adjustment a share of the difference between the Minnesota apportionable value computed (a) with the adjustment and (b) without the adjustment in respect of a plant or plants located in Minnesota, in proportion to the amount of adjustment made with respect to the property located in each such district. Step 3 is shown at line 6(a) of the second version of Exhibit 5.

Thus, districts not benefitted by the average cost/kw adjustment will likewise not be harmed by suffering a loss in their share of Minnesota apportionable value, and the benefit to districts able to take advantage of the average

cost/kw adjustment will reflect the actual increase in Minnesota apportionable value resulting from those adjustments and no more.

TEXT OF PROPOSED CHANGES

The following changes are suggested in reference to page and line assignments of the official version of the Rules as proposed.

1. A new paragraph should be added to 13 MCAR § 1.0003C at page 14 after line 22 which would read:

> Any company for which a modification is made under 13 MCAR § 1.0003C due to the average cost/kw adjustment being made to original cost of a plant or plants located in Minnesota shall have an alternative cost indicator computation made without giving effect to the average cost/kw adjustment of such plant or plants.

2. A new paragraph should be added to 13 MCAR § 1.0003E at page 15 after line 21 which would read:

> Any company whose cost indicator was modified under 13 MCAR § 1.0003C to reflect the average cost/kw adjustment of a plant or plants located in Minnesota shall have an alternative unit value computation made without giving effect to the modification in respect of such plant or plants.

3. A new paragraph should be added to 13 MCAR § 1.0004B at page 21 after line 12 which would read:

> If any modification has been made to the cost indicator under 13 MCAR § 1.0003C to reflect the average cost/kw adjustment of a plant or plants located in Minnesota, an alternative computation of the Minnesota allocation shall be made without giving effect to the modification in respect of such plant or plants.

4. A new paragraph should be added to 13 MCAR § 1.0005D at page 23 after line 16 which would read:

> If any modification has been made to the cost indicator under 13 MCAR § 1.0003C to reflect the average cost/kw adjustment of a plant or plants located in Minnesota, an alternative computation of the Minnesota apportionable value shall be made without giving effect to the modification in respect of such plant or plants.

5. A new sentence should be added to 13 MCAR § 1.0006A at page 23, line 31, which would read:

> If any modification has been made to the cost indicator under 13 MCAR § 1.0003C to reflect the average cost/kw adjustment of a plant or plants located in Minnesota, the apportionment to the taxing districts made pursuant to subsection C hereof shall be based upon the Minnesota apportionable value alternatively computed in 13 MCAR § 1.0005D without giving effect to the modification in respect of such plant or plants.

6. The following language should be deleted from 13 MCAR § 1.0006C2 on page 24, lines 24-25:

> together with any additional cost computed in accordance with 13 MCAR § 1.0003C.

7. A new paragraph should be added to 13 MCAR § 1.0006C2 at page 25 after line 13 which would read:

> All computations made under alternative 1 or 2 of this subsection shall be made without giving effect to any modification to reflect the average cost/kw adjustment made pursuant to 13 MCAR § 1.0003C.

8. A new subsection should be added to 13 MCAR § 1.0006 at page 25 after line 19 which would read:

E. After all other computations have been made under this section, there shall be added to the value of each district in which is located a plant or plants qualifying for the average cost/kw adjustment under 13 MCAR § 1.0003C a share of the difference between the Minnesota apportionable value computed under 13 MCAR § 1.0005 (i) with the adjustment and (ii) without the adjustment in respect of a plant or plants located in Minnesota, in proportion to the amount of the adjustment made with respect to the property located in each such district.

Example 1. COMPUTATION OF UNIT VALUATION OF AN ELECTRIC COMPANY

	With Average Cost/KW Amount		Without Average Cost/KW
1. Utility Plant (Cost)	$200,000,000	F.P.C. Report - - -	$200,000,000
2. Construction in Progress	5,000,000	F.P.C. Report - - -	5,000,000
3. Additional Value From Average Cost per K.W. Computation	4,000,000	Example 2, Line 8 -	0
4. Total Plant	209,000,000	1 + 2 + 3 - - -	205,000,000
5. Non-Depreciable Plant(Land, Intangibles, CWIP)	19,000,000	F.P.C. Report - - -	19,000,000
6. Depreciable Plant	190,000,000	4 - 5 - - -	186,000,000
7. Depreciation (Maximum 17%)	32,300,000	6 X 17% - - -	31,620,000
8. Total Depreciated PlantPlus Non-Depreciable Plant	176,700,000	4 - 7 - - -	173,380,000

	Reference	1971	1972	1973	
9. Net Operating Income	F.P.C. Report	$ 8,000,000	$ 8,500,000	$ 9,000,000	
10. Capitalized Income at 7.75%		103,225,806	109,667,419	116,129,032	
11. 3 Year Total Capitalized Income			329,032,257		
12. 3 Year Average Capitalized Income (line 11 ÷ 3)			109,667,419		
13. Total Depreciated Plant	$176,700,000	Weighted at 85%		$150,195,000	147,373,300
14. 3 Year Average Capitalized Income	109,677,417	Weighted at 15%		16,451,000	16,451,613
15. Market		Weighted at 0%		---	---
16. Unit Value				$166,646,613	$163,824,613

Example 2. COMPUTATION OF AVERAGE COST PER KILOWATT OF INSTALLED CAPACITY.

With Average Cost/KW

ASSUME THAT A STUDY OF MOST RECENT CONSTRUCTION DATA AVAILABLE FROM THE F.P.C. SHOWS THAT THE AVERAGE COST PER KILOWATT OF INSTALLED CAPACITY IN A FOSSIL FUEL STEAM PLANT IS $150,000 PER KILOWATT.

Without Average Cost/KW

(Not Applicable)

1.	Plant	#1	#2
2.	Installed Capacity	100,000 K.W.	50,000 K.W.
3.	Date in Service	1960	1940
4.	Cost of Plant	$15,200,000	$3,500,000
5.	Cost Per K.W.	$152.00	$70.00
6.	Average Cost Per K.W. . . .	$150.00	$150.00
7.	Difference (if any)	--	$80.00
8.	Additional Value	--	$4,000,000

Example 3. ALLOCATION OF UNIT VALUATION OF ELECTRIC COMPANY TO MINNESOTA.

	With Average Cost/KW Amount	Reference	Without Average Cost/KW
1. Utility Plant System	$200,000,000	F.P.C. Report	$200,000,000
2. Construction Work in Progress	5,000,000	F.P.C. Report	5,000,000
3. Total Utility Plant System	205,000,000	1 + 2	205,000,000
4. Utility Plant Minnesota	110,000,000	UTL Report	110,000,000
5. Construction Work in Progress Minnesota	5,000,000	UTL Report	5,000,000
6. Total Utility Plant Minnesota	115,000,000	4 + 5	115,000,000
7. Minnesota Plant to System Plant	56.10%	6 ÷ 3	56.10%
8. Weighting Factor	90%		90%
9. Minnesota Weighted % Original Cost	50.49%	7 x 8	50.49%
10. Gross Revenue System	105,000,000	F.P.C. Report	105,000,000
11. Gross Revenue Minnesota	40,000,000	UTL Report	40,000,000
12. Minnesota Revenue to System Revenue	38.10%	11 ÷ 10	38.10%
13. Weighting Factor	10%		10%
14. Minnesota Weighted % Revenue	3.81%	12 x 13	3.81%
15. Total Minnesota Percent	54.30%	9 + 14	54.30%
16. Unit Value	166,646,613	Example 1, line 16	163,824,613
17. Minnesota Portion of Unit Value	$ 90,489,111	15 x 16	88,956,765

Example 4. COMPUTATION OF APPORTIONABLE VALUE OF UTILITY COMPANY

		With Average Cost/KW		Without Average
		Amount	Reference	Cost/KW
1. Minnesota Portion of Unit Value		$90,489,111	Example 3, line 17	$88,956,765
2. Excludable Items:				
a. Land Assessed Locally		3,000,000	UTL Report	3,000,000
b. Land Rights		---		
c. General Plant Items	$10,000,000		UTL Report	10,000,000
d. Pollution Control Equipment.....	10,000,000		UTL Report	10,000,000
e. Less Depreciation at 17%	3,400,000		(c+d) x 17%	3,400,000
f. Net General Plant and Pollution Control Items ...		16,600,000	(c+d) - e	16,600,000
g. Total Excludable Items		19,600,000	a + f	19,600,000
3. Minnesota Apportionable Value		70,889,111	1 - 2g	69,356,765

Example 5. APPORTIONMENT TO LOCAL TAXING DISTRICTS OF MINNESOTA PORTION OF UNIT VALUE AFTER ADJUSTMENTS.

Computation under Department's Proposal

ASSUME: TAX DISTRICTS 1 AND 2 HAVE POWER PLANTS AND DISTRIBUTION LINES.
TAX DISTRICTS 3 AND 4 HAVE DISTRIBUTION LINES ONLY.
MINNESOTA PORTION OF UNIT VALUE AFTER ADJUSTMENTS = $70,889,111.

TAX DISTRICT	1	2	3	4	Total
1. Last Limited Market Value:					
a. Structures	$ 5,000,000	$10,000,000			$15,000,000
b. Machinery	10,000,000	20,000,000			30,000,000
c. Personal Property	1,000,000	3,000,000	$ 6,000,000	$ 5,000,000	15,000,000
d. Total	$ 16,000,000	$33,000,000	$ 6,000,000	$ 5,000,000	$60,000,000
2. Additions Including Construction in Progress at Original Cost			3,000,000	3,000,000	6,000,000
3. Retirements at Last Limited Market Value (Machinery)		(1,000,000)			(1,000,000)
4. Additional Value Due to Average Cost per Kilowatt Computation ($4,000,000) Less 17% Depreciation Allowance)	3,320,000				3,320,000
5. Updated District Total	$ 19,320,000	$32,000,000	$ 9,000,000	$ 8,000,000	$68,320,000
6. Percent of Total (Line 5 by Tax District ÷ Line 5 Total)	28.28%	46.84%	13.17%	11.71%	100.0%
7. Portion of Minnesota Adjusted Unit Value (Line 6 x $70,889,111).	$ 20,047,441	$33,204,459	$ 9,336,096	$ 8,301,115	$70,889,111
8. New Market Value*					
a. Structures	6,336,595	$10,376,393			$16,712,988
b. Machinery	12,673,190	19,715,148			32,388,338
c. Personal Property	1,037,656	3,112,918	9,336,096	8,301,115	21,787,785
d. Total	$ 20,047,441	$33,204,459	$ 9,336,096	$ 8,301,115	$70,889,111

*Computed by finding percentage of 1a, 1b, 1c plus any additions and minus any retirements in 2, 3, 4 ÷ line 5. This percentage x line 7 equals new market value by classification. Example: District 2, line 1b ($20,000,000) minus line 3 ($1,000,000) = $19,000,000 ÷ 5 ($32,000,000) = 59.38% x line 7 ($33,204,459) = $19,715,148.

Example 5. APPORTIONMENT TO LOCAL TAXING DISTRICTS OF MINNESOTA PORTION OF UNIT VALUE AFTER ADJUSTMENTS.

Computation under Suggested Changes to Proposed Rules

ASSUME: TAX DISTRICTS 1 AND 2 HAVE POWER PLANTS AND DISTRIBUTION LINES.
TAX DISTRICTS 3 AND 4 HAVE DISTRIBUTION LINES ONLY.
MINNESOTA PORTION OF UNIT VALUE AFTER ADJUSTMENTS = $70,889,111

	TAX DISTRICT	1	2	3	4	Total
(Without Average Cost/KW)	1. Last Limited Market Value:					
	a. Structure	$ 5,000,000	$10,000,000			$15,000,000
	b. Machinery	10,000,000	20,000,000			30,000,000
	c. Personal Property	1,000,000	3,000,000	$ 6,000,000	$ 5,000,000	15,000,000
	d. Total	$16,000,000	$33,000,000	$ 6,000,000	$ 5,000,000	$60,000,000
	2. Additions Including Construction in Progress at Original Cost			3,000,000	3,000,000	6,000,000
	3. Retirements at Last Limited Market Value (Machinery)		(1,000,000)			(1,000,000)
	4. Updated District Total	$16,000,000	$32,000,000	$ 9,000,000	$ 8,000,000	$65,000,000
	5. Percent of Total (Line 4 by Tax District ÷ Line 4 Total)	24.62%	49.23%	13.85%	12.30%	100.0%
	6. Portion of Minnesota Adjusted Unit Value (Line 5 x $69,356,765)	$17,075,636	$34,144,335	$ 9,605,912	$ 8,530,882	$69,356,765
(Suggested Method For Apportionment of Average Cost/KW)	a. Additional value due to average cost per kilowatt adjustment (Minnesota Apportionable value with Average Cost/KW adjustment minus Minnesota Apportionable value without Average Cost/KW - Example 4, line 3 - divided proportionately among districts contributing to such adjustment)	1,532,346				1,532,346
	b. Adjusted portion of Minnesota Adjusted Unit Value (Line 6, + Line 6a).	$18,607,982	$34,144,335	$ 9,605,912	$ 8,530,882	$70,889,111
	7. New Market Value*					

*Computations to be made as in example 5 with average cost/KW.

Public Exh. No. E
File No. DR-82-004-JL
Date 11/19/81

2223 Dodge Street
Omaha, Nebraska 68102
Telephone 402-348-4000

INTERNORTH

November 19, 1981

Mr. Jon Lunde, Hearing Officer
Office of Administrative Hearings
1745 University Avenue, Room 300
St. Paul, Minnesota 55104

Re: Proposed Rules of the Department of Revenue Governing Valuation and Assessment of Utility Companies

Dear Sir:

InterNorth, Inc. on behalf of its' operating divisions, Northern Natural Gas Company and Peoples Natural Gas Company, has requested The American Appraisal Company of Milwaukee, Wisconsin to review the Department of Revenue's proposed changes in the rules governing the valuation of transmission pipelines and gas distribution companies. Attached is a copy of the letter report prepared by Mr. John Goodman, Vice President and Manager of the Regulated Industries Division, The American Appraisal Company, covering his review of the rules, the proposed changes and the Department's Statement of Need and Reasonableness.

Mr. Goodman is a registered Professional Engineer and is a Senior Member of the American Society of Appraisers. He is a member of the Wisconsin Society of Professional Engineers, National Society of Professional Engineers, Engineers and Scientists of Milwaukee and Wisconsin Engineering Technology Guidance Council. He has served as an instructor at the annual workshop on Appraisal of Utilities and Railroad Property for Ad Valorem Taxation co-sponsored by the National Tax Association/Tax Institute of America and Wichita State University. He has published in Public Utilities Fortnightly.

Sincerely,

PROPERTY TAX DEPARTMENT

R M Foster

R. M. Foster
Director

RMF/lh

Attachment

THE AMERICAN APPRAISAL COMPANY - HEADQUARTERS
525 E. Michigan Street, P. O. Box 664 Milwaukee, Wisconsin 53201 414: 271-7240

JOHN C. GOODMAN, PE, ASA
Vice President

November 11, 1981

Mr. Robert Foster
Property Tax Department
InterNorth, Inc.
2223 Dodge Street
Omaha, Nebraska 68102

Dear Mr. Foster:

You have requested us to review and comment upon certain revisions being proposed to the rules and regulations of the Minnesota Department of Revenue relating to ad valorem (property) taxes. You provided us with a copy of the proposed revisions to the Rules and the Statement of Need and Reasonableness prepared by the Department of Revenue of the state of Minnesota.

You have asked us to limit our detailed review and comments to two specific revisions. 13 MCAR S 1.0003 Valuation, paragraph C, Cost Approach provides for a revision from 45% to 47.5% in the maximum depreciation to be deducted from the cost approach for gas distribution companies and pipeline companies. Paragraph D of the above citation addresses the Income Approach to Valuation. The pertinent revision to the rules in this paragraph is the modification of the capitalization rate for the gas distribution companies from 8.25% to 8.75% and for pipeline companies from 8.50% to 9.00%.

We will first address the limitation of depreciation in the cost approach to not more than 47.5% of the original cost of the property. In the proposed rules it is stated "The cost factor that will be considered in the utility valuation formula is the original cost less depreciation of the system plant, and improvements, plus the original cost of construction work in progress on the assessment date." (P.5 L17) It is further stated that "Depreciation will be allowed as a deduction from the cost in the amount allowed on the accounting records of the utility company, as such records are required to be maintained by the appropriate regulatory agency." (P5 L27) By the use of the original cost less depreciation approach in determining the cost indicator of value, the Department is

recognizing the unique character of utility companies in that they are subject to stringent government regulation over operations and earnings. The Department also appears to recognize that the earnings that can be generated by the utility company are a direct function of the original cost less accumulated depreciation of the company.

In its Statement of Need and Reasonableness, the Department defines various approaches to determining the cost indicator of value and further describes the three elements that make up depreciation; physical deterioration, functional obsolescence, and economic obsolescence. Up to this point the Department's methods and procedures appear to be in line with appropriate valuation principles. However, the Department then states in its rules that the depreciation shall not exceed 47.5% of the original cost of the property for both gas distribution companies and pipeline companies. The Department rationalizes this position by comparing the valuation of utility property with the valuation of a 20 year old three bedroom house. The Department then states on page 4 of its Statement of Need and Reasonableness that "The agency recognizes that a multi million dollar utility does not sell in the same way as a three bedroom rambler might. It also recognizes that in most instances the utility is limited in its earnings by its rate base; (rate base is normally original cost less depreciation). However, it is readily apparent that because of inflation the cost of replacing the facilities at today's prices would be more than the original cost at the time of installation. Our holding of the depreciation at a specified maximum attempts to recognize both the wearing out and obsolescence of the facilities together with the fact that to replace or reproduce the facility would produce more value. The agency believes that the proposed maximum depreciation allowance is a reasonable and viable method of accomplishing both these objectives." (P4)

We assume that the objectives of the Department are:

1. To recognize the wearing out and obsolescence of the facilities.

2. That replacement or reproduction cost of the facilities must be considered.

The first objective, as interpreted above, is best measured by using the actual book depreciation of the specific company subject to appraisal without any arbitrary limitation. Depreciation rates, which are used to develop the accrued depreciation, consider both the physical deterioration and functional obsolescence inherent in the existing facilities. These depreciation rates are reviewed and authorized by various regulatory bodies and are based on a scientific study. However, these depreciation rates have no element in them for the factor of economic obsolescence. Economic obsolescence is correctly defined in the Statement of Need and

Reasonableness as a loss in value caused by factors outside the property itself. In the case of regulated utilities, this economic obsolescence is caused by regulatory lag and inadequacy in an authorized rate of return when compared to that required by market forces. These two factors combine to limit the actual achieved earnings of a utility company to a level lower than that required by a prudent investor and, also, usually lower than that authorized by the regulatory agency. This disallowance of depreciation in excess of 47.5% does not, in fact, achieve this first objective and, in fact, compounds the problem as accrued depreciation does not in any way recognize economic obsolescence.

The second objective relative to the recognition of replacement or reproduction cost of the facility is totally irrelevant. For non-utility property, wherein the income that could be achieved from the property is regulated by market supply and demand forces, replacement or reproduction cost can be relevant. In the case of a utility company, the earnings are a direct function of the original cost less accumulated book depreciation and replacement cost is given no recognition; regardless of the cost to replace or reproduce the facilities, the earnings are a function of the original cost less accrued depreciation. If the accrued depreciation of a utility is in excess of 47.5% of the original cost, the actual depreciation would be recognized by the regulatory agency in setting rates, and ultimately the authorized income. To our knowledge no agency regulating utility property operated in the state of Minnesota gives any consideration to the reproduction or replacement cost of the utility property in setting its earnings level. We strongly recommend that the rules be revised to utilize a depreciation amount equivalent to the actual book depreciation of the utility subject to appraisal. This, in our opinion, is most likely an insufficient recognition of the total depreciation existent in the property because no recognition has been given to economic obsolescence, a factor that the Department recognizes as existing.

The next subject you have asked us to address is the establishment in the rules of a capitalization rate of 8.75% for gas distribution companies and 9% for the pipeline companies. Our analysis indicates that these capitalization rates are woefully inadequate. The rules state that "The income indicator of value will be estimated by weighting the net operating earnings of the utility company for the most recent three years as follows: most recent year, 40%; previous year 35%; and final year 25%." (P.14 L23) While we could take issue with this method of estimating the income approach to value we understand that that is not part of the rules subject to revision; therefore, our comments will be directed toward developing a capitalization rate that is consistent with the income to be capitalized. The purpose of this weighting of the income is an attempt on the part of the Department to strike a balance between a stable income and a recognition of the current economic conditions affecting a company. If that is the objective, the capitalization rate must be developed with those same objectives in mind.

The Department uses the band of investment method in developing capitalization rates and states that it is "the most generally accepted method of developing a capitalization rate for use in the appraisal of utilities." (P 10) We concur with that statement. However, the Department also states that "It is common practice for utility appraisers all across the country to apply a single capitalization rate to companies within the same industry." (P. 10) We take issue with that statement and find in our experience that exactly the opposite is true; that is, it is common practice for utility appraisers to develop a capitalization rate specifically for the company being appraised. The Statement of Need and Reasonableness also states that "It is paramount in appraisal practice to match the correct income stream to the corresponding capitalization rate. (P.11) We agree with that statement, but conclude, based on our analysis, that the method used by the Department does not achieve that paramount objective.

Most appraisers develop a specific capitalization rate for the company subject to appraisal using the specific company's capital structure. The cost of the debt and preferred elements of capital are calculated as being specific to the particular company; there are many different bond ratings and classifications for companies in the utility industry and these definitely affect the cost of debt and preferred capital, both historical and current, for various utility companies in the various industries. Finally, the equity return component is that required by the investor in the industry subject to appraisal but giving strong consideration to the particular nature of and prospects for the company subject to appraisal. Therefore the objective should be the development of a capitalization rate specific to each company subject to appraisal.

We recognize that the Department, for administration reasons, has as its objective the development of broad based capitalization rates for an industry. We believe that the methods employed by the Department do not reach a reasonable conclusion even when the desire to develop an average capitalization rate for an industry is recognized.

A summary of the general method used by the Department to develop its capitalization rates will be addressed to ensure a complete understanding of the incompatability of the capitalization rate with the income stream. The Department first determines the capital structure based on a 10 year average of the capital structure of national electric, gas distribution, and pipeline companies. A brief review of the data presented in the attachment to the Statement of Need and Reasonableness shows a wide variability in the capital structure for the three subject industries and it also demonstrates a definite change in the capital structure over the past 10 years. The Department ignores these variations and current economic conditions and developes a 10-year average capital structure. It is our opinion that, if an average capital structure rather than a

specific company capital structure is to be used, then three different capital structures should be developed; that is, one for electric companies, one for gas distribution companies, and one for transmission companies. The cost of long term debt is determined from an average of 15 years of historical yields on all utility bonds, newly issued utility bonds, and new gas light and power bonds. It appears obvious that the use of a 15 year average relates in no way to current economic conditions nor does it necessarily present any reflection of the historical embedded cost of debt of a particular utility company. The Department has as is objective "A determination of the average interest rate for contracted indebtness, commonly referred to as the embedded cost of debt." (P.10) This data is readily available for each of the companies subject to appraisal by the Department and there is no reason why it could not be provided by the utility companies with a mininum amount of effort. For the cost of the preferred stock component in the overall capitalization rate, the Department uses a 20 year average. The comments made above relative to the 15 year study for the debt component similarily apply to the preferred stock analysis; the current economic relevance of a 20 year old preferred stock issue in valuing property in 1982 cannot be supported. The Department has as its objective "a determination of the average dividend rate of the outstanding preferred stock." (P.10) This is a number readily available for any company after a very brief analysis of its income statement and balance sheet.

For a determination of the required return on equity, the Department uses an analysis of 10 years of data extracted from Moody's. It must be noted that the Department is attempting to determine the capitalization rate for electric, gas distribution, and transmission utility companies. The data which forms the basis of the equity analysis is exclusively from stocks which are considered to be electric companies or combination utilities with, generally, a very small portion of gas distribution relative to electric. There are no transmission companies or "pure" gas distribution in the public utility average data used by the Department. The Department processes this data in the form of a discounted cash flow model for developing the required return on equity. This method basically utilizes the following formula:

$$R = \frac{D1}{Po} + g, \text{ where}$$

R = the return on equity requirement; D1 = anticipated dividend in the next future year; Po = current stock price; g = growth in dividends per share. The Department's calculation does not follow this formula in that it relates current dividends to current stock price rather than the next year's dividends to the current stock price and calculates the growth factor from earnings per share rather than dividends per share.

If the Department persists in the use of this method, and given the data available in Moody's it should, at minimum, calculate separate equity return rates for the electric stocks, transmission stocks, and gas distribution stocks. All of the data similar to that used in the calculation of the common stock equity return rate for the electric industry is also available for these two other industries in the same Moody's publication. These would result in significantly differing rates as the growth component (g) of the discounted cash flow procedure is about 6.7% for transmission stocks and 4.6% for gas distribution stocks compared to less than 3% for the electric stocks the Department analyzed.

From the above description, it can be seen that the development of the capitalization rate is a conglomeration of data representing 10 to 20 years of historical information some of which is not relevant or specific to the industry subject to appraisal and certainly not reflective of current economic circumstances. It should also be obvious that the method used to develop the capitalization rate is directly opposed to the Department's recognition that it is paramount in appraisal practice to match the correct income stream and the corresponding capitalization rate. If the Department is going to use a weighted three year's historical average of income to capitalize them it should also develop its capitalization rate based on a three year historical basis.

Attachment 1 to this analysis suggests a method by which the Department could improve the development of its capitalization rate so as to match the income stream and still maintain relative administrative simplicity. As indicated above, we do not believe that the various cost data for the components have been correctly determined; nevertheless, to illustrate a more appropriate weighting of capital costs we have used these data for illustration purposes. It can be seen from Attachment 1 that the only revision made in the capitalization rate developed in the Department's Statement of Need and Reasonableness is the changing of the 10 to 20 year averages for the components to a weighted average consistent with those suggested by the Department for the income approach. Using this weighting procedure, an overall capitalization rate of 10.6% is developed. This should be compared to the average utility capitalization rate of 8.87% developed by the Department which is then rounded to 8.75%. An observation must be made here in that the Department correctly states that in the appraisal field it is customary to round cap rates but most appraisers would round a 8.87% cap rate to 8.9% and not to 8.75%. Nevertheless, if the Department's apparent logic is used to adjust this cap rate for the various industries, the indicated rate for the transmission companies would be $\frac{9.00\%}{8.75\%} \times 10.6\% = 10.9\%$. If this revised transmission company cap rate is applied to the Department's illustration of the development of an income indicator of value for a pipeline company (P.15 L13 of the Rules), with no other changes, the income indicator of value becomes $3,963,000 versus the Department's $4,800,000. This is a difference of 21% and illustrates the critical effect of the weighting.

In summary, a capitalization rate should be developed in a manner consistent with the income stream which is used in the capitalization process. In its development the Department has not achieved this objective. Capitalization rates should be developed for each and every industry, and preferably for each company, rather than developing an overall utility capitalization rate and arbitrarily making adjustments for the industry as the Department has done. The capital structure used should be the specific company capital structure, and, if not that, at minimum the capital structure of the industry in which the company is operating. The costs of debt and the preferred stock should be those of the particular utility subject to appraisal but, if that is not possible, then a calculation similar to the weighted average on Attachment 1 should be used. Finally, in the development of the cost of equity, a rate for electric utilities should be calculated properly using the discounted cash flow method and separate equity return requirements should be calculated for the transmission and gas distribution companies.

We have two additional observations. Just as income changes from year to year so do capitalization rates. The rules should set out an acceptable method to develop capitalization rates but the specific rate should not be a part of the rules; if this is not done the rules would have to be revised every year to reflect the influence of changing economic conditions on the capitalization rate.

Finally, the rules state that for gas distribution and transmission companies the cost indicator will be weighted at 75% (P.14 L9) and the income indicator will be weighted at 25% (P.15 L1). Most appraisers recognize that the income indicator of value is the most relevant one in the final estimate of fair market value. As noted above the Department's lack of recognition of economic obsolescence and its attempt to introduce a replacement cost element into its cost approach reduce the reliability of the cost approach as a value indicator. If specific weights for each of the two value indicators must be assigned in the rules, we recommend that 75% weight be given to the income approach and 25% weight be given to the cost approach.

Respectfully submitted,

THE AMERICAN APPRAISAL COMPANY

by



John C. Goodman

JCG/ld

Attachment 1

MINNESOTA DEPARTMENT OF REVENUE

Capitalization Rate
Revised Calculation

All data extracted from Statement of Need and Reasonableness.

Only revision to Department method is to weight 1977 at 25%, 1978 at 35%, 1979 at 40%.

Capital Structure - Weighted 3 year average

	% Debt	% Preferred	% Common
Electric	51.0	12.9	36.1
Transmission	52.3	5.3	42.4
Distribution	48.5	10.0	41.5
Average	50.6	9.4	40.0

Preferred Cost - Weighted 3 year average = 9.17%

Debt Cost - Weighted 3 year average

All Utility Bonds	= 9.57%
New Issue Utility Bonds	= 9.42%
New Gas, Light, Power Bonds	= 9.70%
Average	= 9.56%

Equity Cost - Weighted 3 year average = 12.29%

Capitalization Rate

Component	Weight	Cost	Weighted Cost
Debt	50.6%	9.56%	4.84
Preferred	9.4%	9.17%	.86
Equity	40.0%	12.29%	4.92
			10.62%
		Say	10.6%

Otter Tail
POWER COMPANY

215 South Cascade Street
Fergus Falls, Minnesota 56537
Phone 218-736-5411

RECEIVED
OCT 22 1981
ADMINISTRATIVE
HEARINGS

October 20, 1981

Jon Lunde
Office of Administrative Hearings
Room 300
1745 University Avenue
St. Paul, MN 55104

Dear Mr. Lunde:

Enclosed is my written statement pertaining to the public hearing to be held on November 4, 1981, in the matter of the proposed adoption of rules of the Department of Revenue governing valuation and assessment of utility companies. I would request that this statement be entered as a part of the official record of this hearing.

Yours very truly,

Vernon L. Kester

Vernon L. Kester
Supervisor, Taxes
vk

Enc.

Public Exhibit F
DR-82-004-JL
10-22-81

RECEIVED
OCT 22 1981
ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES
OF THE DEPARTMENT OF REVENUE GOVERNING
THE AD VALOREM (PROPERTY) TAXES IMPOSED ON UTILITY COMPANIES

Statement of Otter Tail Power Company
Vernon L. Kester, Supervisor, Taxes
November 4, 1981

Changes have been proposed in the formula used to determine utility assessments. Although these changes are in the right direction, I do not feel that they go far enough in correcting the inequities in Minnesota utility assessments.

Otter Tail Power Company's system of operations includes portions of the States of Minnesota, North Dakota, and South Dakota. Otter Tail Power Company property taxes, expressed as a percentage of book value, are considerably higher in Minnesota. Based on the 1980 assessments, our property taxes equal 2.86% of book value in Minnesota, 1.43% in North Dakota, and 1.24% in South Dakota. Minnesota's tax per dollar of investment in property is double that of North Dakota or South Dakota.

One change in the formula is to increase the depreciation rate for electric companies from 18% to 19%. This increase is helpful, but, when compared with other states, is woefully inadequate. North Dakota allows depreciation at the lower rate of 25% or actual book depreciation. Otter Tail Power Company's book depreciation as of December 31, 1980, on plant in service, less nondepreciable land, was 27.1%. In South Dakota, the depreciation factor is 55% on old standby generating plants, 50% on construction in progress, and 25% on other property. Both Dakotas allow depreciation on CWIP, whereas, Minnesota allows none. It is our opinion that a depreciation rate of at least 25% should be allowed in Minnesota and that this rate should also be applied to CWIP.

Another proposed rule change involves the "average cost per kilowatt of installed capacity." The change increases the period used to compute the average from 10 to 15 years. I believe that the Department of Revenue, in making this change, is recognizing that it has created some sort of a "monster" that is eventually going to get out of hand and add values to older, obsolete generating plants that will be astronomical. Even by adopting a 15-year period for averaging, it will not take long for the average cost per kW of installed capacity to start increasing rapidly when construction costs currently being experienced take effect. The cost per kW of our Hoot Lake Plant is $215. The last unit in this plant was installed in 1964. Twenty-one years later, the Big Stone Plant was completed at a cost of $382 per kW, or an increase of 77.7%. In 1981 our Coyote Plant went into service at a cost of about $1,000 per kW. This is an increase over the Big Stone cost of 161.8% in just 6 years. We are projecting costs of a new Spiritwood Plant, to be constructed in the next 5 years in North Dakota, to be $1,800 per kW of installed capacity. You can readily see that construction costs have increased tremendously in recent years. Recent costs will have an ever increasing effect on the average cost per kW used in the assessment formula adding more and more excessive valuation to older generating plants.

Otter Tail Power Company recently experienced, first-hand, the realization of what older generating plants are worth. The Company, in 1975, retired

five older steam generating plants at Devils Lake, Jamestown, and Wahpeton in North Dakota, and Canby and Crookston in Minnesota. The total book cost of these plants was slightly over $13,000,000. Sale of plant equipment and some of the buildings as scrap has netted the Company about $200,000. However, removal and other expenses have resulted in a net cost rather than a net return to the Company. The buildings at Canby and Crookston still remain, and we can't even give them away. We still have to pay property taxes on these buildings, which is increasing our net cost even further. Due to the special-purpose construction of the buildings, they would not be suitable for any other use unless large sums of money are spent to remodel the structures. The plants involved were retired for several reasons. First of all, the cost per kWh generated was very high compared to newer, more efficient plants. We were also faced with large expenditures for pollution control equipment in order to meet State and Federal requirements. It became strictly a matter of simple economics, so the plants were retired and replaced with one plant, which is the 440,000 kW Big Stone Station.

Utilities are now expending huge sums of money in plant construction to comply with pollution control requirements. For instance, the Coyote Station, a 440,000 kW plant constructed by Otter Tail Power Company and four other companies, required approximately $100,000,000 in pollution control facilities. This represents nearly 30% of the total cost of the plant. Costs such as these, plus inflation, will eventually increase the average installed cost per kW to the point that the add-on values placed on older plants will be extremely excessive. This could result in the eventual closing of plants as the cost of additional taxes becomes unrealistic.

The proposed rules also provide for increasing the formula capitalization rate for electric utilities from 8% to 8.5%. This too, is a step in the right direction but is woefully inadequate when considering the capitalization costs of utilities. Otter Tail Power Commpany's current cost of capital is over 11% and that includes several old bond issues at low interest rates. Other states have recognized the current high cost of capital in their assessment formulas. North Dakota adopted a rate of 11.5% for the 1981 utilities assessment. We ask that Minnesota would also recognize the extremely high cost of money for utilities by adopting a capitalization rate that is in step with current money costs.

In summary, we urge that consideration be given to:

1. Increasing the depreciation rate to 25%.

2. Elimination of the unfair and unrealistic add-on market value feature based on installed cost per kW of large generating plants.

3. Increasing the capitalization rate to a level that is comparable to actual cost of capital for utilities. This should be a minimum of 11.5%.

If you wish to be notified when the Hearing Examiner's Report is available, please put your name and address on one of the envelopes supplied.

RULE HEARING REGISTER

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11-19-81

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BOB DOLAN ✓	USP	414 Nicollet Mall Mpls	330-5837		✓
MARILYN TAFS	MP+L	30 W. Superior St. Duluth 55802	218-722-2641		✓
Robert M. Foster ✓	InterNorth Inc	2223 Dodge St. Omaha Ne 68114	402-633-4176	✓	✓
Gary L. Woodman ✓	Minnesota Pipeline	P.O. Box 2256 Wichita Kns 67201	316 832-5266		✓
Tim V Tilma	Minnesota Pipeline	P.O. Box 2256 Wichita, Kans 67201	316 832-5024		✓
Richard O. Wittaker ✓	Carlton County	P.O. Box L Carlton, Mn 55718	218-384-4281		✓
Harold Kean ✓	Carlton Co	Box 144 Esko MN	879 3588		
Diana Skelly	Bass Brook Twp	Po Box 146, Cohasset, MN.	328-6677		✓
PHILIP M. CHEN	Bass Brook Twship	2200 First Bank Place East Minneapolis Minn	340-2991		✓
JOHN B. Gillett ✓	" " "	2315 ST. PAUL ST. BALTIMORE, MD. 21218	301-235-3450	✓	
Allan Hovi ✓	Itasca County	1707 Fraser St. Grand Rapids Minn 55744	218-326-964		✓
Ty Bischoff ✓	Sherburne Co	326 Lowell Elk River MN 55330	441 1441 Ext 22		✓
John Windhorst ✓	Bass Brook Twship	2200 First Bank Place East, Mpls Minn	340-2645	✓	
Elroy Schulz ✓	Wrenshall School	Box 68, Wrenshall, MN 55797	218 384-3625	✓	
Earl Davern	Lakehead Pipe Line Co.	Box 388 - Superior WI. 54880	715-392-5631		✓
Peter J Popovich	Cloquet Co	314 Mann Bldg St Paul 55101	612-222-5575	Observer - but may file comments	✓
A. E. Brachet ✓	Great Lakes Gas	One Woodward Detroit Mich	313-965-1616		✓
C. F. McInerney ✓	" " "	" " " "	"		✓
Rosemarie Stanchfield	" " "	" " " "	"		✓

AR-82-004-JC
St. Paul
11/4/81

If you wish to be notified when the Hearing Examiner's Report is available, please put your name and address on one of the envelopes supplied.

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Robert M Foster	Northern Nat Gas	2223 Dodge St. Omaha, Nebr 68102	402-633-4126	yes	yes
Bruce E Hangsen	Minnesota Power	30 W. Superior St Duluth MN	218-723-3985	yes after	yes
Gary D Woodman	Minnesota Pipeline (Koch Ind)	P.O Box 2256 Wichita, Kns 67201	316 832-5266	NO	yes
LEROY SCHULZ	WRENSHALL School	Box 68, Wrenshall, MN 55797	218-384-4274	NO	yes
Donna Perry	Portal Pipeline Co	2900 1st NATL BK Bldg. Dallas, TX 75202	214-744-7033	NO	yes
Peter J Popovich	Carlton Co.	314 Minn. Bldg St Paul 55101	222-5515	at hearing	yes
Bob Dolan	NSP	414 Nicollet Mall Mpls 55401	330-5837	Yes	Yes
R.W. Bailey	Midwestern Gas Trans.	P.O. Box 2511 Houston, Tx 77001	713-757-2100	NO	yes
D.E. Reuther	Great Lakes Gas Trans	One Woodward Ave Detroit Mich	313-965-1616	Maybe	Yes
C. Pat McInerney	" " " "	" " " " "	" "	"	"
J.E. STAUDOHAR	LAKEHEAD PIPE LINE Co.	3025 TOWER AVE, SUPERIOR, WISC	715-392-5631	NO	"
George Maas	—	—	—	—	"
John McKeever	Burlington Northern	Prop Tax - 176 E 5th St. St Paul	298-2873	No	"
Richard Mattson	Carlton County	P.O. Box C Carlton, Mn	218-384-4281	No	yes
Arvid Lown	Carlton County	P.O. Box 144 Esko, MN 55733	218-879-3988	No	yes
Arthur W. Carlson, Jr.	Minnesota Gas Company	733 Marquette Ave, Mpls, MN 55402	372-4776	NO	YES
Don D. Martin	Scott Co.	630 Monroe St. Shakopee 55379	445-7750	No.	yes
STAN WEINBERGER	CITY OF BECKER	P.O. Box 96C St. Cloud, MN 56301	252-4414	YES	YES
Yap Stumpf	City of Becker	PO Box 182 Becker 55308	261-4391		yes
GARY WIEBER	City of Monticello	City Hall Monticello 55362	295-2711	YES	Yes

If you wish to be notified when the Hearing Examiner's Report is available, please put your name and address on one of the envelopes supplied.

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DR-82-004-JL
St. Paul
11/4/81

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R. L. Nyren	Monticello Schools	Box 897, Monticello, Mn. 55362	612-295-5184		Yes
Diana Skelly	Bass Brook Twp	Box 146 Cohasset, Mn 55721	218-328-6677	No	No
J. Windhorst	Bass Brook Twp	2200 First Bank Place East Mpls 55402	612-340-2645	Yes - on the 19th	Yes
John E. MacLaughlin	Sherburne County Atty	321 Lowell Elk River, Mn	6124411383	yes	Yes
P. L. Bischoff	" " Assessor	" "	612-441-1441	yes	Yes
Dick Lemke	Minn R.E.A.	4901 W. 77th St Mpls	612-835-2614	No	Yes
Lee Lundberg	Minn R.E.A.	"	"	No	No
Allan Thori	Itasca County	1707 Fraser St. Grand Rapids Minn 55744	218-326-9671	No	No
Robert Loscheider	" "	Court House - Grand Rapids 55744	326-9628	No	Yes
GORDON MOE	City MPLS	Rm 2106A Henn. Co. Gov't Center MPLS MN 55487	348 2391	Yes	Yes

DR-82-004-JL
ST. PAUL
11/4/81

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Virgil Rapp	Goodhue county	courthouse Red Wing Minn	388-8361		
Bernie Mattson	Wright County	Courthouse - Buffalo, Minn	682-3900		

In the Matter of the Proposed)
Adoption of Rules of the State)
of Minnesota, Department of)
Revenue Governing The Valuation)
and Assessment of Electric, Gas)
Distribution, and Pipeline)
Companies (Utility Companies).)

AFFIDAVIT OF
MAILING NOTICE OF
SUBMISSION TO THE
ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Ronald Cook, being first duly sworn, deposes and says:

That on the 24 day of March, 1982, in the City of St. Paul, County of Ramsey, State of Minnesota he served the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for first class mailing at said City of St. Paul a copy thereof, properly enveloped, with postage prepaid, to all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Subscribed and sworn to before me
this 24 day of March,
1982.

Patricia Zentzis

PATRICIA ZENTZIS
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Comm. Expires May 9, 1982

Ronald Cook

RONALD COOK
Utility Valuation Examiner

John Windhorst
2200 First Bank Place
Minneapolis, MN 55402

Arvid Konu
P.O. Box 144
Esko, MN 55733

Gary D. Woodman
Minnesota Pipeline
P.O. Box 2256
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T.L. Bischoff
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Elk River, MN 55330

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Elroy Schulz
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Becker, MN 55308

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Elk River, MN

Marilyn Tafs
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Duluth, MN 55802

George Maas
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Earl Daveron
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Gordon Moe
Room 2106A
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Minneapolis, MN 55407

Bob Dolan
Northern States Power
414 Nicollet

Rose Marie Stonehill
Great Lake Gas Transmission
One Woodward

Dick Lemke
4901 W. 79th St.
Minneapolis, MN

Virgil Rapp
Goodhue County Courthouse
Red Wing, MN 55066

Bernard L. Mattson
Wright County Courthouse
Buffalo, MN 55313

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE OF MINNESOTA DEPARTMENT OF REVENUE GOVERNING THE VALUATION AND ASSESSMENT OF ELECTRIC, GAS DISTRIBUTION, AND PIPELINE COMPANIES (UTILITY COMPANIES)

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Dorothy A. McClung, Director of Legal Research for the Department of Revenue, do hereby declare that I have examined the proposed rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. No exceptions have been noted.

Dorothy A McClung
DIRECTOR OF LEGAL RESEARCH

DATED: March 23, 1982

ADMIN 1000

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

Office Memorandum

TO : ATTORNEY GENERAL
Department of Administration

DATE: March 24, 1982

FROM : GERALD D. GARSKI, Manager
State Assessed Properties
Property Equalization Division

PHONE: 6-5134

SUBJECT: REVIEW OF PROPOSED RULES

Pursuant to Minn. Statutes, Subd. 4a, Chapter 15.0412, the attached rules, together with all attendent hearing materials, are submitted for your review.

If you have any questions or need any additional information, please feel free to contact me.

GDG:vh

Attachment

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE OF MINNESOTA DEPARTMENT OF REVENUE GOVERNING THE VALUATION AND ASSESSMENT OF ELECTRIC, GAS DISTRIBUTION, AND PIPELINE COMPANIES (UTILITY COMPANIES)

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Pursuant to your request made at the Public Hearings held on November 4 and November 19, 1981 and in accordance with Minnesota Statutes, section 15.0412:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date, March 24, 1982, for review as to form and legality. Pursuant to 1 MCAR § 1.206 B., the Attorney General will not approve the rules for at least 20 calendar days after receipt to allow any person or association time to comment on the legality of the above-captioned rules, after which that Office will complete its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, G-25 State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155, telephone (612) 296-7030. Please note that the above-cited rule of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency.

If you are interested in determining what changes, if any, were made in the proposed rules after the hearing and before submission to the Attorney General, you may contact G. D. Garski, Manager of State Assessed Property, (612) 296-5134.