

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 401

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 4-20-83
DATE FOR REVIEW 4-29-83
DATE DUE 5-4-83

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

Approved 5/4/83 Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____ Revisor approved 4/21/83 disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 4.20.83 Date

N/A Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

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

✓ Mailing list Certificate

✓ Publication in State Register
2.7.83 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

N/A Agency's Findings of Fact no changes

N/A LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

N/A 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

N/A Notice of Submission to the Attorney General

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Joseph E. Sizer, Commissioner

DATE: May 4, 1983

Attn: THOMAS J. BARRETT
Special Assistant
Attorney General

FROM : TED A. MARTINEZ TAM
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Rules of the Department of Energy, Planning and Development (Minnesota Energy Agency) Governing Construction Loans Under the District Heating Bonding Act 6MCAR §§ 2.4021-2.4034.

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.

Encs.
TAM/ls
cc: Ms. Kathy Burek
Mr. Duane Harves

AG copy

Department of Energy, Planning and Development
Energy Division

Adopted Rules for the Administration of the District Heating Bonding Act Regarding Construction Loans

Rules as Adopted

6 MCAR S 2.4021 Definitions.

A. Scope. For the purposes of 6 MCAR SS 2.4021-2.4034, the terms defined in B.-L. have the meanings given them.

B. Act. "Act" means Minnesota Statutes, section 116J.36.

C. Assistant commissioner of energy. "Assistant commissioner of energy" means the Assistant Commissioner of the Energy Division of the Department of Energy, Planning and Development.

D. Commissioner. "Commissioner" means the Commissioner of the Department of Energy, Planning and Development.

E. Debt service cost. "Debt service cost" means the sum of all costs amortizing lease indebtedness, bond indebtedness, urban development action grant indebtedness, and any state indebtedness that is attributed to the project on an annual basis.

F. Debt service coverage. "Debt service coverage" means the gross revenues of the project minus the operating expenses, plus the debt service cost. The debt service coverage is expressed as a percentage of the debt service cost.

G. Department. "Department" means the Department of Energy, Planning and Development.

H. Financial consultant. "Financial consultant" means a reputable person or firm experienced in working with complex revenue-supported financial plans and qualified to assess the financial condition and operation of the project.

I. Gross revenues. "Gross revenues" means all revenues, fees, user charges, rents, franchise fees, special assessments, and other income and receipts derived from the ownership or operation of the project, the proceeds of any insurance that

insures against the loss of gross revenues, any investment income from money or securities derived from the state loan under the act, and any other income and receipts attributable to the ownership or operation of the project from whatever source derived, calculated on an annual basis.

J. Operating expenses. "Operating expenses" means all expenses directly and properly attributable to the operation of the project on an annual basis. Examples are: expenses for operation, maintenance, repairs, ordinary replacement, ordinary acquisition of equipment, fuel and heat, labor and fringe benefits, lease rental payments, insurance premiums, administration, legal services, engineering services, payments of all indebtedness, and any other current expenses or obligations required to be paid by the municipality or owner of the project, all to the extent properly and directly attributable to the operation of the project. Operating expenses do not include any costs or expenses for new construction or any allowance for depreciation.

K. Project. "Project" means a district heating construction project as described by the business plan.

L. Take-or-pay contract. "Take-or-pay contract" means a contract between a district heating system and a thermal load customer whereby the customer agrees to take a predesignated amount of thermal energy over a certain time period or to pay a sum equivalent to the value of the predesignated amount of thermal energy, even if less is taken.

6 MCAR S 2.4022 Purpose.

The purpose of rules 6 MCAR SS 2.4021-2.4034 is to allow district heating projects that have already completed comprehensive engineering, economic, and design studies to make prompt and proper application for construction loans. Rules 6 MCAR SS 2.4021-2.4034 set forth the procedures that municipalities must follow to apply for loans and establish the criteria by which the applications are reviewed.

6 MCAR S 2.4023 Scope of rules.

Rules 6 MCAR SS 2.4021-2.4034 apply to the department and to any municipality applying for construction loans under the act.

6 MCAR S 2.4024 Contents of application.

The application for construction loans shall contain the following information:

A. name, address, and telephone number of the responsible official of the municipality;

B. a comprehensive business plan for the project, as described in 6 MCAR S 2.4025;

C. a resolution in support of the project from the governing body of the municipality, as described in 6 MCAR S 2.4029;

D. identification of all licenses, permits, zoning regulations, and any other requirements of federal, state, or local governments with which the project would be expected to comply, and the present status of each;

E. a list of key personnel and their qualifications as they relate to the project;

F. an estimate of the type and amount of fuel saved per year from the full operation of the district heating system compared to the type and amount of fuel to be used by the system; and

G. a copy of the environmental assessment worksheet or environmental impact statement prepared for the project. If neither is required, then the applicant shall submit a statement as to the environmental effects of the project.

6 MCAR S 2.4025 Comprehensive business plan.

The comprehensive business plan required by 6 MCAR S 2.4024 B. must include all of the following information:

A. a complete engineering design of the project, as described in 6 MCAR S 2.4026;

B. a market study of customers of the district heating system defined by the business plan who represent 90 percent or more of the proposed thermal load, as described in 6 MCAR S 2.4027;

C. a preliminary plan that shows how the system could be

expanded to serve other parts of the community;

D. a complete economic analysis, as described in 6 MCAR S 2.4028, that includes cash flow, income, and balance sheets for a 20-year planning period, and a financing and development plan for the district heating system prepared by a financial consultant;

E. a certification by the municipality that a bid package for the construction of the project has been completed and is available to the department if requested;

F. a copy of the standard contract entered into with customers of the project with a list of customers already under contract, listing the thermal load of each customer presently under contract and comparing the total of the thermal load already contracted with the total load of the project; and

G. a copy of the contract for the furnishing of the heat source or fuel for the project.

6 MCAR S 2.4026 Engineering design.

The complete engineering design of the project required by 6 MCAR S 2.4025 A. must include at least the following information:

A. an analysis of the proposed piping layout that addresses the areas of optimum service to the total designated area, reliability of service, system temperatures and pressure requirements, thermal and hydraulic operability for normal and emergency conditions, optimum piping configuration to provide service, and flexibility for future expansion;

B. an analysis of the proposed piping design that addresses the areas of reliability of service, ease of construction, ease of maintenance, installation methods, and specifications and standards; and

C. an analysis of the heat source design that defines the proposed roles of the following heat sources in the development and the future operation of the system: base load heating plant, peaking plants, large boiler plants in existing buildings, mobile boilers, accumulators, and future heat sources such as solid waste, solar, and industrial waste heat.

6 MCAR S 2.4027 Market study.

The market study required by 6 MCAR S 2.4025 B. must show detailed information on present fuel consumption or heating demand and the present heating system in each building.

6 MCAR S 2.4028 Economic analysis.

The economic analysis required by 6 MCAR S 2.4025 D. must include a cost estimate and expenditure schedule for all transmission and distribution piping; heat source conversion, purchase, or rental; operating and maintenance costs, excluding fuel costs; and building heating conversion costs.

6 MCAR S 2.4029 Resolution in support of project.

The resolution required by 6 MCAR S 2.4024 C. must include the pledges the municipality proposes to make to guarantee repayment of the construction loan and evidence of the municipality's financial capability to sponsor the project.

6 MCAR S 2.4030 Application procedures.

A. Submitting. Applications for construction loans under the act and 6 MCAR SS 2.4021-2.4034 must be submitted to the commissioner.

B. Effective date. The period for accepting applications begins on the date 6 MCAR SS 2.4021-2.4034 become effective.

C. Copies. Ten complete copies of the application must be submitted to the commissioner.

6 MCAR S 2.4031 District heating advisory task force.

A. Membership. Under Minnesota Statutes, section 15.014, the assistant commissioner of energy shall appoint a district heating advisory task force consisting of at least four members in addition to the assistant commissioner of energy who shall act as chairperson.

Task force members must be knowledgeable in the area of district heating, but cannot be directly or indirectly involved in any district heating project under consideration by the commissioner.

The assistant commissioner of energy may from time to time

add or delete task force members, subject only to the limitations in A.

B. Task force duties. The task force shall review each application for a loan under the act, and shall advise and assist the commissioner in carrying out the requirements of the act and 6 MCAR SS 2.4021-2.4034. The commissioner shall retain final responsibility for all statutory and rule requirements.

6 MCAR S 2.4032 Feasibility assessment.

The commissioner shall review each application as received according to the following feasibility assessment parameters:

A. the eligibility and priorities criteria of Minnesota Statutes, section 116J.36, subdivisions 3 and 4;

B. the debt service coverage represented by the business plan;

C. the debt service coverage from revenues currently under contract;

D. the total cost of the project;

E. the ratio of the state loan under the act to the total cost of the project;

F. the terms of the contracts with customers; and

G. the total number of customers for the project.

6 MCAR S 2.4033 Evaluation of application.

Upon reviewing each application, the commissioner shall award points to applicants based upon the following criteria:

A. four points to applicants that have a debt service coverage of at least 130 based upon the revenues currently under contract;

B. four points to applicants that have take-or-pay contracts for at least the term of the state loan under the act; two points, if the contracts are for a term less than the term of the state loan under the act;

C. two points to applicants whose total project cost is less than $5,000,000 or whose state loan under the act would be less than 50 percent of the project's total cost;

D. two points to applicants that have 50 or more customers

identified in the marketing study of their business plans, if these customers comprise at least 50 percent of the project's thermal load.

6 MCAR S 2.4034 Recommendation.

A. Tallying points. The commissioner shall tally the points awarded to each applicant under 6 MCAR S 2.4033 and shall make recommendations based upon the standards set forth in B. and C.

B. Eight or more points. For applicants who have been awarded a total of eight or more points, the commissioner shall recommend that the revenues of the project be pledged for repayment of the state loan under the act. In addition, the state loan may take a position subordinate to other financing.

C. Seven or fewer points. For applicants who have been awarded a total of seven or fewer points, the commissioner shall recommend that the applicant pledge additional funds adequate to ensure the repayment of the state loan under the act. If additional funds are not available or the applicant chooses not to pledge them, then the applicant may pledge to levy an ad valorem tax of a similar amount.

APPROVED AS TO LEGALITY

May 4 19 83

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Ted A. Mantyla
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAY - 5 1983
Joan Anderson Growe
Secretary of State

9:29 AM

Rules as Proposed (all new material)

6 MCAR S 2.4021 Definitions.

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H. Financial consultant. "Financial consultant" means a reputable person or firm experienced in working with complex revenue-supported financial plans and qualified to assess the financial condition and operation of the project.

I. Gross revenues. "Gross revenues" means all revenues, fees, user charges, rents, franchise fees, special assessments, and other income and receipts derived from the ownership or operation of the project, the proceeds of any insurance that insures against the loss of gross revenues, any investment income from money or securities derived from the state loan under the act, and any other income and receipts attributable to the ownership or operation of the project from whatever source derived, calculated on an annual basis.

J. Operating expenses. "Operating expenses" means

APPROVED BY THE REVISOR OF STATUTES OFFICE BY: mwh

expenses directly and properly attributable to the operation of the project on an annual basis. Examples are: expenses for operation, maintenance, repairs, ordinary replacement, ordinary acquisition of equipment, fuel and heat, labor and fringe benefits, lease rental payments, insurance premiums, administration, legal services, engineering services, payments of all indebtedness, and any other current expenses or obligations required to be paid by the municipality or owner of the project, all to the extent properly and directly attributable to the operation of the project. Operating expenses do not include any costs or expenses for new construction or any allowance for depreciation.

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6 MCAR S 2.4022 Purpose.

The purpose of rules 6 MCAR SS 2.4021-2.4034 is to allow district heating projects that have already completed comprehensive engineering, economic, and design studies to make prompt and proper application for construction loans. Rules 6 MCAR SS 2.4021-2.4034 set forth the procedures that municipalities must follow to apply for loans and establish the criteria by which the applications are reviewed.

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Rules 6 MCAR SS 2.4021-2.4034 apply to the department and to any municipality applying for construction loans under the act.

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The application for construction loans shall contain the following information:

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

A. name, address, and telephone number of the responsible official of the municipality;

B. a comprehensive business plan for the project, as described in 6 MCAR S 2.4025;

C. a resolution in support of the project from the governing body of the municipality, as described in 6 MCAR S 2.4029;

D. identification of all licenses, permits, zoning regulations, and any other requirements of federal, state, or local governments with which the project would be expected to comply, and the present status of each;

E. a list of key personnel and their qualifications as they relate to the project;

F. an estimate of the type and amount of fuel saved per year from the full operation of the district heating system compared to the type and amount of fuel to be used by the system; and

G. a copy of the environmental assessment worksheet or environmental impact statement prepared for the project. If neither is required, then the applicant shall submit a statement as to the environmental effects of the project.

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The comprehensive business plan required by 6 MCAR S 2.4024 B. must include all of the following information:

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B. a market study of customers of the district heating system defined by the business plan who represent 90 percent or more of the proposed thermal load, as described in 6 MCAR S 2.4027;

C. a preliminary plan that shows how the system could be expanded to serve other parts of the community;

D. a complete economic analysis, as described in 6 MCAR S 2.4028, that includes cash flow, income, and balance sheets for a 20-year planning period, and a financing and development plan for the district heating system prepared by a financial consultant;

E. a certification by the municipality that a bid package

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

for the construction of the project has been completed and is available to the department if requested;

F. a copy of the standard contract entered into with customers of the project with a list of customers already under contract, listing the thermal load of each customer presently under contract and comparing the total of the thermal load already contracted with the total load of the project; and

G. a copy of the contract for the furnishing of the heat source or fuel for the project.

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The complete engineering design of the project required by 6 MCAR S 2.4025 A. must include at least the following information:

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B. an analysis of the proposed piping design that addresses the areas of reliability of service, ease of construction, ease of maintenance, installation methods, and specifications and standards; and

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6 MCAR S 2.4028 Economic analysis.

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KEEP WITHIN THE PROVISIONS OF STATUTES

include a cost estimate and expenditure schedule for all transmission and distribution piping; heat source conversion, purchase, or rental; operating and maintenance costs, excluding fuel costs; and building heating conversion costs.

6 MCAR S 2.4029 Resolution in support of project.

The resolution required by 6 MCAR S 2.4024 C. must include the pledges the municipality proposes to make to guarantee repayment of the construction loan and evidence of the municipality's financial capability to sponsor the project.

6 MCAR S 2.4030 Application procedures.

A. Submitting. Applications for construction loans under the act and 6 MCAR SS 2.4021-2.4034 must be submitted to the commissioner.

B. Effective date. The period for accepting applications begins on the date 6 MCAR SS 2.4021-2.4034 become effective.

C. Copies. Ten complete copies of the application must be submitted to the commissioner.

6 MCAR S 2.4031 District heating advisory task force.

A. Membership. Under Minnesota Statutes, section 15.014, the assistant commissioner of energy shall appoint a district heating advisory task force consisting of at least four members in addition to the assistant commissioner of energy who shall act as chairperson.

Task force members must be knowledgeable in the area of district heating, but cannot be directly or indirectly involved in any district heating project under consideration by the commissioner.

The assistant commissioner of energy may from time to time add or delete task force members, subject only to the limitations in A.

B. Task force duties. The task force shall review each application for a loan under the act, and shall advise and assist the commissioner in carrying out the requirements of the act and 6 MCAR SS 2.4021-2.4034. The commissioner shall retain final responsibility for all statutory and rule requirements.

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The commissioner shall review each application as received according to the following feasibility assessment parameters:

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E. the ratio of the state loan under the act to the total cost of the project;

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B. four points to applicants that have take-or-pay contracts for at least the term of the state loan under the act; two points, if the contracts are for a term less than the term of the state loan under the act;

C. two points to applicants whose total project cost is less than $5,000,000 or whose state loan under the act would be less than 50 percent of the project's total cost;

D. two points to applicants that have 50 or more customers identified in the marketing study of their business plans, if these customers comprise at least 50 percent of the project's thermal load.

6 MCAR S 2.4034 Recommendation.

A. Tallying points. The commissioner shall tally the points awarded to each applicant under 6 MCAR S 2.4033 and shall make recommendations based upon the standards set forth in B. and C.

...VED IN THE ...OF STATUTES ...BY:

B. Eight or more points. For applicants who have been awarded a total of eight or more points, the commissioner shall recommend that the revenues of the project be pledged for repayment of the state loan under the act. In addition, the state loan may take a position subordinate to other financing.

C. Seven or fewer points. For applicants who have been awarded a total of seven or fewer points, the commissioner shall recommend that the applicant pledge additional funds adequate to ensure the repayment of the state loan under the act. If additional funds are not available or the applicant chooses not to pledge them, then the applicant may pledge to levy an ad valorem tax of a similar amount.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

STATE OF MINNESOTA
DEPARTMENT OF ENERGY, PLANNING AND DEVELOPMENT
ENERGY DIVISION (MINNESOTA ENERGY AGENCY)

In the Matter of the Proposed Adoption of Rules of the Department of Energy, Planning and Development (Minnesota Energy Agency) Governing Construction Loans Under the District Heating Bonding Act 6MCAR SS 2.4021-2.4034.

ORDER ADOPTING RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on February 7, 1983 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 14.14, subdivision 1 on January 31, 1983. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice and receiving fewer than seven written requests for a public hearing within the 30-day comment period, the Attorney General requested a second comment period.

Supplemental Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing, the original Notice and a complete copy of the rules were sent by United States mail to all persons on the list maintained by the Department pursuant to Minnesota Statutes section 14.14, subdivision 1 on March 17, 1983. After affording interested and affected persons an opportunity to submit comments for 30 days after the second Notice, receiving fewer than seven written requests for a public hearing within the second 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as 6 MCAR Sections 2.4021 through 2.4034 are adopted this 20th day of April, 1983 pursuant to authority vested in me by Minnesota Statutes section 116J.10 (a) and section 116J.36 subd. 11.

STATE OF MINNESOTA

Joseph E. Sizer

JOSEPH E. SIZER
COMMISSIONER

STATE OF MINNESOTA

DEPARTMENT OF ENERGY, PLANNING AND DEVELOPMENT

ENERGY DIVISION (MINNESOTA ENERGY AGENCY)

In the Matter of the Proposed Adoption of Rules of the Department of Energy, Planning and Development (Minnesota Energy Agency) Governing Construction Loans under the District Heating Bonding Act 6 MCAR §§ 2.4021 - 2.4034

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

IT IS ORDERED this 21 day of January, 1983, that Notice of Intent to Adopt Rules Without a Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Department of Energy, Planning and Development for that purpose and be published in the State Register.

Department of Energy,
Planning and Development

Robert G. Renner, Jr.
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF ENERGY, PLANNING AND DEVELOPMENT

ENERGY DIVISION (MINNESOTA ENERGY AGENCY)

In the Matter of the Proposed Adoption of Rules of the Department of Energy, Planning and Development (Minnesota Energy Agency) Governing Construction Loans under the District Heating Bonding Act
6 MCAR §§ 2.4021 - 2.4034

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Department of Energy, Planning and Development (Minnesota Energy Agency), hereinafter "Department", intends to adopt the above-entitled rules without a public hearing. The Commissioner of the Department has determined that the adoption of the rules will not be controversial and has elected to follow the procedures set out in Minnesota Statutes § 14.21 - 14.28.

In the 1981 session, the Minnesota Legislature enacted the District Heating Bonding Act, Laws of 1981, Chapter 334, hereinafter "Act", for the purpose of fostering the establishment and improvement of district heating systems. The Department has developed these rules under the authority of Section 1, Subdivision 11 of the Act, for the purpose of administering a program of loans to municipalities for district heating construction.

The objective of the District Heating Construction Loan program is to encourage the development and expansion of economically viable district heating systems which have the potential to save energy and/or displace scarce fuels such as petroleum and natural gas.

Temporary rules for construction loans were duly promulgated and became effective on March 26, 1982. They are published in the

State Register of February 22, 1982 (6 S.R. 1465) with modifications in April 12, 1982 (6 S.R. 1716).

Copies of the proposed rules may be obtained by writing or calling Mary Lesch-Gormley at the address or telephone number given below.

Please be advised that you have an opportunity for the 30-day period following publication of this notice and the proposed rules to submit comments in writing on the proposed rules and to object to the lack of public hearing on the proposed rules. Your written comments or request for hearings should be submitted to the Department of Energy, Planning and Development, %Mary Lesch-Gormley, 980 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101, telephone 612/297-2324. Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, no public hearing will be held. If seven or more persons request hearings on the proposed rules, the Department will order public hearings in accordance with Minn. Stat. § 14.13 - 14.20. The Department may modify the proposed rules if modification is supported by the data and views submitted in written comments and if no substantial change results from the modification.

If no hearing is required, and the Department decides to adopt the rules as proposed, or as modified if written comments justify modification, the Department will submit to the Attorney General for review of form, legality and substantial change the following documents: this notice with the rules as proposed, the rules as adopted, the order adopting the rules, any written comments received by the Department, the Department's Statement of Need and Reasonableness supporting adoption of the rules, and any written comments received by

the Department in response to the earlier notices seeking outside opinions. Any person may request notification of the date the Department makes the submission to the Attorney General. If you desire to be so notified you must inform the Department in writing during the 30-day comment period.

The Department has prepared a Statement of Need and Reasonableness in support of the proposed rules which is also available from the Department by contacting the address or telephone indicated above.

The Department's authority to promulgate the proposed rules can be found in Minn. Stat. § 116J.10(a) and § 116J.36 subd. 11.

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

Dated: January 21, 1983

Robert G. Renner, Jr.
Commissioner

STATE OF MINNESOTA
DEPARTMENT OF ENERGY, PLANNING AND DEVELOPMENT
ENERGY DIVISION (MINNESOTA ENERGY AGENCY)

In the Matter of the Proposed Adoption of Rules of the Department of Energy, Planning and Development (Minnesota Energy Agency) Governing Construction Loans Under the District Heating Bonding Act 6MCAR SS 2.4021-2.4034

SUPPLEMENTAL NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Notice of the Department of Energy, Planning and Development's (Minnesota Energy Agency) intent to adopt rules without a public hearing was published in the February 7, 1983 State Register (7S.R.1141) and mailed to all persons on the Department's list under Minnesota Statutes Section 14.14 Subdivision 1.

The Attorney General has determined that such notice is insufficient. Therefore we are remailing said Notice and a complete copy of the proposed rules.

A new 30 day comment period shall begin March 21 , 1983 using the same procedures as stated in the original Notice which is enclosed.

Joseph E. Sizer
Commissioner

Department of Energy, Planning and Development
Energy Division

Proposed Rules for the Administration of the District Heating Bonding Act Regarding Construction Loans

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Energy, Planning and Development (Minnesota Energy Agency), hereinafter "department," intends to adopt the above-entitled rules without a public hearing. The Commissioner of the Department has determined that the adoption of the rules will not be controversial and has elected to follow the procedures set out in Minnesota Statutes § 14.21-14.28.

In the 1981 session, the Minnesota Legislature enacted the District Heating Bonding Act, Laws of 1981, Chapter 334, hereinafter "Act," for the purpose of fostering the establishment and improvement of district heating systems. The department has developed these rules under the authority of Section 1, Subdivision 11 of the Act, for the purpose of administering a program of loans to municipalities for district heating construction.

The objective of the District Heating Construction Loan program is to encourage the development and expansion of economically viable district heating systems which have the potential to save energy and/or displace scarce fuels such as petroleum and natural gas.

Temporary rules for construction loans were duly promulgated and became effective on March 26, 1982. They are published in the *State Register* of February 22, 1982 (6 S.R. 1465) with modifications in April 12, 1982 (6 S.R. 1716).

Copies of the proposed rules may be obtained by writing or calling Mary Lesch-Gormley at the address or telephone number given below.

Please be advised that you have an opportunity for the 30-day period following publication of this notice and the proposed rules to submit comments in writing on the proposed rules and to object to the lack of public hearing on the proposed rules. Your written comments or request for hearings should be submitted to the Department of Energy, Planning and Development, % Mary Lesch-Gormley, 980 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101, telephone 612/297-2324. Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, no public hearing will be held. If seven or more persons request hearings on the proposed rules, the department will order public hearings in accordance with Minn. Stat. §§ 14.13-14.20. The department may modify the proposed rules if modification is supported by the data and views submitted in written comments and if no substantial change results from the modification.

If no hearing is required, and the department decides to adopt the rules as proposed, or as modified if written comments justify modification, the department will submit to the Attorney General for review of form, legality and substantial change the following documents: this notice with the rules as proposed, the rules as adopted, the order adopting the rules, any written comments received by the department, the department's statement of need and reasonableness supporting adoption of the rules, and any written comments received by the department in response to the earlier notices seeking outside opinions. Any person may request notification of the date the department makes the submission to the Attorney General. If you desire to be so notified you must inform the department in writing during the 30-day comment period.

The department has prepared a statement of need and reasonableness in support of the proposed rules which is also available from the department by contacting the address or telephone indicated above.

The department's authority to promulgate the proposed rules can be found in Minn. Stat. § 116J.10(a) and § 116J.36 subd. 11.

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

January 21, 1983

Robert G. Renner, Jr.
Commissioner

Rules as Proposed (all new material)

6 MCAR § 2.4021 Definitions.

A. Scope. For the purposes of 6 MCAR §§ 2.4021-2.4034, the terms defined in B.-L. have the meanings given them.

B. Act. "Act" means Minnesota Statutes, section 116J.36.

C. Assistant commissioner of energy. "Assistant commissioner of energy" means the Assistant Commissioner of the Energy Division of the Department of Energy, Planning and Development.

D. Commissioner. "Commissioner" means the Commissioner of the Department of Energy, Planning and Development.

E. Debt service cost. "Debt service cost" means the sum of all costs amortizing lease indebtedness, bond indebtedness, urban development action grant indebtedness, and any state indebtedness that is attributed to the project on an annual basis.

F. Debt service coverage. "Debt service coverage" means the gross revenue of the project minus the operating expenses, plus the debt service cost. The debt service coverage is expressed as a percentage of the debt service cost.

G. Department. "Department" means the Department of Energy, Planning and Development.

H. Financial consultant. "Financial consultant" means a reputable person or firm experienced in working with complex revenue-supported financial plans and qualified to assess the financial condition and operation of the project.

I. Gross revenues. "Gross revenues" means all revenues, fees, user charges, rents, franchise fees, special assessments, and other income and receipts derived from the ownership or operation of the project, the proceeds of any insurance that insures against the loss of gross revenues, any investment income from money or securities derived from the state loan under the act, and any other income and receipts attributable to the ownership or operation of the project from whatever source derived, calculated on an annual basis.

J. Operating expenses. "Operating expenses" means all expenses directly and properly attributable to the operation of the project on an annual basis. Examples are: expenses for operation, maintenance, repairs, ordinary replacement, ordinary acquisition of equipment, fuel and heat, labor and fringe benefits, lease rental payments, insurance premiums, administration, legal services, engineering services, payments of all indebtedness, and any other current expenses or obligations required to be paid by the municipality or owner of the project, all to the extent properly and directly attributable to the operation of the project. Operating expenses do not include any costs or expenses for new construction or any allowance for depreciation.

K. Project. "Project" means a district heating construction project as described by the business plan.

L. Take-or-pay contract. "Take-or-pay contract" means a contract between a district heating system and a thermal load customer whereby the customer agrees to take a predesignated amount of thermal energy over a certain time period or to pay a sum equivalent to the value of the predesignated amount of thermal energy, even if less is taken.

6 MCAR § 2.4022 Purpose.

The purpose of rules 6 MCAR §§ 2.4021-2.4034 is to allow district heating projects that have already completed comprehensive engineering, economic, and design studies to make prompt and proper application for construction loans. Rules 6 MCAR §§ 2.4021-2.4034 set forth the procedures that municipalities must follow to apply for loans and to establish the criteria by which the applications are reviewed.

6 MCAR § 2.4023 Scope of rules.

Rules 6 MCAR §§ 2.4021-2.4034 apply to the department and to any municipality applying for construction loans under the act.

6 MCAR § 2.4024 Contents of application.

The application for construction loans shall contain the following information:

A. name, address, and telephone number of the responsible official of the municipality;

B. a comprehensive business plan for the project, as described in 6 MCAR § 2.4025;

C. a resolution in support of the project from the governing body of the municipality, as described in 6 MCAR § 2.4029;

D. identification of all licenses, permits, zoning regulations, and any other requirements of federal, state, or local governments with which the project would be expected to comply, and the present status of each;

E. a list of key personnel and their qualifications as they relate to the project;

F. an estimate of the type and amount of fuel saved per year from the full operation of the district heating system compared to the type and amount of fuel to be used by the system; and

G. a copy of the environmental assessment worksheet or environmental impact statement prepared for the project. If neither is required, then the applicant shall submit a statement as to the environmental effects of the project.

6 MCAR § 2.4025 Comprehensive business plan.

The comprehensive business plan required by 6 MCAR § 2.4024 B. must include all of the following information:

A. a complete engineering design of the project, as described in 6 MCAR § 2.4026;

B. a market study of customers of the district heating system defined by the business plan who represent 90 percent or more of the proposed thermal load, as described in 6 MCAR § 2.4027;

C. a preliminary plan that shows how the system could be expanded to serve other parts of the community;

D. a complete economic analysis, as described in 6 MCAR § 2.4028, that includes cash flow, income, and balance sheets for a 20-year planning period, and a financing and development plan for the district heating system prepared by a financial consultant;

E. a certification by the municipality that a bid package for the construction of the project has been completed and is available to the department if requested;

F. a copy of the standard contract entered into with customers of the project with a list of customers already under contract, listing the thermal load of each customer presently under contract and comparing the total of the thermal load already contracted with the total load of the project; and

G. a copy of the contract for the furnishing of the heat source or fuel for the project.

6 MCAR § 2.4026 Engineering design.

The complete engineering design of the project required by 6 MCAR § 2.4025 A. must include at least the following information:

A. an analysis of the proposed piping layout that addresses the areas of optimum service to the total designated area, reliability of service, system temperatures and pressure requirements, thermal and hydraulic operability for normal and emergency conditions, optimum piping configuration to provide service, and flexibility for future expansion;

B. an analysis of the proposed piping design that addresses the areas of reliability of service, ease of construction, ease of maintenance, installation methods, and specifications and standards; and

C. an analysis of the heat source design that defines the proposed roles of the following heat sources in the development and the future operation of the system: base load heating plant, peaking plants, large boiler plants in existing buildings, mobile boilers, accumulators, and future heat sources such as solid waste, solar, and industrial waste heat.

6 MCAR § 2.4027 Market study.

The market study required by 6 MCAR § 2.4025 B. must show detailed information on present fuel consumption or heating demand and the present heating system in each building.

6 MCAR § 2.4028 Economic analysis.

The economic analysis required by 6 MCAR § 2.4025 D. must include a cost estimate and expenditure schedule for all transmission and distribution piping; heat source conversion, purchase, or rental; operating and maintenance costs, excluding fuel costs; and building heating conversion costs.

6 MCAR § 2.4029 Resolution in support of project.

The resolution required by 6 MCAR § 2.4024 C. must include the pledges the municipality proposes to make to guarantee repayment of the construction loan and evidence of the municipality's financial capability to sponsor the project.

6 MCAR § 2.4030 Application procedures.

A. Submitting. Applications for construction loans under the act and 6 MCAR §§ 2.4021-2.4034 must be submitted to the commissioner.

B. Effective date. The period for accepting applications begins on the date 6 MCAR §§ 2.4021-2.4034 become effective.

C. Copies. Ten complete copies of the application must be submitted to the commissioner.

6 MCAR § 2.4031 District heating advisory task force.

A. Membership. Under Minnesota Statutes, section 15.014, the assistant commissioner of energy shall appoint a district heating advisory task force consisting of at least four members in addition to the assistant commissioner of energy who shall act as chairperson.

Task force members must be knowledgeable in the area of district heating, but cannot be directly or indirectly involved in any district heating project under consideration by the commissioner.

The assistant commissioner of energy may from time to time add or delete task force members, subject only to the limitations in A.

B. Task force duties. The task force shall review each application for a loan under the act, and shall advise and assist the commissioner in carrying out the requirements of the act and 6 MCAR §§ 2.4021-2.4034. The commissioner shall retain final responsibility for all statutory and rule requirements.

6 MCAR § 2.4032 Feasibility assessment.

The commissioner shall review each application as received according to the following feasibility assessment parameters:

A. the eligibility and priorities criteria of Minnesota Statutes, section 116J.36, subdivisions 3 and 4;

B. the debt service coverage represented by the business plan;

C. the debt service coverage from revenues currently under contract;

D. the total cost of the project;

E. the ratio of the state loan under the act to the total cost of the project;

F. the terms of the contracts with customers; and

G. the total number of customers for the project.

6 MCAR § 2.4033 Evaluation of application.

Upon reviewing each application, the commissioner shall award points to applicants based upon the following criteria:

A. four points to applicants that have a debt service coverage of at least 130 based upon the revenues currently under contract;

B. four points to applicants that have take-or-pay contracts for at least the term of the state loan under the act; two points, if the contracts are for a term less than the term of the state loan under the act;

C. two points to applicants whose total project cost is less than $5,000,000 or whose state loan under the act would be less than 50 percent of the project's total cost;

D. two points to applicants that have 50 or more customers identified in the marketing study of their business plans, if these customers comprise at least 50 percent of the project's thermal load.

6 MCAR § 2.4034 Recommendation.

A. Tallying points. The commissioner shall tally the points awarded to each applicant under 6 MCAR § 2.4033 and shall make recommendations based upon the standards set forth in B. and C.

B. Eight or more points. For applicants who have been awarded a total of eight or more points, the commissioner shall recommend that the revenues of the project be pledged for repayment of the state loan under the act. In addition, the state loan may take a position subordinate to other financing.

C. Seven or fewer points. For applicants who have been awarded a total of seven or fewer points, the commissioner shall recommend that the applicant pledge additional funds adequate to ensure the repayment of the state loan under the act. If additional funds are not available or the applicant chooses not to pledge them, then the applicant may pledge to levy an ad valorem tax of a similar amount.

STATE OF MINNESOTA
DEPARTMENT OF ENERGY, PLANNING AND DEVELOPMENT
ENERGY DIVISION (MINNESOTA ENERGY AGENCY)

In the Matter of the Proposed Adoption of Rules of the Department of Energy, Planning and Development (Minnesota Energy Agency) Governing Construction Loans Under the District Heating Bonding Act 6MCAR SS 2.4021-2.4034

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) SS
COUNTY OF RAMSEY)

Jeanette Roesler, being first duly sworn deposes and says:

That on the 17 day of March, 1983, at the City of St. Paul, County of Ramsey, State of Minnesota she served the attached Supplemental Notice of Intent to Adopt Rules without a Public Hearing, the Original Notice of Intent to Adopt Rules without a Public Hearing and a complete copy of the Proposed Rules by depositing in the United States mail at said City of St. Paul, copies thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Minnesota Department of Energy Planning and Development for the purpose of receiving notice of the proposed adoption of rules by this Department.

Jeanette Roesler

Jeanette Roesler

Subscribed and sworn to before me this 22 day of MARCH, 1983.

Dennis M. Devereaux

DENNIS M. DEVEREAUX
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires April 1, 1988

STATE OF MINNESOTA
DEPARTMENT OF ENERGY, PLANNING AND DEVELOPMENT
ENERGY DIVISION (MINNESOTA ENERGY AGENCY)

In the Matter of the Proposed Adoption of Rules of the Department of Energy, Planning and Development (Minnesota Energy Agency) Governing Construction Loans under the District Heating Bonding Act 6 MCAR §§ 2.4021 - 2.4034

AFFIDAVIT OF MAILING

Jeanette Roesler, being first duly sworn, deposes and says; That on the 31 day of January 1983, at the City of Saint Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the United States Mail at said City of Saint Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Minnesota Department of Energy, Planning and Development for the purpose of receiving notice of the proposed adoption of rules by this Department.

Jeanette Roesler
Jeanette Roesler

Subscribed and sworn to before me this 1st day of February, 1983

Dennis M. Devereaux
Notary Public

DENNIS M. DEVEREAUX
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires April 1, 1988

STATE OF MINNESOTA
DEPARTMENT OF ENERGY, PLANNING AND DEVELOPMENT
ENERGY DIVISION (MINNESOTA ENERGY AGENCY)

In the Matter of the Proposed Adoption of Rules of the Department of Energy, Planning and Development (Minnesota Energy Agency) Governing Construction Loans Under the District Heating Bonding Act 6MCAR SS 2.4021-2.4034

MAILING LIST CERTIFICATE

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Stat. §§ 14.14, subd. 1, that their names be placed on file with and maintained by the Minnesota Department of Energy, Planning, and Development for the purpose of receiving notice of the proposed adoption of rules by this Department is accurate and complete as of 8:00 A M., this 15 th day of March, 19 83.

Karla V. Sand

Karla V. Sand

STATE OF MINNESOTA

DEPARTMENT OF ENERGY, PLANNING AND DEVELOPMENT

ENERGY DIVISION (MINNESOTA ENERGY AGENCY)

In the Matter of the Proposed Adoption of Rules of the Department of Energy, Planning and Development (Minnesota Energy Agency) Governing Construction Loans Under the District Heating Bonding Act 6 MCAR §§ 2.4021 - 2.4034

MAILING LIST CERTIFICATE

I hereby certify that the list of persons, associations and other interested groups who have requested, pursuant to Minn. Stat. § 14.14, Subd. 1, that their names be placed on file with and maintained by the Minnesota Department of Energy, Planning and Development for the purpose of receiving notice of the proposed adoption of rules by this Department, is accurate and complete as of 8:00 a.m., this 24 day of January, 1983.

Karla V. Sand

Karla V. Sand

Subscribed and sworn to before me this 1st day of February, 1983.

Dennis M. Devereaux

NOTARY PUBLIC

DENNIS M. DEVEREAUX
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires April 1, 1988

STATE OF MINNESOTA
DEPARTMENT OF ENERGY, PLANNING AND DEVELOPMENT
ENERGY DIVISION (MINNNESOTA ENERGY AGENCY)

In the Matter of the Proposed Adoption of Rules of the Department of Energy, Planning and Development (Minnesota Energy Agency) Governing Construction Loans Under the District Heating Bonding Act 6MCAR SS 2.4021-2.4034

SUPPLEMENTAL MAILING LIST CERTIFICATE

I hereby certify that all persons, associations and other interested groups who were on the original mailing list certified on January 24, 1983, are now on the present mailing list to receive the Supplemental Notice of Intent to Adopt Rules without a Public Hearing, the original Notice of Intent to Adopt Rules without a Public Hearing and a complete copy of the Proposed Rules.

Dated 3/15/83

Dennis M. Devereaux

DENNIS M. DEVEREAUX

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.

Department of Energy, Planning and Development Energy Division

Proposed Rules for the Administration of the District Heating Bonding Act Regarding Construction Loans

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Energy, Planning and Development (Minnesota Energy Agency), hereinafter "department," intends to adopt the above-entitled rules without a public hearing. The Commissioner of the Department has determined that the adoption of the rules will not be controversial and has elected to follow the procedures set out in Minnesota Statutes § 14.21-14.28.

In the 1981 session, the Minnesota Legislature enacted the District Heating Bonding Act, Laws of 1981, Chapter 334, hereinafter "Act," for the purpose of fostering the establishment and improvement of district heating systems. The department has developed these rules under the authority of Section 1, Subdivision 11 of the Act, for the purpose of administering a program of loans to municipalities for district heating construction.

The objective of the District Heating Construction Loan program is to encourage the development and expansion of economically viable district heating systems which have the potential to save energy and/or displace scarce fuels such as petroleum and natural gas.

Temporary rules for construction loans were duly promulgated and became effective on March 26, 1982. They are published in the *State Register* of February 22, 1982 (6 S.R. 1465) with modifications in April 12, 1982 (6 S.R. 1716).

Copies of the proposed rules may be obtained by writing or calling Mary Lesch-Gormley at the address or telephone number given below.

Please be advised that you have an opportunity for the 30-day period following publication of this notice and the proposed rules to submit comments in writing on the proposed rules and to object to the lack of public hearing on the proposed rules. Your written comments or request for hearings should be submitted to the Department of Energy, Planning and Development, % Mary Lesch-Gormley, 980 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101, telephone 612/297-2324. Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, no public hearing will be held. If seven or more persons request hearings on the proposed rules, the department will order public hearings in accordance with Minn. Stat. §§ 14.13-14.20. The department may modify the proposed rules if modification is supported by the data and views submitted in written comments and if no substantial change results from the modification.

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

If no hearing is required, and the department decides to adopt the rules as proposed, or as modified if written comments justify modification, the department will submit to the Attorney General for review of form, legality and substantial change the following documents: this notice with the rules as proposed, the rules as adopted, the order adopting the rules, any written comments received by the department, the department's statement of need and reasonableness supporting adoption of the rules, and any written comments received by the department in response to the earlier notices seeking outside opinions. Any person may request notification of the date the department makes the submission to the Attorney General. If you desire to be so notified you must inform the department in writing during the 30-day comment period.

The department has prepared a statement of need and reasonableness in support of the proposed rules which is also available from the department by contacting the address or telephone indicated above.

The department's authority to promulgate the proposed rules can be found in Minn. Stat. § 116J.10(a) and § 116J.36 subd. 11.

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

January 21, 1983

Robert G. Renner, Jr.
Commissioner

Rules as Proposed (all new material)

6 MCAR § 2.4021 Definitions.

A. Scope. For the purposes of 6 MCAR §§ 2.4021-2.4034, the terms defined in B.-L. have the meanings given them.

B. Act. "Act" means Minnesota Statutes, section 116J.36.

C. Assistant commissioner of energy. "Assistant commissioner of energy" means the Assistant Commissioner of the Energy Division of the Department of Energy, Planning and Development.

D. Commissioner. "Commissioner" means the Commissioner of the Department of Energy, Planning and Development.

E. Debt service cost. "Debt service cost" means the sum of all costs amortizing lease indebtedness, bond indebtedness, urban development action grant indebtedness, and any state indebtedness that is attributed to the project on an annual basis.

F. Debt service coverage. "Debt service coverage" means the gross revenue of the project minus the operating expenses, plus the debt service cost. The debt service coverage is expressed as a percentage of the debt service cost.

G. Department. "Department" means the Department of Energy, Planning and Development.

H. Financial consultant. "Financial consultant" means a reputable person or firm experienced in working with complex revenue-supported financial plans and qualified to assess the financial condition and operation of the project.

I. Gross revenues. "Gross revenues" means all revenues, fees, user charges, rents, franchise fees, special assessments, and other income and receipts derived from the ownership or operation of the project, the proceeds of any insurance that insures against the loss of gross revenues, any investment income from money or securities derived from the state loan under the act, and any other income and receipts attributable to the ownership or operation of the project from whatever source derived, calculated on an annual basis.

J. Operating expenses. "Operating expenses" means all expenses directly and properly attributable to the operation of the project on an annual basis. Examples are: expenses for operation, maintenance, repairs, ordinary replacement, ordinary acquisition of equipment, fuel and heat, labor and fringe benefits, lease rental payments, insurance premiums, administration, legal services, engineering services, payments of all indebtedness, and any other current expenses or obligations required to be paid by the municipality or owner of the project, all to the extent properly and directly attributable to the operation of the project. Operating expenses do not include any costs or expenses for new construction or any allowance for depreciation.

K. Project. "Project" means a district heating construction project as described by the business plan.

L. Take-or-pay contract. "Take-or-pay contract" means a contract between a district heating system and a thermal load customer whereby the customer agrees to take a predesignated amount of thermal energy over a certain time period or to pay a sum equivalent to the value of the predesignated amount of thermal energy, even if less is taken.

6 MCAR § 2.4022 Purpose.

The purpose of rules 6 MCAR §§ 2.4021-2.4034 is to allow district heating projects that have already completed comprehensive engineering, economic, and design studies to make prompt and proper application for construction loans. Rules 6 MCAR §§ 2.4021-2.4034 set forth the procedures that municipalities must follow to apply for loans and to establish the criteria by which the applications are reviewed.

6 MCAR § 2.4023 Scope of rules.

Rules 6 MCAR §§ 2.4021-2.4034 apply to the department and to any municipality applying for construction loans under the act.

6 MCAR § 2.4024 Contents of application.

The application for construction loans shall contain the following information:

A. name, address, and telephone number of the responsible official of the municipality;

B. a comprehensive business plan for the project, as described in 6 MCAR § 2.4025;

C. a resolution in support of the project from the governing body of the municipality, as described in 6 MCAR § 2.4029;

D. identification of all licenses, permits, zoning regulations, and any other requirements of federal, state, or local governments with which the project would be expected to comply, and the present status of each;

E. a list of key personnel and their qualifications as they relate to the project;

F. an estimate of the type and amount of fuel saved per year from the full operation of the district heating system compared to the type and amount of fuel to be used by the system; and

G. a copy of the environmental assessment worksheet or environmental impact statement prepared for the project. If neither is required, then the applicant shall submit a statement as to the environmental effects of the project.

6 MCAR § 2.4025 Comprehensive business plan.

The comprehensive business plan required by 6 MCAR § 2.4024 B. must include all of the following information:

A. a complete engineering design of the project, as described in 6 MCAR § 2.4026;

B. a market study of customers of the district heating system defined by the business plan who represent 90 percent or more of the proposed thermal load, as described in 6 MCAR § 2.4027;

C. a preliminary plan that shows how the system could be expanded to serve other parts of the community;

D. a complete economic analysis, as described in 6 MCAR § 2.4028, that includes cash flow, income, and balance sheets for a 20-year planning period, and a financing and development plan for the district heating system prepared by a financial consultant;

E. a certification by the municipality that a bid package for the construction of the project has been completed and is available to the department if requested;

F. a copy of the standard contract entered into with customers of the project with a list of customers already under contract, listing the thermal load of each customer presently under contract and comparing the total of the thermal load already contracted with the total load of the project; and

G. a copy of the contract for the furnishing of the heat source or fuel for the project.

6 MCAR § 2.4026 Engineering design.

The complete engineering design of the project required by 6 MCAR § 2.4025 A. must include at least the following information:

A. an analysis of the proposed piping layout that addresses the areas of optimum service to the total designated area, reliability of service, system temperatures and pressure requirements, thermal and hydraulic operability for normal and emergency conditions, optimum piping configuration to provide service, and flexibility for future expansion;

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B. an analysis of the proposed piping design that addresses the areas of reliability of service, ease of construction, ease of maintenance, installation methods, and specifications and standards; and

C. an analysis of the heat source design that defines the proposed roles of the following heat sources in the development and the future operation of the system: base load heating plant, peaking plants, large boiler plants in existing buildings, mobile boilers, accumulators, and future heat sources such as solid waste, solar, and industrial waste heat.

6 MCAR § 2.4027 Market study.

The market study required by 6 MCAR § 2.4025 B. must show detailed information on present fuel consumption or heating demand and the present heating system in each building.

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The economic analysis required by 6 MCAR § 2.4025 D. must include a cost estimate and expenditure schedule for all transmission and distribution piping; heat source conversion, purchase, or rental; operating and maintenance costs, excluding fuel costs; and building heating conversion costs.

6 MCAR § 2.4029 Resolution in support of project.

The resolution required by 6 MCAR § 2.4024 C. must include the pledges the municipality proposes to make to guarantee repayment of the construction loan and evidence of the municipality's financial capability to sponsor the project.

6 MCAR § 2.4030 Application procedures.

A. Submitting. Applications for construction loans under the act and 6 MCAR §§ 2.4021-2.4034 must be submitted to the commissioner.

B. Effective date. The period for accepting applications begins on the date 6 MCAR §§ 2.4021-2.4034 become effective.

C. Copies. Ten complete copies of the application must be submitted to the commissioner.

6 MCAR § 2.4031 District heating advisory task force.

A. Membership. Under Minnesota Statutes, section 15.014, the assistant commissioner of energy shall appoint a district heating advisory task force consisting of at least four members in addition to the assistant commissioner of energy who shall act as chairperson.

Task force members must be knowledgeable in the area of district heating, but cannot be directly or indirectly involved in any district heating project under consideration by the commissioner.

The assistant commissioner of energy may from time to time add or delete task force members, subject only to the limitations in A.

B. Task force duties. The task force shall review each application for a loan under the act, and shall advise and assist the commissioner in carrying out the requirements of the act and 6 MCAR §§ 2.4021-2.4034. The commissioner shall retain final responsibility for all statutory and rule requirements.

6 MCAR § 2.4032 Feasibility assessment.

The commissioner shall review each application as received according to the following feasibility assessment parameters:

A. the eligibility and priorities criteria of Minnesota Statutes, section 116J.36, subdivisions 3 and 4;

B. the debt service coverage represented by the business plan;

C. the debt service coverage from revenues currently under contract;

D. the total cost of the project;

E. the ratio of the state loan under the act to the total cost of the project;

F. the terms of the contracts with customers; and

G. the total number of customers for the project.

6 MCAR § 2.4033 Evaluation of application.

Upon reviewing each application, the commissioner shall award points to applicants based upon the following criteria:

A. four points to applicants that have a debt service coverage of at least 130 based upon the revenues currently under contract;

B. four points to applicants that have take-or-pay contracts for at least the term of the state loan under the act; two points, if the contracts are for a term less than the term of the state loan under the act;

C. two points to applicants whose total project cost is less than $5,000,000 or whose state loan under the act would be less than 50 percent of the project's total cost;

D. two points to applicants that have 50 or more customers identified in the marketing study of their business plans, if these customers comprise at least 50 percent of the project's thermal load.

6 MCAR § 2.4034 Recommendation.

A. Tallying points. The commissioner shall tally the points awarded to each applicant under 6 MCAR § 2.4033 and shall make recommendations based upon the standards set forth in B. and C.

B. Eight or more points. For applicants who have been awarded a total of eight or more points, the commissioner shall recommend that the revenues of the project be pledged for repayment of the state loan under the act. In addition, the state loan may take a position subordinate to other financing.

C. Seven or fewer points. For applicants who have been awarded a total of seven or fewer points, the commissioner shall recommend that the applicant pledge additional funds adequate to ensure the repayment of the state loan under the act. If additional funds are not available or the applicant chooses not to pledge them, then the applicant may pledge to levy an ad valorem tax of a similar amount.

TAX COURT

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

State of Minnesota **Tax Court**

Jack Kaufman,

v.

Commissioner of Revenue,

Appellee.

In the Matter of the Appeal from the Commissioner's Order dated August 20, 1981, Relating to the Income Tax of Appellant for the Year 1980.

Order dated January 24, 1983
Docket No. 3448

The above entitled matter was heard by the Minnesota Tax Court on October 1, 1982, Judge Carl A. Jensen presiding.

Jack Kaufman, Appellant, appeared in his own behalf.

Paul R. Kempainen, Special Assistant Attorney General, appeared on behalf of the Appellee.

Briefs were subsequently filed by both parties.

Syllabus

1. A so-called lifetime sale of "personal services property" between Jack Kaufman, the Appellant herein, and P. & T.S., which was stated to be a trust of some kind does not affect the taxability of income that Kaufman received from his employer. The employer is required to withhold income taxes, pay social security taxes, carry workers compensation, and do any other things required of any other employer.

2. An attempt to avoid withholding taxes by an employee by claiming more exemptions or deductions than are allowable and making said claims on his tax return is tantamount to fraud and willful evasion of taxes under Minnesota Statutes 290.53.

Findings of Fact

1. The Appellant herein, Jack Kaufman, is a cash-basis, calendar year taxpayer and resident of the State of Minnesota. The taxable year at issue herein is 1980.

2. During the entire year 1980, Appellant Jack Kaufman (hereinafter, "Kaufman") was employed by the United States Postal Service. Kaufman's employment with the Postal Service began in 1970 and continues up to the present day. By reason of this employment Kaufman was paid by the Postal Service a total of $23,166.94 in compensation during the taxable year 1980.

STATE OF MINNESOTA
DEPARTMENT OF ENERGY, PLANNING AND DEVELOPMENT
ENERGY DIVISION (MINNESOTA ENERGY AGENCY)

In the Matter of the Proposed Adoption of Rules of the Department of Energy, Planning and Development (Minnesota Energy Agency) Governing Construction Loans Under the District Heating Bonding Act 6 MCAR SS 2.4021-2.4034

STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION

In the 1981 session, the Minnesota Legislature enacted the District Heating Bonding Act, Laws of 1981 Chapter 334, hereinafter "Act", for the purpose of fostering the establishment and improvement of district heating systems. The Department of Energy, Planning and Development (Minnesota Energy Agency), hereinafter "Department", has developed these rules under the authority of Section 1, Subdivision 11 of the Act for the purpose of administering a program of loans to municipalities for district heating construction.

The objective of the District Heating Construction Loan Program is to encourage the development and expansion of economically viable district heating systems which have the potential to save energy and/or displace scarce fuels such as petroleum and natural gas.

This Statement of Need and Reasonableness will illustrate the manner in which the Department will administer the construction loan program under the Act.

Temporary rules for construction loans were duly promulgated and became effective on March 26, 1982. They are published in the State Register of February 22, 1982 (6 S.R. 1465) with modifications in April 12, 1982 (6 S.R. 1716). The temporary rules were extended in the Sept. 20, 1982 State Register (7 S.R. 344).

RULES

The format used in preparing this Statement of Need and Reasonableness is as follows: each rule is stated and underlined; it is then followed by an explanation of the intent of the proposed rule and the need for the proposed rule.

6 MCAR S 2.4021 Definitions.

A. Scope. For the purposes of 6 MCAR SS 2.4021-2.4034, the terms defined in B.-L. have the meanings given them.

This rule contains definitions of those terms that we used often in the rules which might not be understood by the reader and also terms which we used in a shorthand manner in the rules.

B. Act. "Act" means Minnesota Statutes, section 116J.36.

This section provides a shorthand method of referring to the legislation under which these rules are promulgated.

C. Assistant commissioner of energy. "Assistant commissioner of energy" means the Assistant Commissioner of the Energy Division of the Department of Energy, Planning and Development.

This section provides a shorthand method of referring to the official who is responsible for the District Heating Advisory Task Force.

D. Commissioner. "Commissioner" means the Commissioner of the Department of Energy, Planning and Development.

This section provides a shorthand method of referring to the official who is responsible for reviewing applications.

E. Debt service cost. "Debt service cost" means the sum of all costs amortizing lease indebtedness, bond indebtedness, urban development action grant indebtedness, and any state

indebtedness that is attributed to the project on an annual basis.

This section is needed to show what yearly indebtedness costs will be used in calculating the debt service coverage.

F. Debt service coverage. "Debt service coverage" means the gross revenues of the project minus the operating expenses, plus the debt service cost. The debt service coverage is expressed as a percentage of the debt service cost.

This section shows how the debt service coverage is to be calculated, for the purpose of evaluating applications.

G. Department. "Department" means the Department of Energy, Planning and Development.

This section provides a shorthand method of referring to the branch of state government responsible for administering the act.

H. Financial consultant. "Financial consultant" means a reputable person or firm experienced in working with complex revenue-supported financial plans and qualified to assess the financial condition and operation of the project.

This section is needed to stipulate the qualifications of the preparer of the complete economic analysis of the project.

I. Gross revenues. "Gross revenues" means all revenues, fees, user charges, rents, franchise fees, special assessments, and other income and receipts derived from the ownership or operation of the project, the proceeds of any insurance that insures against the loss of gross revenues, any investment income from money or securities derived from the state loan

under the act, and any other income and receipts attributable to the ownership or operation of the project from whatever source derived, calculated on an annual basis.

This section is needed to show what yearly revenues will be considered in calculating the debt service coverage, and it gives several non-exclusive examples.

J. Operating expenses. "Operating expenses" means all expenses directly and properly attributable to the operation of the project on an annual basis. Examples are: expenses for operation, maintenance, repairs, ordinary replacement, ordinary acquisition of equipment, fuel and heat, labor and fringe benefits, lease rental payments, insurance premiums, administration, legal services, engineering services, payments of all indebtedness, and any other current expenses or obligations required to be paid by the municipality or owner of the project, all to the extent properly and directly attributable to the operation of the project. Operating expenses do not include any costs of expenses for new construction or any allowance for depreciation.

This section is needed to show what yearly expenses for operation would be used in calculating the debt service coverage. Several non-exclusive examples of such expenses are given. Since there may be confusion over capital and depreciation expenses, these are specifically excluded.

K. Project. "Project" means a district heating construction project as described by the business plan.

This section provides a shorthand method of referring to the undertaking to develop district heating which the construction loan will be part of.

L. Take-or-pay contract. "Take-or-pay contract" means a contract between a district heating system and a thermal load customer whereby the customer agrees to take a predesignated amount of thermal energy over a certain time period or to pay a sum equivalent to the value of the predesignated amount of thermal energy, even if less is taken.

This section is needed to show what will be considered a take-or-pay contract for the purposes of evaluating applications.

6 MCAR S 2.4022 Purpose.

The purpose of rules 6 MCAR SS 2.4021-2.4034 is to allow district heating projects that have already completed comprehensive engineering, economic, and design studies to make prompt and proper application for construction loans. Rules 6 MCAR SS 2.4021-2.4034 set forth the procedures that municipalities must follow to apply for loans and establish the criteria by which the applications are reviewed.

This rule is necessary to inform prospective applicants that the rules contain application procedures and evaluation criteria. It also informs them that preliminary studies must be done before an application can be made.

6 MCAR S 2.4023 Scope of rules.

Rules 6 MCAR SS 2.4021-2.4034 apply to the department and to any municipality applying for construction loans under the act.

This rule is necessary to inform prospective applicants of the parties who will be governed by these rules.

6 MCAR S 2.4024 Contents of application.

The application for construction loans shall contain the following information:

This rule informs prospective applicants what items must be included in the application.

A. name, address and telephone number of the responsible official of the municipality;

This section is needed so that the department will have a contact person for each application.

B. a comprehensive business plan for the project, as described in 6 MCAR S 2.4025;

This section is necessary to inform applicants that a certain amount of planning must be done before an application can be made and to delineate what steps are needed.

C. a resolution in support of the project from the governing body of the municipality, as described in 6 MCAR S 2.4029;

Since loans are to be made to municipalities, it is necessary that such municipalities officially pledge their support to the project.

D. identification of all licenses, permits, zoning regulations, and any other requirements of federal, state, or local governments with which the project would be expected to comply, and the present status of each;

Compliance with govermental regulation can have a significant effect on the timing and even the viability of a district heating project. It is reasonable to expect the commissioner to be appraised of the status of such compliance.

E. a list of key personnel and their qualifications as they relate to the project;

The participation of qualified people is of vital importance to the success of district heating development. It is reasonable for the commissioner to require information on who will be working on a project and what their qualifications are.

F. an estimate of the type and amount of fuel saved per year from the full operation of the district heating system compared to the type and amount of fuel to be used by the system; and

Two of the stated purposes of the act are to increase energy efficiency and to reduce the need for imported energy supplies. It is reasonable to require energy information to determine if a project fulfills these purposes.

G. a copy of the environmental assessment worksheet or environmental impact statement prepared for the project. If neither is required, then the applicant shall submit a statement as to the environmental effects of the project.

The act gives priority to environmentally benign projects, so it is necessary to require environmental information. In most cases, district heating projects will have minimal environmental effects. It is expected that few, if any, will require an Environmental Impact Statement (EIS). In all cases, environmental information is submitted to the commissioner. This becomes part of the application and is therefore considered in the evaluation.

6 MCAR S 2.4025 Comprehensive business plan.

The comprehensive business plan required by 6 MCAR S 2.4024 B. must include all of the following information:

A. a complete engineering design of the project, as described in 6 MCAR S 2.4026;

A project must be thoroughly engineered before construction is considered.

B. a market study of customers of the district heating system defined by the business plan who represent 90 percent or more of the proposed thermal load, as described in 6 MCAR S 2.4027;

A thorough market study is essential to a good business plan. The development of a district heating system will revolve around the market study. Since district heating systems usually involve densely populated downtown areas, it is reasonable to require a study representing a full 90 percent of the thermal load.

C. a preliminary plan that shows how the system could be expanded to serve other parts of the community;

Once a successful district heating system is established, it is usually economically attractive to expand the system to other parts of the community. It is reasonable to expect a project to take account of such possible future expansion in the early planning stages.

D. a complete economic analysis, as described in 6 MCAR S 2.4028, that includes cash flow, income, and balance sheets for a 20-year planning period, and a financing and development plan for the district heating system prepared by a financial consultant;

A comprehensive economic analysis is vitally important to any business plan. It is reasonable to require a 20-year planning period, because the terms of the loans will be at least that long. Since loans will be for less than the total cost of a project, it is important that the commissioner know how the entire project is to be financed in order to review it.

E. a certification by the municipality that a bid package for the construction of the project has been completed and is available to the department if requested;

A comprehensive bid package is an important first step for construction and can ultimately have an effect on system quality and reliability. It may be necessary for the commissioner to examine the bid package in order to properly evaluate a proposal.

F. a copy of the standard contract entered into with customers of the project with a list of customers already under contract, listing the thermal load of each customer presently under contract and comparing the total of the thermal load already contracted with the total load of the project; and

The terms of the customer contract can have a significant effect on the viability of a system. Well drafted contracts can help mitigate the adverse effects of low demand from unseasonable weather or economic conditions. It is reasonable to expect a legal commitment from customers at this point, if construction is to proceed.

G. a copy of the contract for the furnishing of the heat source or fuel for the project.

The contract terms for heat or fuel that a district heating system must comply with can have a major effect on operating costs and therefore viabliity.

6 MCAR S 2.4026 Engineering design.

The complete engineering design of the project required by 6 MCAR S 2.4025 A. must include at least the following information.

A. an analysis of the proposed piping layout that addresses the areas of optimum service to the total designated area, reliability of service, system temperatures and pressure requirements, thermal and hydraulic operability for normal and emergency conditions, optimum piping configuration to provide service, and flexibility for future expansion;

In order to properly evaluate applications, it is reasonable and necessary for the commissioner to require the completion of a comprehensive engineering design of the district heating project. A municipality must do significant preliminary work to arrive at a point where an intelligent decision to construct a district heating system can be made.

The piping layout of a project will have a significant effect on the capital costs, reliability, operating costs and the overall feasibility of a project. It is reasonable that the commissioner require applicants to furnish detailed information in this area.

B. an analysis of the proposed piping design that addresses the areas of reliability of service, ease of construction, ease of maintenance, installation methods, and specifications and standards; and

Likewise, piping design is important in regard to the capital costs, reliability and operating costs of a project. It is reasonable for the commissioner to require detailed information on piping design also.

C. an analysis of the heat source design that defines the proposed roles of the following heat sources in the development and the future operation of the system: base load heating plant,

peaking plants, large boiler plants in existing buildings, mobile boilers, accumulators, and future heat sources such as solid waste, solar, and industrial waste heat.

Additionally, the design of the heat source to be used in a district heating project is an important part of the engineering study. The development of a district heating system will usually proceed in stages and different heat sources will play different roles in each stage. It is reasonable for the commissioner to require an analysis of how each heat source will fit into the overall development.

6 MCAR S 2.4027 Market study.

The market study required by 6 MCAR S 2.4025 B. must show detailed information on present fuel consumption or heating demand and the present heating system in each building.

A thorough market study should contain such detailed information.

6 MCAR S 2.4028 Economic analysis.

The economic analysis required by 6 MCAR S 2.4025 D. must include a cost estimate and expenditure schedule for all transmission and distribution piping; heat source conversion, purchase, or rental; operating and maintenance costs, excluding fuel costs; and building heating conversion costs.

In order to complete a comprehensive economic analysis both an estimate of each items costs and a schedule of when expenses are expected to occur, are needed.

6 MCAR S 2.4029 Resolution in support of project.

The resolution required by 6 MCAR S 2.4024 C. must include the pledges the municipality proposes to make to guarantee

repayment of the construction loan and evidence of the municipality's financial capability to sponsor the project.

Under the act, the commissioner must determine eligibility for loans and under what terms loans will be given. Each municipality's financial capability and repayment guarantees are needed to make such determinations.

6 MCAR S 2.4030 Application procedures.

A. Submitting. Applications for construction loans under the act and 6 MCAR SS 2.4921-2.4034 must be submitted to the commissioner.

B. Effective date. The period for accepting applications begins on the date 6 MCAR SS. 2.4021-2.4034 become effective.

C. Copies. Ten complete copies of the application must be submitted to the commissioner.

This rule is needed to inform applicants to whom applications are to be submitted, when they will first be accepted and how many copies need be submitted.

6 MCAR S 2.4031 District heating advisory task force

A. Membership. Under Minnesota Statues, section 15.014, the assistant commissioner of energy shall appoint a district heating advisory task force consisting of at least four members in addition to the assistant commissioner of energy who shall act as chairperson.

To provide for the fairest and most comprehensive evaluation of applications, an advisory group of district heating experts under the assistant commissioner of energy should be assembled.

Task force members must be knowledgeable in the area of district heating, but cannot be directly or indirectly involved in any district heating project under consideration by the commissioner.

It is reasonable to require that advisory group members be knowledgeable in this field and that they have no conflict of interest.

The assistant commissioner of energy may from time to time add or delete task force members, subject only to the limitations in A.

The assistant commissioner of energy is the most qualified to determine who will be able to provide the best advice at a particular time and may add or delete members subject to his own judgement.

B. Task force duties. The task force shall review each application for a loan under the act, and shall advise and assist the commissioner in carrying out the requirements of the act and 6 MCAR SS 2.4021-2.4034. The commissioner shall retain final responsibility for all statutory and rule requirements.

This section is needed to advise applicants that while the commissioner has final responsibility for evaluation, he will be receiving advice and assistance from experts in the district heating field.

6 MCAR S 2.4032 Feasibility assessment.

The commissioner shall review each application as received according to the following feasibility assessment parameters:

This rule identifies the official who is responsible for examining and rating applications and lists the standards by which they will be evaluated.

Requiring each application to be reviewed as received eliminates the confusion of late additions or deletions. It

also puts all applicants on an equal footing, because extraneous considerations which are not part of the application will not be considered.

A. the eligibility and priorities criteria of Minnesota Statutes, section 116J.36, subdivisions 3 and 4;

This section informs the prospective applicant that the act specifies certain standards by which application will be judged.

B. the debt service coverage represented by the business plan;

The debt service coverage is a good representation of a project's financial feasibility and indirectly the project's planning, design, and engineering. It is reasonable to evaluate an application on the planned debt service coverage.

C. the debt service coverage from revenues currently under contract;

This requirement will give a good indication of customer support for a project and will be needed by the commissioner to fully evaluate an application.

D. the total cost of the project;

Total cost, when compared to the scope of a project is an indicator of how well the project was planned, designed and engineered.

E. the ratio of the state loan under the act to the total cost of the project;

Those projects that are able to arrange much of their financing prior to their application for the state loan will likely be on a sounder financial basis.

F. the terms of the contracts with customers; and

Contract provisions that would protect the revenues of the project, such as take-or-pay, will be considered favorably.

G. the total number of customers for the project.

A large number of customers generally indicate more stable revenues, in that if one or two customers withdraw the effect is minimal.

6 MCAR S 2.4033 Evaluation of application.

Upon reveiwing each application, the commissioner shall award points to applicants based upon the following criteria:

Using a point system reduces the chance of being arbitrary.

A. four points to applicants that have a debt service coverage of at least 130 based upon the revenues currently under contract;

The most points should be awarded to those projects that have a committed high ratio of revenues over expenditures.

B. four points to applicants that have take-or-pay contracts for at least the term of the state loan under the act; two points, if the contracts are for a term less than the term of the state loan under the act;

Points should be awarded to the degree that project revenues are protected by the take-or-pay contracts.

C. two points to applicants whose total project cost is less than $5,000,000 or whose state loan under the act would be less than 50 percent of the project's total cost;

Those projects that are of low capital cost or who have arranged financing prior to their application would have points awarded.

D. two points to applicants that have 50 or more customers identified in the marketing study of their business plans, if these customers comprise at least 50 percent of the project's thermal load.

Because of the potential for more stable revenues of projects with large numbers of customers, more points should be awarded. The thermal load requirement protects in the situation where there are many small customers and a few very large customers.

6 MCAR S 2.4034 Recommendation.

A. Tallying points. The commissioner shall tally the points awarded to each applicant under 6 MCAR S 2.4033 and shall make recommendations based upon the standards set forth in B. and C.

This section informs applicants that the commissioner is responsible for calculating points and making recommendations.

B. Eight or more points. For applicants who have been awarded a total of eight or more points, the commissioner shall recommend that the revenues of the project be pledged for repayment of the state loan under the act. In addition, the state loan may take a position subordinate to other financing.

Those projects which have the qualifications that warrant the award if at least eight points, will likely be on a sound financial basis. The revenues of the project should be sufficient to assure repayment of the state loan. If the state loan could be made subordinate to other financing, then more favorable rates might be obtained, further enhancing the financial stability.

C. Seven or fewer points. For applicants who have been awarded a total of seven or fewer points, the commissioner shall recommend that the applicant pledge additional funds adequate to ensure the repayment of the state loan under the act. If additional funds are not available or the applicant chooses not to pledge them, then the applicant may pledge to levy an ad valorem tax of a similar amount.

Those projects whose qualifications warrant seven or less points are likely to be on a less secure financial basis. In order to assure the repayment of the state loan, the pledge of additional funds or taxes will be required.

Date 7th day February 1983

DEPARTMENT OF ENERGY, PLANNING AND DEVELOPMENT

ENERGY DIVISION (MINNESOTA ENERGY AGENCY)

BY Dennis M. Devereaux

DENNIS M. DEVEREAUX

STATE OF MINNESOTA
DEPARTMENT OF ENERGY, PLANNING AND DEVELOPMENT
ENERGY DIVISION (MINNESOTA ENERGY AGENCY)

In the Matter of the Proposed Adoption of Rules of the Department of Energy, Planning and Development (Minnesota Energy Agency) Governing Construction Loans Under the District Heating Bonding Act 6 MCAR §§ 2.4021-2.4034

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURE

I, Special Assistant Attorney General Thomas J. Barrett, do hereby declare that I have examined the 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.

Thomas J. Barrett

THOMAS J. BARRETT
Special Assistant
Attorney General

Dated: April 20, 1983

STATE OF MINNESOTA
DEPARTMENT OF ENERGY, PLANNING AND DEVELOPMENT
ENERGY DIVISION (MINNESOTA ENERGY AGENCY)

In the Matter of the Proposed Adoption of Rules of the Department of Energy, Planning and Development (Minnesota Energy Agency) Governing Construction Loans Under the District Heating Bonding Act 6MCAR SS 2.4021-2.4034.

AFFIDAVIT OF NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) SS
COUNTY OF RAMSEY)

MARY C. LESCH-GORMLEY, being first duly sworn, deposes and says:

That during the second 30 day comment period which occurred between March 21, 1983 and April 19, 1983, regarding the rules in the above entitled matter; no person or association requested notice that such rules have been submitted to the Attorney General.

Mary C. Lesch-Gormley

MARY C. LESCH-GORMLEY

Subscribed and sworn to before me this 20th day of April, 1983.

Dennis M. Devereaux

DENNIS M. DEVEREAUX
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires April 1, 1988

STATE OF MINNESOTA
DEPARTMENT OF ENERGY, PLANNING AND DEVELOPMENT
ENERGY DIVISION (MINNESOTA ENERGY AGENCY)

In the Matter of the Proposed Adoption of Rules of the Department of Energy, Planning and Development (Minnesota Energy Agency) Governing Construction Loans Under the District Heating Bonding Act 6MCAR SS 2.4021-2.4034.

AFFIDAVIT OF NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
)SS
COUNTY OF RAMSEY)

MARY C. LESCH-GORMLEY, being first duly sworn, deposes and says:

That during the 30 day comment period which occurred between February 7, 1983 and March 8, 1983, regarding the rules in the above entitled matter; no person or association requested notice that such rules have been submitted to the Attorney General.

Mary C. Lesch-Gormley
MARY C. LESCH-GORMLEY

Subscribed and sworn to before me this 9th day of March, 1983.

Dennis M. Devereaux
NOTARY PUBLIC

DENNIS M. DEVEREAUX
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires April 1, 1988