

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 704

TEMPORARY

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 10-20-83
DATE FOR REVIEW —
DATE DUE 10-27-83

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

Approved 10.27.83 mjC Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State _____ Revisor approved _____ disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed See SR

✓ Order Adopting 10.18.83 Date combined with FoF

N/A Notice of Intent to Solicit Outside Opinion

_____ Order for rulemaking
_____ date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
OK Sufficiency per discussion w/ MC, LDS. Sonneman notified

✓ Affidavit of Mailing Notice or rulemaking
✓ 7.19.83 At least ~~30~~ 20 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
✓ 7.25.83 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

✓ Agency's Findings of Fact combined with Order Adopting

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

_____ Statement of Need and Reasonableness

_____ 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

N/A Affidavit of Mailing Notice of Submission to Attorney General

_____ Notice of Submission to the Attorney General

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : RANDALL D. YOUNG, Executive Secretary DATE: 10/27/83
Attn: KARL W. SONNEMAN, Special Assistant
Attorney General

FROM : MARTHA J. CASSERLY MJC PHONE: 296-4347
Special Assistant
Attorney General

SUBJECT: In the Matter of the Adoption of Temporary Rules Governing Cogeneration and Samll Power Production (Amending 4 MCAR §§ 3.0450 - 3.0462)

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.
MJC/ls
cc: Ms. Kathy Burek
Mr. Duane Harves

Attachment A
AG copy

Minnesota Public Utilities Commission

Adopted Temporary Rules Governing Cogeneration and Small Power Production

Temporary Rules as Adopted

4 MCAR S 3.0450 Scope and purpose.

The purpose of 4 MCAR SS 3.0450-3.0463 is to implement certain provisions of Minnesota Statutes, section 216B.164; the Public Utility Regulatory Policies Act of 1978, United States Code, title 16, section 824a-3 (Supplement III, 1979); and the Federal Energy Regulatory Commission regulations, Code of Federal Regulations, title 18, sections 292.101-292.602 (1981). Nothing in 4 MCAR SS 3.0450-3.0463 excuses any utility from carrying out its responsibilities under these provisions of state and federal law. Rules 4 MCAR SS 3.0450-3.0463 shall at all times be applied in accordance with their intent to give the maximum possible encouragement to cogeneration and small power production consistent with protection of the ratepayers and the public.

4 MCAR S 3.0451 Definitions.

A. Applicability. For purposes of 4 MCAR SS 3.0450-3.0463, the following terms have the meanings given them.

B. [Unchanged.]

C. Average retail utility energy rate. "Average retail utility energy rate" means, for any class of utility customer, the quotient of the total annual class revenue from sales of electricity minus the annual revenue resulting from fixed charges, divided by the annual class kilowatt-hour sales. Data from the most recent 12-month period available <u>prior to each filing required by 4 MCAR S 3.0452</u> shall be used in the computation.

F of F c

C.-N. [Reletter as D.-O.]

P. Marginal capital carrying charge rate in the first year of investment. "Marginal capital carrying charge rate in the

first year of investment" means the percentage factor by which the amount of a new capital investment in a generating unit would have to be multiplied to obtain an amount equal to the total additional first year amounts for the cost of equity and debt capital, income taxes, property and other taxes, tax credits (amortized over the useful life of the generating unit), depreciation, and insurance which would be associated with the new capital investment and would account for the likely inflationary or deflationary changes in the investment cost due to a one-year delay in building the unit.

P.-R. [Reletter as Q.-S.]

T. Qualifying facility. "Qualifying facility" means a cogeneration or small power production facility which satisfies the conditions established in Code of Federal Regulations, title 18, section 292.101 (b) (1) (1981), as applied when interpreted in accordance with the amendments to Code of Federal Regulations, title 18, sections 292.201-292.207-adopted through 46 Federal Register 33025-33027 (1981). The initial operation date or initial installation date of a cogeneration or small power production facility shall not prevent the facility from being considered a qualifying facility for the purposes of 4 MCAR SS 3.0450-3.0463 if it otherwise would satisfy all stated conditions.

T.-W. [Reletter as U.-X.]

Y. Utility. "Utility" means:

1. for the purposes of 4 MCAR SS 3.0453 and 3.0461, any public utility, including municipally owned electric utilities or cooperative electric associations, which sells electricity at retail in Minnesota; or

2. for the purposes of 4 MCAR SS 3.0450-3.0452, 3.0454-3.0460, and 3.0462-3.0463, any public utility, including municipally owned electric utilities and cooperative electric associations, which sells electricity <u>at retail</u> in Minnesota, except those municipally owned electric utilities which have adopted and have in effect rules consistent with 4 MCAR SS 3.0450-3.0463.

FSFV

4 MCAR S 3.0452 Filing requirements.

A. Filing dates. Within 60 days after the effective date of 4 MCAR SS 3.0450-3.0463, on January 1, 1985, and every 12 months thereafter, each utility shall file with the commission, for its review and approval, a cogeneration and small power production tariff. The tariff for generating utilities shall contain Schedules A through G, except that generating utilities with less than 500 million kilowatt-hour sales in the calendar year preceding the filing may substitute their retail rate schedules for Schedules A and B. The tariff for nongenerating utilities shall contain Schedules C, D, E, F, and H, and may, at the option of the utility, contain Schedules A and B, using data from the utility's wholesale supplier.

B.-C. [Unchanged.]

D. Schedule B. Schedule B shall contain the information listed in 1.-5.

1.-4. [Unchanged.]

5. If the utility has no planned generating facility additions for the ensuing ten years, but has planned additional capacity purchases, other than from qualifying facilities, during the ensuing ten years, Schedule B shall contain its net annual avoided capacity cost stated in dollars per kilowatt-hour averaged over the on-peak hours and the utility's net annual avoided capacity costs stated in dollars per kilowatt-hour averaged over all hours. These shall be calculated as follows:

a. [Unchanged.]

b. The net annual avoided capacity cost shall be computed by applying the figure determined in a. to the steps enumerated in 4.d.-i., excluding 4.f.

6. [Unchanged.]

E. Schedule C. Schedule C shall contain the calculation of the average retail utility energy rates.

F. Schedule D. Schedule D shall contain all standard contracts to be used with qualifying facilities, containing applicable terms and conditions.

G. Schedule E. Schedule E shall contain the utility's

safety standards, required operating procedures for interconnected operations, and the functions to be performed by any control and protective apparatus. These standards and procedures shall not be more restrictive than the interconnection guidelines listed in 4 MCAR S 3.0462. The utility may include in Schedule E suggested types of equipment to perform the specified functions. No standard or procedure shall be established to discourage cogeneration or small power production.

H. Schedule F. Schedule F shall contain procedures for notifying affected qualifying facilities of any periods of time when the utility will not purchase electric energy or capacity because of extraordinary operational circumstances which would make the costs of purchases during those periods greater than the costs of internal generation.

I. Schedule G. Schedule G shall contain and describe all computations made by the utility in determining Schedules A and B.

J. Schedule H; special rule for nongenerating utilities. Schedule H shall list the rates at which a nongenerating utility purchases energy and capacity. If the nongenerating utility has more than one wholesale supplier, Schedule H shall list the rates of that supplier from which purchases may first be avoided. If the nongenerating utility with more than one wholesale supplier also chooses to file Schedules A and B, the data on Schedules A and B shall be obtained from that supplier from which purchases may first be avoided.

K. Availability of filings. All filings required by A.-J. shall be made with the commission and shall be maintained at the utility's general office and any other offices of the utility where rate case filings are kept. These filings shall be available for public inspection at the commission and at the utility offices during normal business hours.

4 MCAR S 3.0453 Reporting requirements.

A.-E. [Unchanged.]

F. Effectiveness. The utility may provide a statement of

the effectiveness of Minnesota Statutes, section 216B.164 and 4 MCAR SS 3.0450-3.0463 in encouraging cogeneration and small power production, as observed by the utility.

4 MCAR S 3.0454 Conditions of service.

A. Requirement to purchase. The utility shall purchase energy and capacity from any qualifying facility which offers to sell energy to the utility and agrees to the conditions set forth in 4 MCAR SS 3.0450-3.0463.

B.-C. [Unchanged.]

D. Responsibility for apparatus. The qualifying facility, without cost to the utility, shall furnish, install, operate, and maintain in good order and repair any apparatus the qualifying facility needs in order to operate in accordance with Schedule E.

E. [Unchanged.]

F. Legal status not affected. Nothing in 4 MCAR SS 3.0450-3.0463 affects the responsibility, liability, or legal rights of any party under applicable law or statutes. No party shall require the execution of an indemnity clause or hold harmless clause in the written contract as a condition of service.

G.-K. [Unchanged.]

4 MCAR S 3.0456 Standard rates for purchases.

A. [Unchanged.]

B. Net energy billing rate.

1. The net energy billing rate is available only to qualifying facilities with capacity of less than 40 kilowatts which choose not to offer electric power for sale on either a time-of-day basis or a simultaneous purchase and sale basis.

2. The utility shall bill the qualifying facility for the excess of energy supplied by the utility above energy supplied by the qualifying facility during each billing period according to the utility's applicable retail rate schedule.

3. When the energy generated by the qualifying facility exceeds that supplied by the utility, the utility shall

compensate the qualifying facility for the excess energy at the average retail utility energy rate. ~~The compensation shall reflect changes to the energy rate due to the operation of the utility's fuel adjustment clause.~~

no indication of why this deletion

C. Simultaneous purchase and sale billing rate.

1. The simultaneous purchase and sale rate is available only to qualifying facilities with capacity of less than 40 kilowatts which choose not to offer electric power for sale on a time-of-day basis.

2. The qualifying facility shall be billed for all energy and capacity it consumes during a billing period according to the utility's applicable retail rate schedule.

3. The utility shall purchase all energy and capacity which is made available to it by the qualifying facility. At the option of the qualifying facility, its entire generation shall be deemed to be made available to the utility. Compensation to the qualifying facility shall be the sum of a. and b.

a. The energy component shall be the appropriate system average incremental energy costs shown on Schedule A; or if the generating utility has not filed Schedule A, the energy component shall be the energy rate of the retail rate schedule, applicable to the qualifying facility, filed in lieu of Schedules A and B; or if the nongenerating utility has not filed Schedule A, the energy component shall be the energy rate shown on Schedule H;

b. If the qualifying facility provides firm power to the utility, the capacity component shall be the utility's net annual avoided capacity cost per kilowatt-hour averaged over all hours shown on Schedule B; or if the generating utility has not filed Schedule B, the capacity component shall be the demand charge per kilowatt (if any) of the retail rate schedule, applicable to the qualifying facility, filed in lieu of Schedules A and B, divided by the number of hours in the billing period; or if the nongenerating utility has not filed Schedule B, the capacity component shall be the capacity cost per

kilowatt shown on Schedule H, divided by the number of hours in the billing period. If the qualifying facility does not provide firm power to the utility, no capacity component shall be included in the compensation paid to the qualifying facility.

D. Time-of-day purchase rates.

1. Time-of-day rates are required for qualifying facilities with capacity of 40 kilowatts or greater and less than or equal to 100 kilowatts, and they are optional for qualifying facilities with capacity less than 40 kilowatts. Time-of-day rates are also optional for qualifying facilities with capacity greater than 100 kilowatts if these qualifying facilities provide firm power.

2. The qualifying facility shall be billed for all energy and capacity it consumes during each billing period according to the utility's applicable retail rate schedule. Any utility rate-regulated by the commission may propose time-of-day retail rate tariffs which require qualifying facilities that choose to sell power on a time-of-day basis to also purchase power on a time-of-day basis.

3. The utility shall purchase all energy and capacity which is made available to it by the qualifying facility. Compensation to the qualifying facility shall be the sum of a. and b.

a. The energy component shall be the appropriate on-peak and off-peak system incremental costs shown on Schedule A; or if the generating utility has not filed Schedule A, the energy component shall be the energy rate of the retail rate schedule, applicable to the qualifying facility, filed in lieu of Schedules A and B; or if the nongenerating utility has not filed Schedule A, the energy component shall be the energy rate shown on Schedule H.

b. If the qualifying facility provides firm power to the utility, the capacity component shall be the utility's net annual avoided capacity cost per kilowatt-hour averaged over the on-peak hours as shown on Schedule B; or if the generating utility has not filed Schedule B, the capacity component shall

be the demand charge per kilowatt (if any) of the retail rate schedule, applicable to the qualifying facility, filed in lieu of Schedules A and B, divided by the number of on-peak hours in the billing period; or if the nongenerating utility has not filed Schedule B, the capacity component shall be the capacity cost per kilowatt shown on Schedule H, divided by the number of on-peak hours in the billing period. The capacity component shall apply only to deliveries during on-peak hours. If the qualifying facility does not provide firm power to the utility, no capacity component shall be included in the compensation paid to the qualifying facility.

•4 MCAR S 3.0460 Disputes.

In case of a dispute between a utility and a qualifying facility or an impasse in the negotiations between them, either party may request the commission to determine the issue. When the commission makes the determination, the burden of proof shall be on the utility. In the order resolving the dispute, the commission ~~will apportion~~ shall require the prevailing party's reasonable costs, disbursements, and attorney's fees to be paid by the party against whom the issue or issues were adversely decided, except that a qualifying facility will be required to pay the costs, disbursements, and attorney's fees of the utility only if the commission finds that the claims of the qualifying facility have been made in bad faith or are a sham or frivolous.

4 MCAR S 3.0461 Notification to customers.

A. Contents of written notice. Within 60 days following each filing required by 4 MCAR S 3.0452, every utility shall furnish written notice to each of its customers:

1. That the utility is obligated to interconnect with and purchase electricity from cogenerators and small power producers;

2. That the utility is obligated to provide information to all interested persons free of charge upon request; and

3. That any disputes over interconnection, sales, and purchases are subject to resolution by the commission upon

complaint.

The notice shall be in language and form approved by the commission.

B. [Unchanged.]

4 MCAR S 3.0462 Interconnection guidelines.

A. Denial of interconnection application. Except as hereinafter provided, a utility shall interconnect with a qualifying facility that offers to make energy or capacity available to the utility. The utility may refuse to interconnect a qualifying facility with its power system until the qualifying facility has properly applied under 4 MCAR S 3.0454 K. and has received approval from the utility. The utility shall withhold approval only for failure to comply with applicable utility rules not prohibited by 4 MCAR SS 3.0450-3.0463, or governmental rules or laws. The utility shall be permitted to include in its contract reasonable technical connection and operating specifications for the qualifying facility.

B.-F. [Unchanged.]

G. Permitting entry. If the particular configuration of the qualifying facility precludes disconnection or testing from the utility side of the interconnection, the qualifying facility shall make equipment available and permit electric and communication utility personnel to enter the property at reasonable times to test isolation and protective equipment, to evaluate the quality of power delivered to the utility's system, and to test to determine whether the qualifying facility's generating system is the source of any electric service or communication systems problems. The utility shall remain responsible for its personnel.

H.-K. [Unchanged.]

Temporary Rule as Proposed (all new material)

4 MCAR S 3.0463 [Temporary] Contracts.

A. Existing contracts. Any interconnection contracts executed between a utility and a qualifying facility with

installed capacity of less than 40 kilowatts before the effective date of 4 MCAR SS 3.0450-3.0463 may, at the option of either party, be canceled and replaced with the uniform statewide contract by either party giving the other written notice thereof. The notice shall be effective upon the shortest period permitted under the existing contract for termination, but not less than ten nor more than 30 days.

B. Language flexibility. Electric utilities organized as cooperatives may substitute "Cooperative" wherever "Utility" appears in the uniform statewide contract. FofFB

C. Uniform statewide contract. The form of the uniform statewide contract shall be as follows:

UNIFORM STATEWIDE CONTRACT FOR

COGENERATION AND SMALL POWER PRODUCTION FACILITIES

THIS CONTRACT is entered into _____, 19___, by _____ (hereafter called "Utility") and _____ _____ (hereafter called "QF").

RECITALS

The QF has installed electric generating facilities, consisting of _____ _____ _____ (Description of facilities), rated at less than 40 kilowatts of electricity, on property located at _____ _____.

The QF is prepared to generate electricity ~~for use and for sale to~~ in parallel with the Utility. FofFC

The QF's electric generating facilities meet the requirements of the Minnesota Public Utilities Commission (hereafter called "Commission") rules on Cogeneration and Small Power Production and any standards the Utility has established under those rules.

The Utility is obligated under federal and Minnesota law to interconnect with the QF and to purchase electricity ~~from~~ offered for sale by the QF. FofFC

A contract between the QF and the Utility is required by the Commission's rules.

AGREEMENTS

The QF and the Utility agree:

1. The Utility will sell electricity to the QF under the rate schedule in force for the class of customer to which the QF belongs.

2. The Utility will buy electricity offered for sale from the QF under the current rate schedule filed with the Commission. The QF has elected the following rate schedule category:

.... 1. Net energy billing rate under 4 MCAR S 3.0456 B.

.... 2. Simultaneous purchase and sale billing rate under 4 MCAR S 3.0456 C.

.... 3. Time-of-day purchase rates under 4 MCAR S 3.0456 D.

FOR F C

A copy of the presently filed rate schedule is attached to this contract.

3. The rates for sales and purchases of electricity may change over the time this contract is in force, due to actions of the Utility or of the Commission, and the QF and the Utility agree that sales and purchases will be made under the rates in effect each month during the time this contract is in force.

~~a. The Utility will make these computations at the end of each billing period:~~

~~a. the Utility will deduct the purchases made from the QF from the sales made to the QF during that billing period and determine the difference;~~

~~b. the Utility will multiply the difference by the rate then in force;~~

~~c. if sales made to the QF exceed the purchases from the QF, the Utility will bill the QF the amount calculated in b plus any fixed charges;~~

~~d. if purchases from the QF exceed the sales made to the QF, the Utility will pay the QF the amount calculated in b minus any fixed charges by _____;~~
~~(Fill in either "by bill credit" or "by check within 15 days.")~~

4. The Utility will compute the charges and payments for purchases and sales for each billing period. Any net credit to the QF will be made under one of the following options as chosen by the QF:

.... 1. Credit to the QF's account with the Utility.

.... 2. Paid by check to the QF within 15 days of the billing date.

5. The QF will operate ~~his or her~~ its electric generating facilities within the rules, regulations, and policies of the Utility. A copy of those rules, regulations, and policies is attached to this contract. This agreement does not waive the QF's right to bring a dispute before the Commission.

FofF c 5,6

6. The Utility's rules, regulations, and policies will follow the Commission's rules on Cogeneration and Small Power Production.

~~7. The Utility approves the QF's electric generating facilities as of the date of this contract.~~

FofF c7

~~8.~~ 7. The QF will operate ~~his or her~~ its electric generating facilities so that they conform to ~~all~~ the national, state, and local electric and safety codes, and will be responsible for ~~all~~ the costs of conformance.

FofF c8

~~9. The QF will pay the Utility for all costs of interconnecting with the Utility's system.~~ 8. The QF ~~and the Utility agree that the~~ is responsible for the actual, reasonable costs of interconnection which are estimated to be $_____ ~~, and that~~. The QF will pay the Utility in this way:

FofF c9

_____

_____.

~~10.~~ 9. The QF will give the Utility reasonable access to ~~his or her~~ its property and electric generating facilities if the configuration of those facilities does not permit disconnection or testing from the Utility's side of the interconnection. If the Utility enters the QF's property, the Utility will remain responsible for its personnel.

~~11.~~ 10. The Utility may stop providing electricity to the QF during a system emergency. The Utility will not discriminate

among-customers against QFs when it stops providing electricity or when it resumes providing electricity.

~~12.~~ 11. The Utility may stop purchasing electricity from the QF when necessary for the Utility to construct, install, maintain, repair, replace, remove, investigate, or inspect any equipment or facilities within its electric system. The Utility will notify the QF before it stops purchasing electricity in this way:

_____

_____.

~~13.--The-Utility-may-stop-purchasing-electricity-from-the-QF when-extraordinary-operating-conditions-make-the-cost-of purchasing-electricity-from-the-QF-more-expensive-than-the-costs of-generating-the-electricity-internally.--The-Utility-will-only exercise-this-right-under-the-following-circumstances:~~

~~_____~~

~~_____~~

~~_____.--The-Utility-will-notify-the-QF-before-it stops-purchasing-electricity-in-this-way:--_____~~

~~_____~~

~~_____.~~

FofF C 13

~~14.~~ 12. The QF will keep in force liability insurance against personal or property damage due to the installation, interconnection, and operation of ~~his-or-her~~ its electric generating facilities. The amount of insurance coverage will be $_____ (amount not greater than $300,000).

~~15.~~ 13. This contract becomes effective as soon as it is signed by the QF and the Utility. This contract will remain in force until either the QF or the Utility gives written notice to the other that the contract is canceled. This contract will be canceled 30 days after notice is given.

~~16.~~ 14. This contract is temporary, and will be replaced by a permanent contract after the Commission puts permanent rules on cogeneration and small power production into place. The permanent contract may differ in its terms and conditions.

~~17.~~ 15. This contract contains all the agreements made

between the QF and the Utility except that this contract shall at all times be subject to all rules and orders issued by the Public Utilities Commission or other government agency having jurisdiction over the subject matter of this contract. The QF and the Utility are not responsible for any agreements other than those stated in this contract.

THE QF AND THE UTILITY HAVE READ THIS CONTRACT AND AGREE TO BE BOUND BY ITS TERMS. AS EVIDENCE OF THEIR AGREEMENT, THEY HAVE EACH SIGNED THIS CONTRACT BELOW ON THE DATE WRITTEN AT THE BEGINNING OF THIS CONTRACT.

_____

QF

By:_____

_____

_____

UTILITY

By:_____

_____

(Title)

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
OCT 28 1983
Joan Anderson Growe
Secretary of State
10:57 AM

APPROVED AS TO FORM AND LEGALITY
October 27 1983
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY Martha J Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

AG copy

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Terry Hoffman	Chairman
Leo G. Adams	Commissioner
Roger L. Hanson	Commissioner
Cynthia A. Kitlinski	Commissioner
Lillian Warren-Lazenberry	Commissioner

In the Matter of the Adoption of Temporary Rules Governing Cogeneration and Small Power Production (Amending 4 MCAR §§ 3.0450 - 3.0462)

DOCKET NO. G,E-999/R-83-376

ORDER ADOPTING TEMPORARY RULES

PROCEDURAL HISTORY

On April 18, 1983, the Minnesota Public Utilities Commission (the Commission) published its adopted Rules governing Cogeneration and Small Power Production in the State Register. The purpose of those rules was to implement Minnesota law (Minn. Stat. § 216B.164), federal law (the Public Utility Regulatory Policies Act of 1978, United States Code, Title 16, § 824a-3), and regulations of the Federal Energy Regulatory Commission (Code of Federal Regulations, Title 18, §§ 292.101-292.602).

On May 23, 1983, the Minnesota Legislature enacted a bill which, among other things, amended Minn. Stat. § 216B.164. Minn. Laws 1983, Chapter 301, §§ 166-171. The amendment required changes in the Commission's rules and granted the Commission authority to adopt temporary rules to implement the changes.

On July 25, 1983, the Commission published its Proposed Temporary Rules Governing Cogeneration and Small Power Production in the State Register, along with a Notice of Intent to Adopt Temporary Rules.

As of August 15, 1983, comments were received from Dakota Electric Association (DEA), Maun, Green, Hayes, Simon, Johanneson and Brehl on behalf of Jacobs Wind Electric Company (Jacobs), Northern States Power Company (NSP), Dairyland Power Cooperative (Dairyland), and United Power Association (UPA). On August 17, Otter Tail Power Company (Otter Tail) submitted comments.

FINDINGS AND CONCLUSIONS

The Commission finds that no comment was received with respect to many particulars of the Temporary Rules as Proposed. The Commission concludes that the great majority of these may be adopted without further discussion. Other portions of the Proposed Temporary Rules did draw comment. The Commission will note the comment and discuss its resolution in each such case.

These temporary rules will be effective for 180 days from their effective date or until the Commission adopts permanent amendments to these rules, whichever event occurs sooner. Pursuant to Minn. Stat. § 14.35, the Commission may extend these temporary rules for an additional 180 days by giving notice.

4 MCAR § 3.0450. Scope and purpose.

Jacobs suggested adding "and the requirement that utilities shall interconnect with each qualifying facility that offers to provide available energy or capacity and satisfies the requirements of Minnesota Statute §216B.164" at the end of this section.

The Commission finds that the requirement to interconnect and to purchase is clear in the law and the rules, and that the proposed language is, therefore, superfluous and redundant. The Commission concludes that the proposal should be rejected.

4 MCAR § 3.0451. Definitions.

C. Average retail utility energy rate.

Jacobs suggested changing the proposed definition to read:

> "Average retail utility energy rate" means for each qualifying facility the average of the retail energy rates, exclusive of special rates based on income, age, or energy conservation, according to the applicable rate schedule of the utility to which the qualifying facility is or shall be interconnected for sales by such utility to the class of customers to which the qualifying facility belongs with respect to the retail sale of energy by the utility.

DEA suggested the proposed definition be clarified to require that the calculation in the proposed rule be made only at the time of each filing, rather than monthly.

NSP suggested using the data supporting its currently effective rate schedules rather than the most recent 12 month period, in order to make effective use of the fuel clause adjustment.

Otter Tail suggested using the energy cost component of the retail rate, rather than the retail rate itself. Otter Tail also suggested that the 12 month calculation be based on a fiscal year rather than the most recent period.

The Commission finds that the language of the Proposed Temporary Rule should be changed. It is clear that the language as proposed would double count fuel costs and is ambiguous with respect to a monthly or an annual computation of the rate.

The Commission finds that the Jacobs proposal also is ambiguous. If the suggestion is interpreted to mean "use the arithmetic mean of the prices applicable to the various rate blocks," there is immediately a question of which blocks to consider. Furthermore, there is no safeguard against a utility establishing one or more consumption blocks, perhaps in ranges unlikely to be used by its customers, for the purpose of influencing the price paid to qualifying facilities. Finally, the Commission believes that the intent of the legislation was to make the rates paid to qualifying facilities equivalent to the rates paid by utility customers in the class. To achieve that result, an average weighted by consumption is necessary.

The Commission believes the NSP proposal would work well if the rule were applicable to regulated utilities only, but it is not. Some nonregulated utilities may not have fuel clause adjustments, and none of them file them monthly with the Commission. The Commission finds that it is not possible to properly apply a rule which depends on fuel clause adjustments to the wide variety of utilities which these rules must govern. The Commission concludes that its rule must not rely on monthly fuel clause adjustments, and has modified 4 MCAR § 3.0456 B.3 accordingly.

The Commission finds that the Otter Tail proposal to use only the energy cost simply does not comply with the statute, which requires use of the retail rate, and must be rejected.

The Commission finds that an appropriate modification of this definition is to adopt the DEA proposal, which will clarify the filing requirements, and to eliminate the operation of the fuel clause adjustment as discussed above. The result is a simple rate which is easy to calculate, and which reflects fuel cost differences annually rather than monthly. The use of the weighted average price paid by customers automatically addresses the legislative concern that the rate paid not be influenced by "special rates based on income, age, or energy conservation," because unduly low rates in one consumption block are counterbalanced by rates higher than they otherwise would be in other blocks in order to derive the proper revenue from the customer class.

Y. Utility.

Dairyland suggested that the definitions proposed needed clarification that utilities which sell at retail are the ones affected by both 1. and 2.

The Commission finds this suggestion to be appropriate because the rule as originally proposed was assumed to apply only to retail utilities, and concludes it adds clarity and should be adopted.

4 MCAR § 3.0452. Filing requirements.

E. Schedule C.

Jacobs suggested that this Schedule should be eliminated, as it was not necessary given Jacobs's proposed definition of average utility retail energy rate.

The Commission did not accept Jacobs's proposed definition. The Commission finds that the definition it did accept still requires the language which was in the Proposed Rule. The Commission concludes there should be no change.

4 MCAR § 3.0456. Standard rates for purchases.

B. Net energy billing rate.

DEA suggested adding "or, if the applicable rate schedule has a flat energy rate, at the flat energy rate" at the end of Paragraph 3.

Jacobs suggested that Paragraph 3 should be amended to read:

> When the energy generated by the qualifying facility exceeds that supplied by the utility, the utility shall compensate the qualifying facility for the excess energy at the rates set for net input into the utility system set by the Commission based on avoided costs and all other relevant factors, or if elected by the qualifying facility, the average retail utility energy rate.

The Commission finds that neither of these suggestions is necessary, and that adoption of either of them would be redundant. The Commission concludes that it should adopt neither.

4 MCAR § 3.0460. Disputes.

UPA suggested elimination of the sentence added to the existing language when the Temporary Rule was proposed to restore equitability.

Jacobs suggested substituting "shall require" for "will apportion".

The Commission finds that the UPA proposal must be rejected to comply with the statute. The Commission finds that the Jacobs proposal more clearly expresses the Commission's intent and statutory language than did the proposed language, and concludes the proposal should be adopted.

4 MCAR § 3.0462. Interconnection guidelines.

UPA suggested elimination of the statement that the utility shall remain responsible for its personnel because UPA found it to be superfluous and offensive.

The Commission finds that the proposed language clearly expresses the intent of the legislation, and is necessary for a clear understanding of the application of the rule. Accordingly, the Commission rejects the UPA proposal.

4 MCAR § 3.0463 <Temporary> Contracts.

B. Language flexibility.

UPA suggested that a cooperative utility should have the flexibility to

use the word "Cooperative" wherever the word "Utility" appeared in the uniform statewide contract. The Commission recognizes that cooperatives have different relations with their customers that other utilities (see Minn. Stat. § 216B.026). The Commission finds that use of the suggestion will not change the effect of any contract clause, and concludes it should be adopted.

C. Uniform statewide contract.

Under "RECITALS":

Jacobs suggested striking from paragraph 3 the phrase "and any standards the Utility has established under those rules."

The Commission finds that technical standards may be necessary as part of the utility's cogeneration and small power production tariff. The Commission concludes that the phrase should therefore remain part of the contract.

NSP suggested substituting the phrase "in parallel with" for "for use and sale to" in paragraph 3; and "offered for sale by" for "from" in paragraph 5. These changes would recognize that not all QF's may wish to sell power to the utility but will need to interconnect the QF to the utility's electric system.

The Commission finds that this suggestion is reasonable, and that its adoption will expand the applicability of the contract without harming any party. The Commission concludes it should be adopted. p. 10

Under "AGREEMENTS":

In this section, NSP argued that several paragraphs could be removed since they address items already covered in the Commission's rules. The Commission has determined, in the majority of cases, to reject this change since one purpose of a uniform contract is to spell out the terms of agreement for the parties without constant reference to the rules. However, the contract is not to be a substitute for those rules as is acknowledged in the final paragraph of the contract.

Paragraph 2 (Rule as Proposed).

NSP urged three changes. One would reflect the "offered for sale" language added to the recital. Another would describe the rate schedule as "approved by the Commission". The last would recognize that the QF has selected the applicable rate from several rates available under the Commission's rules.

Jacobs also urged that the contract indicate which of several billing rates the QF has selected. Jacobs also proposed that there should be two net energy billing options (avoided cost or the average retail utility energy rate) in addition to the simultaneous purchase and sale rate and the time-of-day rate.

The Commission finds that NSP's first suggestion is consistent with the change made in the recitals. The Commission also finds the contract should recognize that the QF has a choice of rate schedules and identify them. The rules recognize three choices, not the four offered by Jacobs, since net energy billing computed on the basis of the retail rate tariffs is considered to be an approximation of avoided cost. The Commission concludes that the language of the Rule as proposed should be modified accordingly. not done p. 11

Paragraph 4 (Rule as Proposed).

NSP would replace the existing language, which describes the billing computation for net energy sales and the method of payment, with two clauses: one which states the payment rate for QF sales to the utility, and the second which states the method of payment.

UPA commented that the clause as proposed was unclear regarding which

rate the utility will bill the QF.

The Commission concludes it should adopt the second clause recommended by NSP to replace the existing language. The concern regarding identification of applicable rate for purchases from the QF is now addressed in paragraph 2 of the contract. Since the existing language is appropriate only for one rate option - net energy billing - the language should be removed. The NSP clause does provide for the choice of payment method which the proposed rule had included.

Paragraphs 5 and 6 (Rule as Proposed).

NSP proposed to substitute "its" for "his or her" in order to recognize that partnerships or corporations may enter into these contracts.

Jacobs urged that either the Commission draft the "rules, regulations, and policies"; or that it substitute stronger language representing that the utility's tariffed rule follows the Commission's rules for the existing clause.

The Commission finds that NSP's proposal to substitute "its" for "his or her" is appropriate, not only here, but in all other places in the contract where "his or her" appeared in the Proposed Rule. The Commission also finds that Jacobs's proposal has merit. It has recognized in the existing rules that it is not possible to adopt rules covering all conceivable situations applicable to utilities and that it is necessary for utilities to have some discretion (subject to Commission review) to adopt additional rules. The Commission concludes that the addition of a sentence emphasizing the ability of the QF to bring a dispute before the Commission will properly address Jacobs's concern for stronger language without making radical changes in the proposed rule as sought by Jacobs.

Paragraph 7 (Rule as Proposed)

NSP urged that this clause be deleted. It argued that the clause is too broad; that the utility cannot be the inspector of QF facilities; and that the utility should not be put in the position to be held legally liable to third parties injured by the QF.

The Commission finds NSP's argument persuasive and concludes it should delete the clause.

Paragraph 8 (Rule as Proposed).

The Commission is changing "all" to "the" wherever it occurs in this clause for purposes of clarity.

Paragraph 9 (Rule as Proposed).

NSP argued that this clause is covered by the rules and is thus unnecessary. Alternatively, it recommended deletion of the second sentence which requires parties to fill in the interconnection costs and method of payment.

Jacobs urged that the phrase "all costs of interconnecting" is too broad. It would have the language conform to the definition of interconnection costs in the rule which addresses reasonableness and the necessity for installing the interconnection facilities.

The Commission believes it is important that the contract continue to address the method of payment of interconnection costs, but agrees that duty to pay these costs is adequately addressed in the rules. The Commission believes that the rules should continue to require estimation of the anticipated interconnection costs, subject to change and review of reasonableness as set forth in the rules. The changes to the Rule as proposed address the concerns expressed by the parties.

Paragraph 10 (Rule as Proposed).

NSP argued that this clause was unnecessary. UPA urged that the phrase

"the Utility will remain responsible for its personnel" be deleted.

The Commission has considered these comments, and finds that the language as proposed is consistent with the rule and is necessary for a proper understanding of both the agreements made in the contract, and the law. The Commission therefore declines to make a change.

Paragraph 11 (Rule as Proposed).

NSP argued that this clause is unnecessary. It also proposed to substitute "against QFs" for "among customers" in describing the prohibited discrimination. NSP pointed out that in restoring power it necessarily must make judgements regarding which customers will be restored first.

The Commission believes the clause is necessary for the full understanding between the parties which is one of the purposes of the contract. The Commission agrees that restoration of power to all customers does not occur instantaneously and believes that NSP's suggested language change clarifies the meaning of the clause to preserve the intent of preventing discrimination against QFs. The Commission concludes that the recommended change should be adopted. p.13

Paragraph 12 (Rule as Proposed).

NSP argued that this clause is unnecessary. It further argued that if the clause were not deleted, it should state that the utility will take reasonable steps to notify the QF rather than leave a blank for the parties to fill in.

UPA argued that this clause is unnecessary and should be deleted, because the subject matter is addressed in the rules.

Jacobs urged that an antidiscrimination clause be added.

The Commission finds that the "reasonable steps" language suggested by NSP may be used to fill in the blank of the rule as proposed, so no change would be necessary to accomplish that end. If no change is made, the parties would be free to fill in other language which may better fit their peculiar circumstances. The Commission is not persuaded of the need for the antidiscrimination clause recommended by Jacobs. The Commission concludes that the language should remain as it was proposed.

Paragraph 13 (Rule as Proposed).

NSP argued that this clause is unnecessary. Jacobs urged that antidiscrimination language be added as in paragraph 12.

In testimony from the hearings to adopt the currently effective rules, statements by utilities indicated that it was highly unlikely that any utility would attempt to contact and shut off small qualifying facilities for the circumstances described. Consequently, the Commission finds that the clause is unnecessary and potentially confusing. The Commission concludes it should be deleted.

Paragraph 14 (Rule as Proposed).

NSP proposed significant changes to the insurance clause.

The Commission finds that the changes proposed by NSP may not be adopted because they would depart from the language in 4 MCAR § 3.0454 E. Resolution of the issues raised by NSP, particularly to the extent they would clarify the existing rule, should be addressed in the proceeding to permanently amend the existing rules. p.14

Paragraph 17 (Rule as Proposed).

NSP suggested adding a new clause to the contract which the Commission finds to be appropriate and concludes should be incorporated in the final contract clause.

O R D E R

1. The temporary rules governing cogeneration and small power production, appended hereto as Attachment A, are hereby adopted.

2. These temporary rules shall be effective for 180 days from their effective date.

3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Randall D. Young
Executive Secretary

SERVICE DATE: OCT 18 1983

(S E A L)

CERTIFICATE OF BOARD'S

RESOLUTION PROPOSING RULES

I, Randall D. Young, do hereby certify that I am the Executive Secretary of the Minnesota Public Utilities Commission, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Public Utilities Commission, duly and properly called and held on the 23rd day of June, 1983, that a quorum was present at said meeting, that a majority of those present voted for the resolution, and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that Randall D. Young, the Executive Secretary of the Minnesota Public Utilities Commission, be and he hereby is granted the authority and directed to sign an Order of the Commission directing the publication in the State Register of proposed temporary rules governing amendments to 4 MCAR § 3.450 - 3.463 as well as perform any and all acts incidental thereto."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 19th day of October, 1983.

RDY

Randall D. Young
Executive Secretary

Attest by one other Board member

STATE OF MINNESOTA)
)ss
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

Stuart Mitchell, being first duly sworn, deposes and says:

That on July 19, 1983 she served the attached

Notice of Temporary Rule Making

Docket No. E-999/R-83-376

/X/ by depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid.

~~/X/ by personal service~~

to all persons at the addresses indicated below or on the attached list:

W Stuart Mitchell, Jr.

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

Karen Dorff

KAREN DORFF
NOTARY PUBLIC-MINNESOTA
ANOKA COUNTY
MY COMMISSION EXPIRES APRIL 14, 1990

MINNESOTA PUBLIC UTILITIES COMMISSION

PROPOSED TEMPORARY RULES GOVERNING COGENERATION AND SMALL POWER PRODUCTION

Notice of Intent to Adopt Temporary Rules

Notice is hereby given that the Minnesota Public Utilities Commission has proposed the following temporary rules for the purpose of amending its existing rules governing cogeneration and small power production to implement changes made to M.S. §216B.164 during the 1983 legislative session.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed rules for 20 days immediately following publication of this material in the State Register. All submissions must be in writing and addressed to

Randall D. Young
Executive Secretary
Minnesota Public Utilities Commission
780 American Center Building
160 East Kellogg Blvd.
St. Paul, Minnesota 55101

The temporary rules may be revised on the basis of the data and views received. Any written material received will become part of the record and will be submitted to the Attorney General.

The Commission has reviewed the proposed rules and believes that their adoption will not require the expenditure of public money by local public bodies in excess of $100,000 in either of the two years following adoption.

July 6, 1983

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STATE OF MINNESOTA

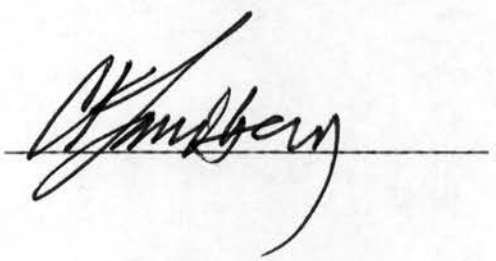
COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption of Rules of the Minnesota Public Utilities Commission Governing Cogeneration and Small Power Production

Docket No. G, E-999/R-83-376

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 Public Utilities Commission for the purpose of receiving notice of the proposed adoption of rules by this Commission is accurate and complete as of 1:00 P.M., this 5th day of July, 1983.



Minnesota Public Utilities Commission

Proposed Temporary Rules Governing Cogeneration and Small Power Production

Notice of Intent to Adopt Temporary Rules

Notice is hereby given that the Minnesota Public Utilities Commission has proposed the following temporary rules for the purpose of amending its existing rules governing cogeneration and small power production to implement changes made to Minn. Stat. § 216B.164 during the 1983 legislative session.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed rules for 20 days immediately following publication of this material in the *State Register*. All submissions must be in writing and addressed to

Randall D. Young
Executive Secretary
Minnesota Public Utilities Commission
780 American Center Building
160 East Kellogg Blvd.
St. Paul, Minnesota 55101

The temporary rules may be revised on the basis of the data and views received. Any written material received will become part of the record and will be submitted to the Attorney General.

The commission has reviewed the proposed rules and believes that their adoption will not require the expenditure of public money by local public bodies in excess of $100,000 in either of the two years following adoption.

July 6, 1983

Randall D. Young
Executive Secretary

Temporary Rules as Proposed

4 MCAR § 3.0450 Scope and purpose.

The purpose of 4 MCAR §§ 3.0450~~-3.0462~~ 3.0463 is to implement certain provisions of ~~Minn. Stat.~~ § Minnesota Statutes, section 216B.164; the Public Utility Regulatory Policies Act of 1978, ~~16~~ United States Code, title 16, section 824a-3 (Supplement III, 1979); and the Federal Energy Regulatory Commission regulations, ~~18~~ Code of Federal Regulations, title 18, sections 292.101-292.602 (1981). Nothing in 4 MCAR §§ 3.0450~~-3.0462~~ 3.0463 excuses any utility from carrying out its responsibilities under these provisions of state and federal law. Rules 4 MCAR §§ 3.0450~~-3.0462~~ 3.0463 shall at all times be applied in accordance with their intent to give the maximum possible encouragement to cogeneration and small power production consistent with protection of the ratepayers and the public.

4 MCAR § 3.0451 Definitions.

A. Applicability. For purposes of 4 MCAR §§ 3.0450~~-3.0462~~ 3.0463, the following terms have the meanings given them.

B. [Unchanged.]

C. Average retail utility energy rate. "Average retail utility energy rate" means, for any class of utility customer, the quotient of the total annual class revenue from sales of electricity minus the annual revenue resulting from fixed charges, divided by the annual class kilowatt-hour sales. Data from the most recent 12-month period available shall be used in the computation.

C.-N. [Reletter as D.-O.]

~~O.~~ P. Marginal capital carrying charge rate in the first year of investment. "Marginal capital carrying charge rate in the first year of investment" means the percentage factor by which the amount of a new capital investment in a generating unit would have to be multiplied to obtain an amount equal to the total additional first year amounts for the cost of equity and debt capital, income taxes, property and other taxes, tax credits (amortized over the useful life of the generating unit), depreciation, and insurance which would be associated with the new capital investment and would account for the likely inflationary or deflationary changes in the investment cost due to ~~the~~ a one-year delay in building the unit.

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.

P.-R. [Reletter as Q.-S.]

~~S.~~ T. Qualifying facility. "Qualifying facility" means a cogeneration or small power production facility which satisfies the conditions established in ~~18~~ Code of Federal Regulations, title 18, section 292.101 (b) (1) (1981), as applied when interpreted in accordance with the amendments to ~~18~~ Code of Federal Regulations, title 18, sections 292.201-292.207 adopted through 46 Federal Register 33025-33027 (1981). The initial operation date or initial installation date of a cogeneration or small power production facility shall not prevent the facility from being considered a qualifying facility for the purposes of 4 MCAR §§ 3.0450~~-3.0462~~ 3.0463 if it otherwise would satisfy all stated conditions.

T.-W. [Reletter as U.-X.]

~~X.~~ Y. Utility. "Utility" means ~~any public utility subject to rate regulation by the commission engaged in the generation, transmission, or distribution of electricity in Minnesota, and any cooperative electric association and municipally owned electric utility not subject to rate regulation by the commission which becomes interconnected with a qualifying facility.~~:

1. for the purposes of 4 MCAR §§ 3.0453 and 3.0461, any public utility, including municipally owned electric utilities or cooperative electric associations, which sells electricity at retail in Minnesota; or

2. for the purposes of 4 MCAR §§ 3.0450-3.0452, 3.0454-3.0460, and 3.0462-3.0463, any public utility, including municipally owned electric utilities and cooperative electric associations, which sells electricity in Minnesota, except those municipally owned electric utilities which have adopted and have in effect rules consistent with 4 MCAR §§ 3.0450-3.0463.

4 MCAR § 3.0452 Filing requirements.

A. Filing dates. Within 60 days after the effective date of 4 MCAR §§ 3.0450~~-3.0462~~ 3.0463, on January 1, ~~1984~~ 1985, and every 12 months thereafter, each utility shall file with the commission, for its review and approval, a cogeneration and small power production tariff. The tariff for generating utilities shall contain Schedules A through ~~F~~ G, except that generating utilities with less than 500 million kilowatt-hour sales in the calendar year preceding the filing may substitute their retail rate schedules for Schedules A and B. The tariff for nongenerating utilities shall contain Schedules C, D, E, F, and ~~G~~ H, and may, at the option of the utility, contain Schedules A and B, using data from the utility's wholesale supplier.

B.-C. [Unchanged.]

D. Schedule B. Schedule B shall contain the information listed in 1.-5.

1.-4. [Unchanged.]

5. If the utility has no planned generating facility additions for the ensuing ten years, but has planned additional capacity purchases, other than from qualifying facilities, during the ensuing ten years, Schedule B shall contain its net annual avoided capacity cost stated in dollars per kilowatt-hour averaged over the on-peak hours and the utility's net annual avoided capacity costs stated in dollars per kilowatt-hour averaged over all hours. These shall be calculated as follows:

a. [Unchanged.]

b. The net annual avoided capacity cost shall be computed by applying the figure determined in a. to the steps enumerated in 4. d. ~~4.~~i., excluding 4.g f.

6. [Unchanged.]

E. Schedule C. Schedule C shall contain the calculation of the average retail utility energy rates.

F. Schedule D. Schedule D shall contain all standard contracts to be used with qualifying facilities, containing applicable terms and conditions.

~~E.~~ G. Schedule ~~D~~ E. Schedule ~~D~~ E shall contain the utility's safety standards, required operating procedures for interconnected operations, and the functions to be performed by any control and protective apparatus. These standards and procedures shall not be more restrictive than the interconnection guidelines listed in 4 MCAR § 3.0462. The utility may include in Schedule ~~D~~ E suggested types of equipment to perform the specified functions. No standard or procedure shall be established to discourage cogeneration or small power production.

~~G.~~ H. Schedule ~~E~~ F. Schedule ~~E~~ F shall contain procedures for notifying affected qualifying facilities of any periods of time when the utility will not purchase electric energy or capacity because of extraordinary operational circumstances which would make the costs of purchases during those periods greater than the costs of internal generation.

~~H.~~ I. Schedule ~~F~~ G. Schedule ~~F~~ G shall contain and describe all computations made by the utility in determining Schedules A and B.

~~I.~~ J. Schedule ~~G~~ H; special rule for nongenerating utilities. Schedule ~~G~~ H shall list the rates at which a nongenerating utility purchases energy and capacity. If the nongenerating utility has more than one wholesale supplier, Schedule ~~G~~ H shall list the

rates of that supplier from which purchases may first be avoided. If the nongenerating utility with more than one wholesale supplier also chooses to file Schedules A and B, the data on Schedules A and B shall be obtained from that supplier from which purchases may first be avoided.

~~I.~~ K. Availability of filings. All filings required by A.~~-I.~~J. shall be made with the commission and shall be maintained at the utility's general office and any other offices of the utility where rate case filings are kept. These filings shall be available for public inspection at the commission and at the utility offices during normal business hours.

4 MCAR § 3.0453 Reporting requirements.

A.-E. [Unchanged.]

F. Effectiveness. The utility may provide a statement of the effectiveness of ~~Minn. Stat. §~~ Minnesota Statutes, section 216B.164 and 4 MCAR §§ 3.0450~~-3.0463~~ 3.0463 in encouraging cogeneration and small power production, as observed by the utility.

4 MCAR § 3.0454 Conditions of service.

A. Requirement to purchase. The utility shall purchase energy and capacity from any qualifying facility which offers to sell energy to the utility and agrees to the conditions set forth in 4 MCAR §§ 3.0450~~-3.0462~~ 3.0463.

B.-C. [Unchanged.]

D. Responsibility for apparatus. The qualifying facility, without cost to the utility, shall furnish, install, operate, and maintain in good order and repair any apparatus the qualifying facility needs in order to operate in accordance with Schedule ~~D~~ E.

E. [Unchanged.]

F. Legal status not affected. Nothing in 4 MCAR §§ 3.0450~~-3.0462~~ 3.0463 affects the responsibility, liability, or legal rights of any party under applicable law or statutes. No party shall require the execution of an indemnity clause or hold harmless clause in the written contract as a condition of service.

G.-K. [Unchanged.]

4 MCAR § 3.0456 Standard rates for purchases.

A. [Unchanged.]

B. Net energy billing rate.

1. The net energy billing rate is available only to qualifying facilities with capacity of less than 40 kilowatts ~~or less~~ which choose not to offer electric power for sale on either a time-of-day basis or a simultaneous purchase and sale basis.

2. The utility shall bill the qualifying facility for the excess of energy supplied by the utility above energy supplied by the qualifying facility during each billing period according to the utility's applicable retail rate schedule.

3. When the energy generated by the qualifying facility exceeds that supplied by the utility ~~during a billing period~~, the utility shall compensate the qualifying facility for the excess energy ~~under either a. or b~~ at the average retail utility energy rate.

~~a. For a qualifying facility with capacity of 20 kilowatts or less, compensation shall be at the energy rate of the rate schedule applicable to sales to the qualifying facility. If the rate schedule consists of more than one block, the lowest per kilowatt hour rate shall apply.~~ The compensation shall reflect changes to the energy rate due to the operation of the utility's fuel adjustment clause.

~~b. For a qualifying facility with capacity of more than 20 kilowatts but not greater than 40 kilowatts, compensation shall be as specified under C.3.~~

C. Simultaneous purchase and sale billing rate.

1. The simultaneous purchase and sale rate is available only to qualifying facilities with capacity of less than 40 kilowatts ~~or less~~ which choose not to offer electric power for sale on a time-of-day basis.

2. The qualifying facility shall be billed for all energy and capacity it consumes during a billing period according to the utility's applicable retail rate schedule.

3. The utility shall purchase all energy and capacity which is made available to it by the qualifying facility. At the option

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of the qualifying facility, its entire generation shall be deemed to be made available to the utility. Compensation to the qualifying facility shall be the sum of a. and b.

a. The energy component shall be the appropriate system average incremental energy costs shown on Schedule A; or if the generating utility has not filed Schedule A, the energy component shall be the energy rate of the retail rate schedule, applicable to the qualifying facility, filed in lieu of Schedules A and B; or if the nongenerating utility has not filed Schedule A, the energy component shall be the energy rate shown on Schedule ~~G~~ H;

b. If the qualifying facility provides firm power to the utility, the capacity component shall be the utility's net annual avoided capacity cost per kilowatt-hour averaged over all hours shown on Schedule B; or if the generating utility has not filed Schedule B, the capacity component shall be the demand charge per kilowatt (if any) of the retail rate schedule, applicable to the qualifying facility, filed in lieu of Schedules A and B, divided by the number of hours in the billing period; or if the nongenerating utility has not filed Schedule B, the capacity component shall be the capacity cost per kilowatt shown on Schedule ~~G~~ H, divided by the number of hours in the billing period. If the qualifying facility does not provide firm power to the utility, no capacity component shall be included in the compensation paid to the qualifying facility.

D. Time-of-day purchase rates.

1. Time-of-day rates are required for qualifying facilities with capacity ~~greater than~~ of 40 kilowatts or greater and less than or equal to 100 kilowatts, and they are optional for qualifying facilities with capacity less than ~~or equal to~~ 40 kilowatts. Time-of-day rates are also optional for qualifying facilities with capacity greater than 100 kilowatts if these qualifying facilities provide firm power.

2. The qualifying facility shall be billed for all energy and capacity it consumes during each billing period according to the utility's applicable retail rate schedule. Any utility rate-regulated by the commission may propose time-of-day retail rate tariffs which require qualifying facilities that choose to sell power on a time-of-day basis to also purchase power on a time-of-day basis.

3. The utility shall purchase all energy and capacity which is made available to it by the qualifying facility. Compensation to the qualifying facility shall be the sum of a. and b.

a. The energy component shall be the appropriate on-peak and off-peak system incremental costs shown on Schedule A; or if the generating utility has not filed Schedule A, the energy component shall be the energy rate of the retail rate schedule, applicable to the qualifying facility, filed in lieu of Schedules A and B; or if the nongenerating utility has not filed Schedule A, the energy component shall be the energy rate shown on Schedule ~~G~~ H.

b. If the qualifying facility provides firm power to the utility, the capacity component shall be the utility's net annual avoided capacity cost per kilowatt-hour averaged over the on-peak hours as shown on Schedule B; or if the generating utility has not filed Schedule B, the capacity component shall be the demand charge per kilowatt (if any) of the retail rate schedule, applicable to the qualifying facility, filed in lieu of Schedules A and B, divided by the number of on-peak hours in the billing period; or if the nongenerating utility has not filed Schedule B, the capacity component shall be the capacity cost per kilowatt shown on Schedule ~~G~~ H, divided by the number of on-peak hours in the billing period. The capacity component shall apply only to deliveries during on-peak hours. If the qualifying facility does not provide firm power to the utility, no capacity component shall be included in the compensation paid to the qualifying facility.

4 MCAR § 3.0460 Disputes.

In case of dispute between a utility and a qualifying facility or an impasse in the negotiations between them, either party may request the commission to determine the issue. When the commission makes the determination, the burden of proof shall be on the utility. In the order resolving the dispute, the commission will apportion the prevailing party's reasonable costs, disbursements, and attorney's fees to be paid by the party against whom the issue or issues were adversely decided, except that a qualifying facility will be required to pay the costs, disbursements, and attorney's fees of the utility only if the commission finds that the claims of the qualifying facility have been made in bad faith or are a sham or frivolous.

4 MCAR § 3.0461 Notification to customers.

A. Contents of written notice. Within 60 days following each ~~annual~~ filing required by 4 MCAR § 3.0452, every utility shall furnish written notice to each of its customers:

1. That the utility is obligated to interconnect with and purchase electricity from cogenerators, and small power producers;

2. That the utility is obligated to provide information to all interested persons free of charge upon request; and

3. That any disputes over interconnection, sales, and purchases are subject to resolution by the commission upon complaint.

The notice shall be in language and form approved by the commission.

B. [Unchanged.]

4 MCAR § 3.0462 Interconnection guidelines.

A. Denial of interconnection application. Except as hereinafter provided, a utility shall interconnect with a qualifying facility that offers to make energy or capacity available to the utility. The utility may refuse to interconnect a qualifying facility with its power system until the qualifying facility has properly applied under 4 MCAR § 3.0454 K. and has received approval from the utility. The utility shall withhold approval only for failure to comply with applicable utility rules not prohibited by 4 MCAR §§ ~~3.0480-3.0562~~ 3.0450-3.0463, or governmental rules or laws. The utility shall be permitted to include in its contract reasonable technical connection and operating specifications for the qualifying facility.

B.-F. [Unchanged.]

G. Permitting entry. If the particular configuration of the qualifying facility precludes disconnection or testing from the utility side of the interconnection, the qualifying facility shall make equipment available and permit electric and communication utility personnel to enter the property at reasonable times to test isolation and protective equipment, to evaluate the quality of power delivered to the utility's system, and to test to determine whether the qualifying facility's generating system is the source of any electric service or communication systems problems. The utility shall remain responsible for its personnel.

H.-K. [Unchanged.]

Temporary Rules as Proposed (all new material)

4 MCAR § 3.0463 [Temporary] Contracts.

A. Existing contracts. Any interconnection contracts executed between a utility and a qualifying facility with installed capacity of less than 40 kilowatts before the effective date of 4 MCAR §§ 3.0450-3.0463 may, at the option of either party, be canceled and replaced with the uniform statewide contract by either party giving the other written notice thereof. The notice shall be effective upon the shortest period permitted under the existing contract for termination, but not less than ten nor more than 30 days.

B. Uniform statewide contract. The form of the uniform statewide contract shall be as follows:

UNIFORM STATEWIDE CONTRACT FOR
COGENERATION AND SMALL POWER PRODUCTION FACILITIES

THIS CONTRACT is entered into _____, 19 ____, by _____ (hereafter called "Utility") and _____ (hereafter called "QF").

RECITALS

The QF has installed electric generating facilities, consisting of _____ (Description of facilities), rated at less than 40 kilowatts of electricity, on property located at _____.

The QF is prepared to generate electricity for use and for sale to the Utility.

The QF's electric generating facilities meet the requirements of the Minnesota Public Utilities Commission (hereafter called "Commission") rules on Cogeneration and Small Power Production and any standards the Utility has established under those rules.

The Utility is obligated under federal and Minnesota law to interconnect with the QF and to purchase electricity from the QF.

A contract between the QF and the Utility is required by the Commission's rules.

AGREEMENTS

The QF and the Utility agree:

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.

1. The Utility will sell electricity to the QF under the rate schedule in force for the class of customer to which the QF belongs.

2. The Utility will buy electricity from the QF under the current rate schedule filed with the Commission. A copy of the presently filed rate schedule is attached to this contract.

3. The rates for sales and purchases of electricity may change over the time this contract is in force, due to actions of the Utility or of the Commission, and the QF and the Utility agree that sales and purchases will be made under the rates in effect each month during the time this contract is in force.

4. The Utility will make these computations at the end of each billing period:

a. the Utility will deduct the purchases made from the QF from the sales made to the QF during that billing period and determine the difference;

b. the Utility will multiply the difference by the rate then in force;

c. if sales made to the QF exceed the purchases from the QF, the Utility will bill the QF the amount calculated in b. plus any fixed charges;

d. if purchases from the QF exceed the sales made to the QF, the Utility will pay the QF the amount calculated in b. minus any fixed charges by _____.
(Fill in either "by bill credit" or "by check within 15 days.")

5. The QF will operate his or her electric generating facilities within the rules, regulations, and policies of the Utility. A copy of those rules, regulations, and policies is attached to this contract.

6. The Utility's rules, regulations, and policies will follow the Commission's rules on Cogeneration and Small Power Production.

7. The Utility approves the QF's electric generating facilities as of the date of this contract.

8. The QF will operate his or her electric generating facilities so that they conform to all national, state, and local electric and safety codes, and will be responsible for all costs of conformance.

9. The QF will pay the Utility for all costs of interconnecting with the Utility's system. The QF and the Utility agree that the costs of interconnection are $ _____, and that the QF will pay the Utility in this way: _____
_____.

10. The QF will give the Utility reasonable access to his or her property and electric generating facilities if the configuration of those facilities does not permit disconnection or testing from the Utility's side of the interconnection. If the Utility enters the QF's property, the Utility will remain responsible for its personnel.

11. The Utility may stop providing electricity to the QF during a system emergency. The Utility will not discriminate among customers when it stops providing electricity or when it resumes providing electricity.

12. The Utility may stop purchasing electricity from the QF when necessary for the Utility to construct, install, maintain, repair, replace, remove, investigate, or inspect any equipment or facilities within its electric system. The Utility will notify the QF before it stops purchasing electricity in this way: _____
_____.

13. The Utility may stop purchasing electricity from the QF when extraordinary operating conditions make the cost of purchasing electricity from the QF more expensive than the costs of generating the electricity internally. The Utility will only exercise this right under the following circumstances:
_____
_____
_____. The Utility will notify the QF before it stops purchasing electricity in this way: _____
_____.

14. The QF will keep in force liability insurance against personal or property damage due to the installation, interconnection, and operation of his or her electric generating facilities. The amount of insurance coverage will be $ _____ (amount not greater than $300,000).

15. This contract becomes effective as soon as it is signed by the QF and the Utility. This contract will remain in force until either the QF or the Utility gives written notice to the other that the contract is canceled. This contract will be canceled 30 days after notice is given.

16. This contract is temporary, and will be replaced by a permanent contract after the Commission puts permanent rules on cogeneration and small power production into place. The permanent contract may differ in its terms and conditions.

17. This contract contains all the agreements made between the QF and the Utility. The QF and the Utility are not responsible for any agreements other than those stated in this contract.

THE QF AND THE UTILITY HAVE READ THIS CONTRACT AND AGREE TO BE BOUND BY ITS TERMS. AS EVIDENCE OF THEIR AGREEMENT, THEY HAVE EACH SIGNED THIS CONTRACT BELOW ON THE DATE WRITTEN AT THE BEGINNING OF THIS CONTRACT.

_____

QF

By: _____

_____

Minnesota Housing Finance Agency

Proposed Temporary Rules Governing Accessory Apartment Loans

Request for Public Comment

Notice is hereby given that the Minnesota Housing Finance Agency has proposed the following temporary rules for the purpose of establishing procedures for application for participation in and setting income limits for Accessory Apartment Loans, pursuant to subdivision 10 of chapter 462A.03 and subdivision 11 of chapter 462A.06 of Minnesota Statutes.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed rules for 20 days immediately following publication of this material in the *State Register* by writing to Mary Tingerthal, Director of Home Improvement Loan Programs, Minnesota Housing Finance Agency, Suite 200, 333 Sibley Street, St. Paul, Minnesota 55101. The temporary rules may be revised on the basis of comments received. Any written material received shall become part of the record in the final adoption of the temporary rule. As required by the Administrative Procedures Act, this temporary rule will be effective for not more than 180 days and may be continued in effect for up to an additional 180 days.

July 22, 1983

James J. Solem
Executive Director

Temporary Rules as Proposed (all new material)

Chapter Six C
Accessory Apartment Loans

12 MCAR § 3.058 [Temporary] Definitions.

A. Scope. For the purposes of this chapter, the following terms have the meanings given them.

B. Accessory apartment loan. "Accessory apartment loan" means a loan the proceeds of which are used to construct an additional dwelling unit within a structure, or to improve not more than two rental dwelling units located in a structure that was originally built as a single-family residence and that, at the time of the loan application, contains a total of not more than three dwelling units.

C. Borrower. "Borrower" means one or more persons who apply for and receive an accessory apartment loan and who are the makers of a note in evidence of the loan.

D. Dwelling unit. "Dwelling unit" means a housing unit that includes self-contained cooking, sleeping, and bathroom facilities, and is located in the structure. A dwelling unit may be occupied by either a tenant or the owner of the structure.

E. Rental dwelling unit. "Rental dwelling unit" means a dwelling unit that is occupied by a person or household other than the owner of the structure and for which rent in cash or in kind is received by the owner.

F. Structure. "Structure" means a building that was originally built as a single-family residence and that satisfies the eligibility requirements of 12 MCAR § 3.059 E. [Temporary].

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.

In the Matter of the Proposed Adoption of Rules of the Minnesota Public Utilities Commission Governing Cogeneration and Small Power Production
MPUC Docket No. G, E-999/R-83-376

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Karl W. Sonneman, 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. Any exceptions are noted below.

Karl W. Sonneman

KARL W. SONNEMAN
Special Assistant
Attorney General

Dated: October 20, 1983

CERTIFICATE OF BOARD'S

RESOLUTION ADOPTING RULES

I, Randall D. Young, do hereby certify that I am the Executive Secretary of the Minnesota Public Utilities Commission, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Public Utilities Commission, duly and properly called and held on the 19th day of October, 1983, that a quorum was present at said meeting, that a majority of those present voted for the resolution, and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that the temporary rules relating to Cogeneration and Small Power Production be and they hereby are approved and adopted, pursuant to authority vested in us by Minnesota Statutes § 216B.164 as amended in Minn. Laws 1983, Ch. 301, §§ 166-171 and that Randall D. Young, the Executive Secretary of the Minnesota Public Utilities Commission, be and hereby is authorized to sign an order adopting these rules and further is authorized to perform the necessary acts to provide that these rules shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 19th day of October, 1983.

Randall D. Young
Executive Secretary

Attest by one other Board member