

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1114

12/11 requested that F. Altman send Order Adopting

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 12-3-84
DATE FOR REVIEW
DATE DUE 12-17-84

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

Approved 12/17/84 (DS) Disapproved Returned to Agency

Resubmitted Due
Approved Disapproved Returned to Agency

Date filed w/Secretary of State 12-20-84 Revisor approved 12/4/84
disapproved

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 12.1.84 Date not submitted

N/A Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
2 Sufficiency period of effectiveness ?

✓ Affidavit of Mailing Notice or rulemaking
11.5.84 At least ~~30~~ 25 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate dated 2 days later than affidavit

✓ Publication in State Register
11.5.84 At least ~~30/20~~ 25 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

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules
creatively written

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

MINNESOTA
Department of Energy
and Economic Development

Financial Management Division
Energy Finance 297-1332
Business Finance 297-3547

900 American Center
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

December 3, 1984

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

Re: Proposed Emergency Rules Governing
Energy Financial Assistance

Dear Ms. Wehrwein:

Enclosed please find a complete set of documents for the above-entitled proposed emergency rules of the Department of Energy and Economic Development including the following:

1.) Rules as adopted
2.) Order for publication
3.) Copy of the emergency rules as proposed
4.) Mailing list certificate
5.) Affidavit of mailing
6.) Notice of intent to adopt emergency rules and request for public comment
7.) Order adopting emergency rules
8.) Certificate of Compliance with rulemaking procedures
9.) Findings of Fact and conclusions based on verbal comments received on rules

We have not had any requests for a hearing made during the twenty-five day period and we received no written comments on the rules. These rules are not adopted in response to a petition and no requests have been made to be notified of submission of the rules to the Attorney General.

We are on a very short time line for these rules because the Minnesota Energy and Economic Development Authority (the Authority) meets on December 26th to close on several pending projects. Naturally, we will not be able to finalize the transactions without your expeditious approval of our rules. I am available at 296-7457 to respond to any questions or comments. I would very much appreciate anything that can be done to process these rules as quickly as possible.

Your earliest response to these documents is appreciated. Christie B. Eller is also available at 296-9200 to answer any questions.

Sincerely,

Frank Altman
Assistant Commissioner, Energy Finance

FA:sm

attachments

To: Larry
Date: 12/11/84
Re: DEED - Energy Financial Assistance

Order Adopting

Not submitted. Agency has been requested to provide

Rules as Adopted

p. 5. line 9 — 4012, subp. 3 contains phrase "including but not limited to" without any criteria to indicate what else might be included

ok - "must . . . indicates" these are the minimum requirements. Business may submit more info.

*

p. 8 line 8 — 4013, subp. 2. (?) check stat. auth.

Not only is this sentence poorly written but it provides the agency with wide discretion limited by minimal criteria.

p. 11 line 23 — 4014, subp. 9. "constitutes" should read "constitute"

ok - typo.

*

p. 12, line 4 — The rule gives the agency authority to impose "any conditions or requirements the authority deems desirable" with no criteria to guide agency discretion.

? check stat. auth. existing language

p. 15 4021, subp. 6. E. ok. typo.
line 31 "borower" should be "borrower"

p. 18 4025, subp. 3.
line 13 "edibile" should be "eligible"

Approved 12/17/84 x
LTB

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Mark Dayton, Commissioner
Department of Energy & Economic Development

DATE: 12/20/84

ATTN: Christie Eller

FROM : Special Assistant Attorney General
Larry D. Starns LDS
Special Assistant Attorney General

PHONE: 297-3493

SUBJECT: In the Matter of the Proposed Adoption of Emergency Rules of the State of Minnesota Governing Energy Financial Assistance

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.

LDS:sz
Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

Department of Energy and Economic Development

Adopted Emergency Rules Governing Energy Financial Assistance

Emergency Rules as Adopted

8300.4010 [Emergency] SCOPE.

Parts 8300.4010 to 8300.4014 [Emergency] are general rules that apply to all applications for energy financial assistance made available by the authority under the act and under the energy loan program and the energy loan insurance program. Parts 8300.4020 to 8300.4038 [Emergency] specify procedures and criteria for energy financial assistance from particular programs of the authority.

8300.4011 [Emergency] DEFINITIONS.

Subpart 1. **Statutory terms.** The definitions in Minnesota Statutes, section 116J.88 and part 8300.0100 apply to parts 8300.4010 to 8300.4038 [Emergency].

Subp. 2. **Annual total benefits.** "Annual total benefits" means B_t in subpart 8 that accrue to the applicant plus the annual monetary value of outputs expected to result from the undertaking of a qualified energy project that accrue to the public at large. Outputs must be estimated in dollars based upon the most recent credible evidence available including scientific studies, economic studies, or other analyses. Outputs include the estimated value of new jobs produced; the monetary value of decreased levels of air, water, or other forms of pollution; or other avoided public costs.

Subp. 3. **Annual total costs.** "Annual total costs" means the annual repayments of interest plus principal for I in subpart 7 incurred by the applicant of the qualified energy project plus the annual incremental monetary costs incurred by the state through the use of appropriated money in any one or a combination of the funds administered by the authority, the economic recovery fund, or other appropriations made available to assist the qualified energy project by the legislature.

Subp. 4. **Avoided public costs.** "Avoided public costs" include the estimated dollar costs that could reasonably be expected to be incurred during the useful life of the qualified energy project by a unit of local, state, or federal government, if the project were not undertaken, but that will be avoided if the project is financed. Avoided public costs include the costs of siting, designing, or constructing facilities of any type necessary to comply with environmental regulations; or the costs associated with unemployment compensation, welfare benefits, or other benefits that would otherwise be paid to existing workers who would be unemployed if the qualified energy project were not undertaken.

Subp. 5. **Cost effective.** A qualified energy project is deemed to be cost effective if it meets any of the following criteria:

A. Internal net benefit criterion: The present value of the annual net cost savings or net revenues generated by the qualified energy project over its expected useful life is greater than the investment cost to the applicant.

B. Public net benefit criterion: The present value of the annual total benefits from the qualified energy project is greater than the present value of the annual total costs of the qualified energy project over its expected useful life.

Subp. 6. **Energy financial assistance.** "Energy financial assistance" means loans, loan guaranties or insurance, and any other use of funds from the energy development fund and the energy loan insurance fund as permitted by the act.

Subp. 7. **Investment cost.** "Investment cost" means: I = The total amount of the loan obtained by the applicant required by the qualified energy project to generate annual net cost savings or net revenues equal to B_t in subpart 8. "I" is the present value of annual repayments of the interest plus principal discounted at the rate r in subpart 8 over the term of the loan for I.

Subp. 8. **Present value.** "Present value" of the annual net cost savings or net revenues generated by the qualified energy

project means:

$$\sum_{t=1}^{L} \frac{B_t}{(1+r)^t}$$

where

B_t = Annual net cost savings or net revenues realized by the applicant for each year t of the expected useful life of the qualified energy project. This represents annual cost savings or annual revenues net of annual operating costs excluding annual interest plus principal payments for the investment cost of the qualified energy project.

L = Expected useful life of the qualified energy project.

r = Annual rate of interest charged to the applicant on the investment cost of the qualified energy project.

Subp. 9. **Project.** "Project" means that which is funded or secured or is proposed to be funded or secured by energy financial assistance.

8300.4012 [Emergency] PROCEDURES FOR ENERGY FINANCIAL ASSISTANCE APPLICATIONS.

Subpart 1. **In general.** To apply for energy financial assistance from the authority, an applicant shall submit an application form to the commissioner on a form provided by the commissioner. An application must be completed, dated, and signed by an owner, general partner, or an authorized officer of the applicant. The commissioner shall follow the procedures under part 8300.4014 [Emergency].

Subp. 2. **Contents.** An application must contain at a minimum the following information:

A. a written history of the business ~~entity~~;

B. the source and use of funds to finance the project;

C. financial statements that include a balance sheet, an operating statement, a statement of the sources and uses of funds, and footnotes to the statements if available for the following time periods:

(1) Financial statements from the previous three years, if applicable. If unaudited, the statements must be

signed by an authorized financial officer of the business making application.

(2) A current quarterly financial statement that was compiled within 90 days of the date the application was submitted, if quarterly financial statements are regularly prepared.

(3) Federal tax returns filed by the business for the previous three years if applicable, if the applicant is an individual or partnership.

(4) A proforma balance sheet and income statement for the 24 months following the energy financial assistance closing that shows the financial position of the applicant and that includes the proposed financing.

D. A marketing plan that describes:

(1) the industry the business entity is in;

(2) the industry outlook for the next three to five years; ~~and~~

(3) the major characteristics of the industry, names, locations, products or services provided~~,~~; <u>;</u>

<u>(4) the</u> duration and conditions of <u>the applicant's</u> contracts <u>currently</u> in ~~the plan,~~ <u>place;</u> and

<u>(5)</u> the percentage of annual sales volume for each major customer over the previous three years.

E. Current resumes of key personnel and signed personal financial statements dated as of the date of the application for any person who owns 20 percent or more interest in the business.

F. A resolution of support or other comparable preliminary approval from the local government unit.

G. A statement of informed consent by the individual subject regarding the use and dissemination of the private data as provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d). If the subject of the data is a corporation, then an authorized representative shall provide a statement of informed consent in a form similar to that provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d).

H. Certification that the employer does not discriminate in employment in a manner contrary to applicable federal or state laws and regulations.

I. Certification of business compliance with all federal, state, or local laws or regulations that affect the conduct of business in the state.

Subp. 3. **Business plan.** As part of the application, the applicant shall submit to the commissioner a comprehensive business plan. The business plan must include, but is not limited to, the following:

A. a management summary of the plan including:

(1) name of the business;

(2) business location and plan description;

(3) discussion of the product, market, and competition;

(4) expertise of management team;

(5) summary of financial projections;

(6) amount of energy financial assistance requested;

(7) form of and purpose for the financial assistance; and

(8) business goals; and

(9) purpose of undertaking the project;

B. a description of the company including the following:

(1) date and state of incorporation, date and state of formation of partnership, or date and state of formation of sole proprietorship;

(2) history of the company; and

(3) principals and the roles they played in the evolution of the company;

C. a market analysis including:

(1) description of the current industry status and industry trends;

(2) effects of major social, economic, technological, or regulatory trends on the industry;

(3) description of the total market, principal market participants, and their performance; and

(4) discussion of the target market and competition;

D. a description of the product or product line including:

(1) list of patents, copyrights, licenses, or statement of the proprietary interest in the product or product line;

(2) discussion of technical and legal considerations;

(3) comparisons to competitors' products or product lines; and

(4) description of research and development and future plans for research and development;

E. a description of the marketing strategy including:

(1) overall strategy;

(2) pricing policy;

(3) sales channels and terms;

(4) method of selling, distributing, and servicing product;

(5) estimated sales and market share; and

(6) advertising, public relations, and promotion;

F. the management plan including:

(1) form of business organization;

(2) board of directors composition, if applicable;

(3) officers organization chart and responsibilities; and

(4) resumes of key personnel;

G. an operating plan including:

(1) schedule of upcoming work for the next one to two years;

(2) facilities plan or planned capital improvements for the next three years;

(3) manufacturing processes; and

(4) staffing plan (number of employees);

H. a schedule indicating the completion dates for realizing the significant aspects of the business plan;

I. a discussion of the risks and problems inherent to the business plan, including both the negative factors and plans to minimize the impact of those factors; and

J. financial data including:

(1) a funding request indicating the desired financing, capitalization, use of funds, and future financing;

(2) financial statements for the past three years, if applicable;

(3) current financial statements;

(4) monthly cash flow financial projections including the proposed financing for two years; and

(5) projected balance sheets, income statement, and statement of changes in financial position for two years including the proposed financing.

8300.4013 [Emergency] COLLATERAL REQUIREMENTS AND ADDITIONAL INFORMATION OR CERTIFICATIONS.

Subpart 1. **Collateral requirements.** The authority shall require collateral in accordance with generally accepted commercial lending practices as it deems necessary to protect the interests of the authority in the energy financial assistance. At a minimum, the collateral will take one or more of the following forms:

A. mortgage on real property;

B. security position on personal property;

C. security of its energy financial assistance with assets being financed by the energy financial assistance and other assets of the company to protect the interests of the state's financial participation;

D. letter of credit or equivalent instrument;

E. guarantees <u>or other assurances of repayment</u> of affiliates of the applicant <u>or other interested parties with respect to the project</u>;

F. guarantees <u>or other assurances of repayment</u> of shareholders or partners who have 20 percent or more ownership

in the applicant; and

G. bond insurance or other credit enhancements; and

H. assignments of leases or rents on property or equipment.

Subp. 2. **Additional information or certifications.** The following additional information is required by the authority, if applicable, prior to disbursing energy financial assistance and other information that the authority in it sole discretion deems advisable for prudent financial management of authority energy financial assistance:

A. a lease agreement on property or equipment;

B. a listing of collateral, including serial numbers for machinery and equipment that will serve as collateral to the energy financial assistance;

C. certification of insurance for workers' compensation and employer's liability;

D. a statement provided by the Internal Revenue Service of tax clearance;

E. an appraisal of collateral offered to the authority for the energy financial assistance; and

F. a certificate of the insurers of all collateral that insurance is in force and effect. Prior to expiration of any insurance policy, the applicant shall furnish the commissioner with evidence that the policy has been renewed, replaced, or is no longer required.

8300.4014 [Emergency] PROCEDURES FOR APPLICATION PROCESSING.

Subpart 1. **Deadline for submission.** The applicant shall submit a complete application to the commissioner by the first business day of any month in order for the authority to consider it in that month. If an application is received after the first of the month and can be reviewed by the commissioner for eligibility and financial feasibility prior to the authority agenda deadline, the authority may consider the application at the meeting in that month.

Subp. 2. **Completed applications.** An application is complete when the commissioner receives all required

documentation and exhibits, together with the required fee, if applicable.

Subp. 3. **Incomplete applications.** If an incomplete application is received, the commissioner shall notify the applicant of specific deficiencies in the application. The applicant has 60 days from the date of mailing of the commissioner's notification to complete the application. If the application is not completed and received by the commissioner within 60 days, the application is deemed to be rejected and the applicant shall reapply to be further considered.

Subp. 4. **Review of eligibility of project and applicant.** The commissioner shall review all completed applications to determine if the project and the applicant are eligible and meet the requirements of the act and any of parts 8300.4010 to 8300.4014 [Emergency] and any parts relating to the energy financial assistance for which the applicant has applied.

If the project and applicant are eligible, the commissioner shall review the application for economic feasibility as provided in subpart 6.

Subp. 5. **Ineligible project or applicant.** The commissioner shall notify the applicant in writing if the applicant or the project is ineligible. The applicant has 30 days from the date of the commissioner's notification to amend the application.

Upon receipt of an amended application, the commissioner shall review the amended application under subpart 4. The commissioner shall reject the amended application if the project ~~and~~ or applicant are ineligible. If the project and applicant are eligible, the commissioner shall review the amended application for economic feasibility under subpart 6.

If the application is not amended within 30 days, the application must be rejected and will not receive any further consideration.

Subp. 6. **Economic feasibility review.** The commissioner shall review the application in accordance with generally accepted commercial lending practices, including the use of the

standards as printed in the most current annually updated version of the Annual Statement Studies, issued by Robert Morris Associates, Philadelphia, PA.

The commissioner shall obtain any other credit information when available from private credit rating agencies including, but not limited to, Standard & Poors and Dun & Bradstreet. In accordance with generally accepted commercial lending practices, the commissioner may check personal references.

The commissioner shall determine if the applicant can generate sufficient cash flow and maintain a sound financial condition.

The commissioner shall determine if there is sufficient collateral for the energy financial assistance.

Submission of the application by the commissioner to the authority at a board meeting is conclusive evidence that the commissioner has made the determinations required pursuant to this subpart.

Subp. 7. **Rejection of application based on economic feasibility.** The commissioner shall notify the applicant in writing if the application is not economically feasible and the application is rejected.

If the application is rejected due to economic feasibility, the applicant may, within 30 days after written notification by the commissioner, request that the commissioner submit the rejected application to the authority for review at the next regularly scheduled meeting of the authority for which the agenda has not been established.

If the authority approves the application at its board meeting, the application will be treated in accordance with subpart 8.

Subp. 8. **Authority evaluation procedure.** Applications approved for processing by the commissioner must be presented to the authority for approval or disapproval. If the authority disapproves the application, the commissioner shall so notify the applicant. If the authority approves the energy financial assistance, it shall pass a preliminary or a final resolution

giving approval to the project to be financed and stating in either the preliminary or final resolution or combination of both the name of the owner, a brief description of the project, the maximum amount of ~~the energy financial assistance~~ bonds to be issued or the maximum amount of the loan to be made or the maximum amount of the loan to be guaranteed or insured, whichever is applicable, and other provisions as the authority in its sole discretion deems advisable for prudent financial management of authority energy financial assistance. The commissioner shall notify the applicant of the authority's approval and provide the applicant with a copy of the resolution passed. If the energy ~~energy~~ financial assistance is funded by bonds, then passage of a preliminary and a final resolution as provided in subpart 9 are required before energy financial assistance is approved. Throughout this process if the authority does not extend energy financial assistance, the authority shall remain without liability to the applicant.

Subp. 9. **Funding of energy financial assistance by bonds.** If the authority intends to fund the energy financial assistance by issuing bonds, the authority shall first pass a preliminary resolution. The preliminary resolution ~~does~~ will not obligate the authority to issue bonds or to fund energy financial assistance, but will only ~~constitutes~~ constitute an expression of current intention of the authority to issue bonds or to fund the energy financial assistance. If the authority subsequently determines that there are no adverse changes in the ~~financial~~ conditions or key personnel of the applicant, market conditions, with availability of bond issuance authority, and other financial conditions that the authority deems necessary and the authority decides in accordance with generally accepted commercial lending practices to fund the financial assistance, the authority shall pass a final resolution that authorizes the issuance and sale of bonds to fund the energy financial assistance. The final resolution must specify the terms and conditions under which bonds will be issued. The preliminary resolution may contain a time limit with respect to the issuance

of the bonds, may be revoked or amended by the authority at any time prior to the final resolution of the authority without liability to the authority, and may impose any conditions or requirements that the authority deems desirable. The commissioner shall notify the applicant of the authority's approval and provide the applicant with a copy of the resolution passed. Throughout this process, if the authority does not extend energy financial assistance, the authority shall remain without liability to the applicant.

Subp. 10. **Preparation of documents.** The commissioner has the authority and responsibility to prepare or cause to be prepared all necessary documents and to execute them on behalf of the authority.

ENERGY DEVELOPMENT LOAN PROGRAM

8300.4020 [Emergency] PURPOSE.

The energy development loan program issues energy financial assistance in the form of energy loans funded by proceeds of the authority's revenue bonds that may be secured by a guarantee or insurance from the energy development fund or energy loans made directly with money in the energy development fund. Energy loans funded by the proceeds of the authority's revenue bonds must be made in accordance with parts 8300.4010 to 8300.4024 [Emergency]. Energy loans funded directly with money in the energy development fund must be made in accordance with parts 8300.4010 to 8300.4023 [Emergency] and part 8300.4025.

8300.4021 [Emergency] ELIGIBLE APPLICANTS FOR ENERGY DEVELOPMENT LOAN PROGRAM.

Any business as defined in the act is eligible to apply for an energy loan.

8300.4023 [Emergency] ELIGIBLE LOANS FOR ENERGY DEVELOPMENT LOAN PROGRAM.

Subpart 1. **In general.** The authority shall make energy loans to applicants in compliance with the act and parts 8300.0100 to 8300.0600 and 8300.4010 to 8300.4014 [Emergency].

Subp. 2. **Purpose of loan.** An energy loan must be used to

provide interim or long-term financing for certain capital expenditures as provided in the act, and for expenditures that meet the rquirements of federal industrial development bond laws where applicable, including:

A. acquisition costs of land, buildings, or both;

B. site preparation;

C. construction costs;

D. engineering costs;

E. costs of equipment, machinery, or both;

F. bond issuance costs;

G. underwriting or placement fees;

H. trustee's fees;

I. fee of guarantor, insurer, or financial institution, other than the authority, who provides letters of credit, surety bonds, or equivalent security;

J. authority fees, including application and guaranty fees of the authority and administrative costs and expenses;

K. certain contingency costs;

L. interest costs during construction;

M. legal fees, including those of the authority's bond counsel; and

N. debt service reserve fund.

Working capital loans are not eligible for energy financial assistance under the energy development loan program. However, energy loans for certain finished equipment inventory that constitute qualified energy projects that are funded out of the energy development fund or the proceeds of revenue bonds issued by the authority to the extent permitted under federal tax law are permitted.

Subp. 3. **Equity requirements.** The maximum loan percentage of authorized project cost is 80 percent for equipment and 90 percent for other authorized costs. Instead of an equity contribution, the authority shall accept adequate security, collateral, or guarantees sufficient to insure the repayment of the financial assistance. The authority may accept letters of credit or other credit enhancements as part of the equity

contribution by the applicant.

Subp. 4. **Maximum term.** The maximum term of an energy loan may not exceed the average useful life of the real property, or 80 percent of the useful life of equipment or machinery or ~~21~~ 31 years, whichever is less.

Subp. 5. **Security requirements.** Energy financial assistance, either for real property or equipment, must be secured ~~as follows~~ with the best available security, including one or more of the following:

A. a mortgage or other adequate security as determined by the authority on the real property to be financed;

B. a lien or other adequate security as determined by the authority on equipment to be financed by the authority;

C. other security as determined by the commissioner to have a value at least equal to the principal amount to be financed by the authority less the value, as determined by the authority, of the security provided in items A and B, ~~which~~ if any. The other security shall be in the form and kind satisfactory to the authority and may consist of some or all of the following:

(1) a senior, junior, or parity lien on other assets of the applicant; or

(2) a senior, junior, or parity lien on assets of certain owners, officers, and affiliated persons of the applicant (including sole proprietors and their spouses, partners and their spouses, and major shareholders of corporate officers and their spouses); or

~~B.~~ (3) a guarantee of owners, officers, and affiliated persons of the applicant (including sole proprietors and their spouses, partners and their spouses, and major shareholders of corporate officers and their spouses), or other related entities such as subsidiaries or parent corporations of the applicant; or

~~E.~~ (4) additional forms of security, if necessary to strengthen the authority's collateral position on the financial assistance; and

F. D. in addition to or in substitution for any of the items A to E C, any guarantee or any other form of collateral or security as required by either insurers or other providers of collateral or security of the bonds, other than the authority or as required by the authority in accordance with generally accepted lending practices.

Subp. 6. **Findings of public purpose.** The authority shall review and consider approval of an application for an energy loan on the basis of effectuating the purposes of the act, including determinations regarding the following:

A. that the project will be economically feasible in that the borrower reasonably can be expected to maintain a sound financial condition and to retire the principal and pay the interest on the loan anticipated to be made, in accordance with the terms of the loan agreement;

B. ~~that~~ with respect to a resource recovery project the project will be cost-effectve in accordance with part 8300.4011 [Emergency], subpart 5;

C. that the qualified energy project and its development is economically advantageous to the state, that the provision to meet increased demand upon public facilities as a result of the qualified energy project is reasonably assured and any feedstock availability, resource base, or energy sources necessary to support the successful operation of the qualified energy project is adequate;

D. that the qualified energy project will tend to facilitate a reliable supply of energy to Minnesota's households, business establishments, or municipalities, tend to diminish Minnesota's dependence on imported energy sources, or serve some other energy related public purpose;

E. that the borrower is a business under the act;

F. that the qualified energy project satisfies the priorities and criteria of the act;

G. that other things being equal in the event that there are more otherwise eligible applications submitted to the authority than there is funding available to assist, the energy

loan allows greater leverage of the energy development fund than other competing applications.

8300.4024 [Emergency] ENERGY LOANS FUNDED BY BONDS.

Subpart 1. **In general.** If the authority intends to fund an energy loan by issuing revenue bonds, it must do so in conformance with part 8300.4014 [Emergency], subpart 9 and this part. The income from bonds issued by the authority for energy loans will be subject to taxation by the federal government or exempt from taxation by the federal government. If the income from the bonds is to be subject to taxation by the federal government, the preliminary resolution must acknowledge that the bonds will be subject to applicable federal taxes.

Subp. 2. **Interest rate.** The authority shall set interest rates at a negotiated rate that approximates the market rate of interest for securities of equivalent value at the time the bonds are initially sold.

Subp. 3. **Debt service reserve fund.** In conjunction with each amount of financial assistance it extends, the authority shall establish and fund a debt service reserve fund sufficient to cover approximately 12 month's debt service or such lesser amount to insure tax exempt status of interest on the bonds if the bonds are intended to be tax exempt. The reserve must be funded through the proceeds of the bonds to be issued and sold in conjunction with each particular amount of financial assistance extended. The interest earned on the debt service reserve fund must accrue to the benefit of the applicant except to the extent necessary to insure tax exempt status of interest on bonds if the bonds are intended to be tax exempt. This amount must be applied to offset the principal and interest payments on an annual basis or to redeem bonds prior to maturity provided that the financial assistance is current. Instead of a debt service reserve fund the authority shall accept other adequate security or guarantees to ensure repayment of the bonds in accordance with generally accepted commercial lending practices.

Subp. 4. **Final resolution.** After the authority passes a

preliminary resolution, it may pass a final resolution that authorizes the issuance and sale of bonds to fund the financial assistance to the applicant, as discussed in part 8300.4014 [Emergency], subpart 9. The final resolution for an application under the program depends, in part, upon a determination that there are no adverse changes in the financial condition or key personnel of the applicant, market conditions, availability of bond issuance authority, if applicable, and other ~~financial~~ conditions in accordance with generally accepted commercial lending practices that the authority deems necessary.

Upon passage of the final resolution, the authority shall commence to issue bonds in accordance with market conditions and the other legal conditions that govern the issuance of its bonds and notes. This issuance must be in accordance with the contents of any insurance contracts, agreements with lenders providing letters of credit, or other forms of financial assistance and other terms and conditions necessary to effectuate a bond sale. Funds will not be disbursed at the loan closing until it has been determined that there are no adverse changes in the ~~financial~~ condition in accordance with generally accepted commercial lending practices or key personnel of the business entity applying for the financial assistance. After the bonds are issued and sold, there will be a loan closing where the funds are transferred and documents are signed in accordance with the terms of the final resolution and the respective documents.

8300.4025 [Emergency] ENERGY LOANS FUNDED DIRECTLY FROM MONEY IN THE ENERGY DEVELOPMENT FUND.

Subpart 1. **In general.** The authority may make energy loans funded directly from money in the energy development fund only after it has made the following determinations:

A. that the qualified energy project achieves the public purposes listed in part 8300.4023 [Emergency], subpart 6;

B. that no other sources of financing including bonds issued by the authority are available to the project in sufficient quantities or at interest rates which will not render

the project economically infeasible; and

C. that a direct loan provides the best available leverage of money in the energy development loan fund.

Subp 2. **Maximum loan amount.** The principal amount of energy loans made directly with money in the energy development fund must not exceed $500,000.

Subp 3. **Leverage of other money.** The maximum percentage of authorized project costs which may be financed by an energy loan made directly with money in the energy development loan fund is 70 percent for equipment and 80 percent for other authorized costs as listed in part 8300.4023 [Emergency], subpart 2. The percentage of authorized project cost not eligible to be financed by the authority must be financed by one or a combination of the following other sources of funds:

A. equity in the form of cash, land, or other tangible or real property provided by the owner or investors in the project;

B. loans, letters of credit, or other sources of debt financing or insurance provided by financial institutions; or

C. grants of money, land, or other property loans from a unit of government where such grant or loan comprises no more than 50 percent of that portion of the total project cost not eligible to be financed with the energy loan.

Subp. 4. **Interest rates.** The interest rate of the energy loans funded directly from the energy development fund must not exceed the interest rate for a full-faith-and-credit obligation of the United States government of comparable maturity, nor be lower than five percent per annum, nor be lower than the percentage rate necessary to establish a debt service coverage ratio of 1.3 to 1, whichever of the latter two conditions is greater.

Subp. 5. **Servicing of direct energy loans.** The commissioner shall establish an amortization schedule and shall monitor the repayment of the principal and interest as set out in the amortization schedule. The commissioner shall monitor the terms and conditions of the contract for the energy

financial assistance.

The commissioner may restructure the energy financial assistance at the request of the applicant or upon his or her own initiative if the commissioner determines that restructuring the energy financial assistance will increase the probability that the energy financial assistance will be repaid to the state.

If the applicant requests the commissioner to restructure the energy financial assistance, the commissioner shall charge the applicant a fee in the amount of one-half percent on the outstanding principal amount of the energy financial assistance.

ENERGY LOAN INSURANCE PROGRAM

8300.4030 [Emergency] SCOPE.

Parts 8300.0100 to 8300.0600; and 8300.4030 to 8300.4038 [Emergency] apply to applications for energy financial assistance from the energy loan insurance fund made available by the authority under Minnesota Statutes, section 116J.924. Unless otherwise specified, parts 8300.4010 to 8300.4014 [Emergency] do not apply to energy financial assistance provided by the authority under parts 8300.4030 to 8300.4038 [Emergency].

8300.4031 [Emergency] DEFINITIONS.

Subpart 1. **Statutory terms.** The definitions in Minnesota Statutes, section 116J.88, and parts 8300.0100 and 8300.4011 [Emergency] apply to parts 8300.4030 to 8300.4038 [Emergency].

Subp. 2. **Borrower.** "Borrower" means a business that submits or has submitted an application for an energy loan to a financial institution for a qualified energy project.

Subp. 3. **Claim.** "Claim" means a claim for reimbursement to the authority by a participating lender.

Subp. 4. **Default.** "Default" means the failure of the borrower to make a scheduled payment of principal and interest within 60 days of the date it is due <u>or the breach by the borrower for more than 60 days after mailing of written notice of breach to the borrower by the lender of any material covenant in the note, loan agreement, or in any instrument securing the loan which the lender determines constitutes an adverse change</u>

in the borrower's ability to repay the insured energy loan.

Subp. 5. **Energy loan insurance.** "Energy loan insurance" means the direct insuring by the authority of an energy loan made by a financial institution under Minnesota Statutes, section 116J.924.

Subp. 6. **Lender.** "Lender" means either a participating lender or a financial institution that intends to submit an application to the authority to be a participating lender. For purposes of parts 8300.4031 to 8300.4038 [Emergency], lender is not restricted to financial institutions participating in a loans-to-lenders program.

Subp. 7. **Participating lender.** "Participating lender" means a financial institution that has been designated by the authority to participate in the energy loan insurance program.

Subp. 8. **Participating lender's agreement.** "Participating lenders agreement" means the agreement in the form prescribed by the commissioner under which a financial institution is designated as a participating lender.

8300.4032 [Emergency] APPLICATIONS FOR ENERGY LOANS SUBMITTED TO FINANCIAL INSTITUTIONS.

Subpart 1. **Contents of energy loan applications.** To apply for an energy loan under the energy loan insurance program, a borrower shall submit an application for an energy loan to a participating lender or a financial institution that intends to submit an application to the authority to be participating lender on a form prescribed by the commissioner. An energy loan application must be completed, dated, and signed by an owner, general partner, or an authorized officer of the borrower. The energy loan application must contain the information required under part 8300.4012 [Emergency], subparts 2 and 3.

Subp. 2. **Review by financial institution.** The lender to which the application from the borrower is submitted shall review each application submitted to it to determine whether or not the lender will make an insured energy loan to the borrower for the purposes specified in the application. If the lender rejects the application, it must notify both the borrower and

the commissioner in writing regarding its decision. If it decides to make an insured loan subject to the the availability of energy loan insurance, the lender shall apply to the authority for insurance on a form provided by the commissioner

Subp. 3. **Fee.** Lenders may require borrowers to pay application fees, orignation fees, or commitment fees, only if these fees are normally required of the financial institution's other customers, and only if these fees do not exceed the usual and customary charges by the financial institution for similar loans to other borrowers. Any fees charged must be reported to the commissioner.

8300.4033 [Emergency] SUBMISSION OF APPLICATIONS FOR ENERGY LOAN INSURANCE.

Subpart 1. **Contents of applications by lenders for energy loan insurance.** Applications for energy loan insurance must be submitted by a lender to the commissioner on forms prescribed by the commissioner that must include the name of the lender, the name of the borrower, the principal amount of the energy loan to be insured, the amount and percentage of the insurance requested, the term of the loan, the interest rate, an amortization schedule, and other terms and conditions established by the lender pursuant to generally accepted commercial lending practices. A lender's application must be completed, dated, and signed by a duly authorized officer of the financial institution seeking the insurance. The completed lender's application must be accompanied by the following additional information:

A. a copy of the entire energy loan application submitted by the borrower to the lender;

B. a certification and supporting documentation that the lender has determined that the project is economically feasible in accordance with generally accepted commercial lending practices, including the use of the standards as printed in the most current annually updated version of the Annual Statment Studies, issued by Robert Morris Associates, Philadelphia, PA;

C. a signed letter of conditional commitment from the lender to make the energy loan subject to obtaining an energy loan insurance commitment from the authority;

D. a statement of the need for energy loan insurance which specifies reasons why the lender will not make the loan without energy loan insurance;

E. an appraisal of the value of the collateral for the loan including land, buildings, machinery, equipment, furniture, fixtures, inventory, accounts receivable, and other applicable collateral under part 8300.4013 [Emergency];

F. a statement of informed consent signed by a duly authorized officer of the financial institution regarding the use and dissemination of the private data as provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d).

G. a participating lender's agreement on a form prescribed by the commissioner in accordance with part 8300.4034 [Emergency] and executed by a duly authorized officer of the financial institution if the financial institution has not been previously designated a participating lender by the authority.

Subp. 2. **Review by commissioner.** Upon receipt of the lender's application for insurance and a signed participating lender's agreement, the commissioner shall review the application in accordance with the procedures set forth in part 8300.4014 [Emergency], subparts 1 to 6. The commissioner shall also review the financial institution's applications and required supporting information to determine if the qualified energy project is economically feasible, technically feasible, and cost-effective.

Subp. 3. **Rejection of application.** If the lender's application for insurance is incomplete, the commissioner shall notify the financial institution and the borrower in writing according to part 8300.4014 [Emergency], subpart 3. If either the borrower or the financial institution applying for insurance is ineligible for any reason, the commissioner shall follow the procedures in part 8300.4014 [Emergency]. If the commissioner determines that the qualified energy project proposed in the

application for an energy loan is either technically or economically infeasible, the commissioner shall notify both the borrower and the financial institution in writing of the commissioner's decision to reject the application. If the application is rejected, the borrower or the financial institution may, within 30 days after written notification by the commissioner, ~~requires~~ request that the commissioner submits the rejected application to the authority for review at the next regularly scheduled meeting of the authority for which the agenda has not been established.

If so submitted, the authority ~~approves~~ shall evaluate the application at its board meeting~~,-the-application-will-be treated~~ in accordance with part 8300.4014 [Emergency], subpart 4.

Subp. 4. **Authority evaluation procedure.** Applications approved for processing by the commissioner must be presented to the authority for approval or disapproval. The authority shall review and consider approval of the application on the basis of effectuating the purposes of the act, including determinations regarding the following:

A. that the project will be economically feasible in that the borrower can be reasonably expected to maintain a sound financial condition and to retire the principal and pay the interest on the loan made, in accordance with the terms of the loan agreement;

B. the project will be cost-effective in accordance with part 8300.4011 [Emergency], subpart 3;

C. that the qualified energy project and its development is economically advantageous to the state, that the provision to meet increased demand upon public facilities as a result of the qualified energy project is reasonably assured and any feedstock availability, resource base or energy sources necessary to support the successful operation of the qualified energy project is adequate;

D. that the qualified energy project will tend to facilitate a reliable supply of energy to Minnesota's households, business establishments ~~of~~, or municipalities, tend

to diminish Minnesota's dependence on imported energy sources, or serve some other energy related public purpose;

E. that the borrower is a business under the act;

F. that the qualified energy project satisfies the priorities and criteria of the act;

G. that other things being equal in the event that there are more otherwise eligible applications submitted to the authority than there is funding available to assist, the energy loan allows greater leverage of the energy development fund than other competing applications.

If the authority disapproves the application, the commissioner shall so notify the borrower and financial institution. If the authority approves the energy loan insurance, it shall pass a resolution giving approval to the project to be financed and stating the name of the financial institution, the name of the borrower, a brief description of the project, the maximum amount of the financial assistance, and other provisions as the authority in its sole discretion deems advisable for prudent financial management of authority energy loan insurance. The commissioner shall notify the borrower and financial institution of the authority's approval and provide the financial institution with a copy of the resolution passed.

Subp. 5. **Preparation of documents.** The commissioner has the authority and responsibility to prepare or cause to be prepared all necessary documents and to execute them on behalf of the authority.

8300.4034 [Emergency] PARTICIPATING LENDERS.

Subpart 1. **Eligibility.** In order to be eligible to receive energy financial assistance in the form of energy loan insurance from the energy loan insurance fund, a duly authorized officer of the financial institution seeking the assistance in conjunction with an energy loan must first sign a participating lender's agreement on the form prescribed by the commissioner that sets forth the terms and conditions under which an energy loan is to be made and specifies procedures to be followed in the case of a default by the borrower. The participating

lender's agreement must require the financial institution seeking designation as a participating lender, and the authority to conform to the following conditions:

A. The insured portion of any energy loans insured by the authority shall not exceed ~~$2.5 million~~ $2,500,000 and the maximum term of any energy loan shall not exceed the average useful life of the improvement or 21 years, whichever is less.

B. The authority shall insure no more than 90 percent of any loan.

C. The financial institution shall make no provision to accelerate loan payments due to default or any other reason, without prior written approval from the commissioner.

D. The financial institution shall make no provision to subordinate any loan security to other liens against such property, without prior written approval from the commissioner.

E. The financial institution shall not acquire any preferential security, surety, or insurance to protect its uninsured interest in a loan.

F. Security must be obtained for the full amount of the loan and must be prorated between the financial institution and the authority~~;~~.

G. The financial institution shall require the borrower to adequately insure, maintain, and repair all parts of the qualified energy project for the purpose of protecting the security interests of the financial institution and the authority.

H. The authority shall not be liable for delinquency charges or late fees, assessed against the borrower by the financial institution.

I. The financial institution shall review and approve loans for qualified energy projects in accordance with generally accepted commercial lending practices.

J. The financial institution shall be responsible for servicing all loans it makes for qualified energy projects, either directly or by contracting with a servicing agent.

K. The financial institution shall not sell or

transfer any loan insured by the authority, without prior written approval from the commissioner.

L. The financial institution shall, for the term of the loan insured by the authority, notify the commissioner of all principal and interest payments that are at least one week overdue. In addition, the financial institution shall make written reports to the commissioner on forms provided by the commissioner on the performance of the loans. These reports must be made on a schedule determined by the commissioner but not less than annually.

M. The aggregate principal amount of loans insured by the authority may not at any time exceed an amount equal to the current reserves in the insurance fund multiplied by ten.

N. The authority shall not insure any loan that carries an interest rate of more than three points above the lender's prime interest rate for variable rate loans or ~~two~~ more than three points above the interest rate of a full-faith-and-credit obligation of the United Stattes government of comparable maturity for a fixed-rate term loan.

In the event that the lender fails to comply in good faith with the provisions of the participating lenders agreement and the lender's failure causes substantial harm to the authority, the authority may withdraw its insurance on the affected loans, remove the lender from the program without refunding any fees paid by the lender, or do both.

P. The lender agrees not to make any amendments to the loan agreement after loan closing without the prior written approval of the authority.

Q. The lender agrees to make no waivers of default without prior written approval of the authority.

R. The authority shall not insure energy loans made by the lender prior to the execution of the "Participating Lender Agreement," and the lender shall not unconditionally commit to make an insured loan nor disburse funds for an insured loan under this program without prior approval from the authority.

Subp. 2. **Designation of participating lender.** To designate a financial institution as a participating lender, the authority must pass a resolution designating the financial institution as a participating lender and authorizing the commissioner on behalf of the authority to execute the participating lender's agreement which has been executed by a duly authorized officer of the financial institution.

8300.4035 [Emergency] PROCEDURES UPON DEFAULT.

The authority and participating lenders shall follow the following procedures in the event of a default:

A. In the event of a default by the borrower on the insured loan, the participating lender shall file with the commissioner, on ~~form~~ forms supplied by the commissioner, all claims for occurred losses within one year of the date of default.

B. The authority is liable for not more than the agreed percentage of the sum of the unpaid principal and the accrued interest to the date the claim is filed.

C. In the event of default and claims by the participating lender arising from such default, the participating lender shall pursue in good faith all legal rights it may have against the borrower.

D. In the event of a default by the borrower, the authority may cure the default by making payment due to the participating lender within 30 days of the date of the default. Any payment made by the authority to cure a default by a borrower must be repaid by the borrower or deducted from any claims submitted by the participating lender in connection with a default by the borrower for whom the payment was made by the authority.

E. If the borrower or the authority does not cure the default within 60 days, then the loan must be accelerated.

F. Upon nonpayment of the accelerated loan, the participating lender may file a claim with the authority. The security must then be liquidated by the participating lender.

G. The authority shall receive a prorated share of

all liquidation proceeds. Upon receipt, the authority shall pay the claim of the participating lender.

8300.4036 [Emergency] APPLICATION AND CLAIM FORMS.

The commissioner must prepare application forms necessary for the administration of the energy loan insurance program. The commissioner must prescribe uniform energy loan insurance claim forms for use by participating lenders.

8300.4037 [Emergency] PRIOR COMMITMENT.

The authority may resolve to insure a loan prior to its execution or disbursement, if there is a firm commitment by the participating lender to make the loan upon the authority's resolution to insure the loan. If the participating lender fails to enter into a loan agreement with the borrower within 90 days of the authority's resolution, the authority shall reaffirm the resolution for an additional 90-day period if there has been no adverse change in the financial condition of the borrower or the financial institution.

8300.4038 [Emergency] REPORTS.

During the term of a loan insured by the authority, the borrower shall make written reports to the commissioner on forms approved by the commissioner regarding the acquisition, construction, installation, and operation of the qualified energy project on a schedule determined by the commissioner, but not less than annually.

The participating lender shall report to the commissioner any fees charged to the borrower for the energy loans within 30 days of the date on which the energy loan was closed.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC 19 1984
Secretary of State

STATE OF MINNESOTA
DEPARTMENT OF STATE
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DEC 20 1984
Joan Anderson Growe
Secretary of State
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APPROVED AS TO LEGALITY
December 17, 1984
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

ordinary course of posting and are reimbursed during the same or following business day. Overdrafts originating and disposed of in this manner shall not be construed as being in violation of Minnesota Statutes, section 48.08.

2675.2420 ~~INSURANCE COMMISSION~~ OTHER BUSINESS; EXPENSE REIMBURSEMENT AGREEMENTS.

If an officer of a bank is acting as an insurance agent ~~and such~~, acting to effect transactions in securities or the business of an insurance agency or securities broker-dealer not owned by the bank is being conducted on the banking premises, there must be an arrangement as to allocating overhead expenses or as to distribution of net earnings and ~~to~~ be included in an appropriate board resolution. The allocations may include the credit insurance income required to be turned over to the bank pursuant to Minnesota Statutes, section 47.016, or commissions.

2675.2500 DISPLAY AND REPLACEMENT COPIES.

Every bank shall display its bank charter in a prominent place in the lobby. In case of destruction or misplacement of the charter, the ~~Division of Banking~~ commissioner will supply a duplicate, upon application, ~~without~~ at the cost set out in Minnesota Statutes, section 46.131, subdivision 10.

REPEALER. Minnesota Rules, parts 2675.0700; 2675.0800; 2675.0900; 2675.0910; 2675.0920; 2675.0930; 2675.0940; 2675.0950; 2675.1160; 2675.2010; 2675.2020; 2675.2030; 2675.2060; 2675.2070; 2675.2080; 2675.2090; 2675.2120; 2675.2150; 2675.2160; 2675.2190; 2675.2200, subparts 2 and 3; 2675.2230; 2675.2290; and 2675.2410 are repealed.

Department of Energy and Economic Development

Proposed Emergency Rules Governing Energy Financial Assistance

Notice of Intent to Adopt Emergency Rules and Request for Public Comment

Notice is hereby given that the Minnesota Department of Energy and Economic Development is proposing to adopt emergency rules for the Energy Loan Insurance Program and the Energy Development Loan Program. The agency is authorized by Minnesota Statutes 116J.91 Subdivision 8 (1983 Supp) and 116J.91 Subdivision 4 (1983 Supp as amended Minnesota Laws 1984 Chapter 583 Section 17) to adopt emergency rules for the Energy Loan Insurance Program and the Energy Development Loan Program.

All interested parties have 25 days from the day of publication of this notice in the *State Register* to submit written comments to the agency on the proposed emergency rules. With publication of this notice in the November 5, 1984 *State Register*, written comments must be received by the agency no later than 4:30 p.m. on November 30, 1984. Written comments should be sent to:

Kathryn Hahne
Energy Finance Division
Department of Energy & Economic Development
900 American Center Building
150 East Kellogg Blvd.
St. Paul, Minnesota 55101
Telephone: (612) 297-1391

Please be advised that the proposed emergency rules may be modified as a result of the comments received. Any written material received by the agency will become part of the record in this matter.

The proposed emergency rules with any modifications adopted by the agency, will be submitted to the Attorney General for review as to form and legality after close of the comment period. Persons wishing to be informed of the date of submission of the proposed emergency rules to the Attorney General should notify the agency of such desire at the address given above. The Attorney General has ten working days to approve or disapprove the rules.

The emergency rules will be effective five working days following approval of the rules by the Attorney General. It is the agency's intent to keep the rules in effect for a period of 180 days upon publication of a separate notice to such effect.

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.

A full copy of the proposed emergency rules is available by contacting Ms. Hahne at the above address.

November 5, 1984

Mark B. Dayton, Commissioner
Department of Energy and Economic Development

Emergency Rules as Proposed (all new material)

8300.4010 [Emergency] SCOPE.

Parts 8300.4010 to 8300.4014 [Emergency] are general rules that apply to all applications for energy financial assistance made available by the authority under the act and under the energy loan program and the energy loan insurance program. Parts 8300.4020 to 8300.4038 [Emergency] specify procedures and criteria for energy financial assistance from particular programs of the authority.

8300.4011 [Emergency] DEFINITIONS.

Subpart 1. Statutory terms. The definitions in Minnesota Statutes, section 116J.88 and part 8300.0100 apply to parts 8300.4010 to 8300.4038 [Emergency].

Subp. 2. Annual total benefits. "Annual total benefits" means B_t in subpart 8 that accrue to the applicant plus the annual monetary value of outputs expected to result from the undertaking of a qualified energy project that accrue to the public at large. Outputs must be estimated in dollars based upon the most recent credible evidence available including scientific studies, economic studies, or other analyses. Outputs include the estimated value of new jobs produced; the monetary value of decreased levels of air, water, or other forms of pollution; or other avoided public costs.

Subp. 3. Annual total costs. "Annual total costs" means the annual repayments of interest plus principal for I in subpart 7 incurred by the applicant of the qualified energy project plus the annual incremental monetary costs incurred by the state through the use of appropriated money in any one or a combination of the funds administered by the authority, the economic recovery fund, or other appropriations made available to assist the qualified energy project by the legislature.

Subp. 4. Avoided public costs. "Avoided public costs" include the estimated dollar costs that could reasonably be expected to be incurred during the useful life of the qualified energy project by a unit of local, state, or federal government; if the project were not undertaken, but that will be avoided if the project is financed. Avoided public costs include the costs of siting, designing, or constructing facilities of any type necessary to comply with environmental regulations; or the costs associated with unemployment compensation, welfare benefits, or other benefits that would otherwise be paid to existing workers who would be unemployed if the qualified energy project were not undertaken.

Subp. 5. Cost effective. A qualified energy project is deemed to be cost effective if it meets any of the following criteria:

A. Internal net benefit criterion: The present value of the annual net cost savings or net revenues generated by the qualified energy project over its expected useful life is greater than the investment cost to the applicant.

B. Public net benefit criterion: The present value of the annual total benefits from the qualified energy project is greater than the present value of the annual total costs of the qualified energy project over its expected useful life.

Subp. 6. Energy financial assistance. "Energy financial assistance" means loans, loan guaranties or insurance, and any other use of funds from the energy development fund and the energy loan insurance fund as permitted by the act.

Subp. 7. Investment cost. "Investment cost" means: I = The total amount of the loan obtained by the applicant required by the qualified energy project to generate annual net cost savings or net revenues equal to B_t in subpart 8. "I" is the present value of annual repayments of the interest plus principal discounted at the rate r in subpart 8 over the term of the loan for I.

Subp. 8. Present value. "Present value" of the annual net cost savings or net revenues generated by the qualified energy project means:

$$\sum_{t=1}^{L} \frac{B_t}{(1+r)^t}$$

where

B_t = Annual net cost savings or net revenues realized by the applicant for each year t of the expected useful life of the qualified energy project. This represents annual cost savings or annual revenues net of annual operating costs excluding annual interest plus principal payments for the investment cost of the qualified energy project.

L = Expected useful life of the qualified energy project.

r = Annual rate of interest charged to the applicant on the investment cost of the qualified energy project.

Subp. 9. Project. "Project" means that which is funded or is proposed to be funded by energy financial assistance.

8300.4012 [Emergency] PROCEDURES FOR ENERGY FINANCIAL ASSISTANCE APPLICATIONS.

Subpart 1. In general. To apply for energy financial assistance from the authority, an applicant shall submit an application form to the commissioner on a form provided by the commissioner. An application must be completed, dated, and signed by an owner, general partner, or an authorized officer of the applicant. The commissioner shall follow the procedures under part 8300.4014 [Emergency].

Subp. 2. Contents. An application must contain at a minimum the following information:

A. a written history of the business entity;

B. the source and use of funds to finance the project;

C. financial statements that include a balance sheet, an operating statement, a statement of the sources and uses of funds, and footnotes to the statements if available for the following time periods:

(1) Financial statements from the previous three years, if applicable. If unaudited, the statements must be signed by an authorized financial officer of the business making application.

(2) A current quarterly financial statement that was compiled within 90 days of the date the application was submitted, if quarterly financial statements are regularly prepared.

(3) Federal tax returns filed by the business for the previous three years if applicable, if the applicant is an individual or partnership.

(4) A proforma balance sheet and income statement for the 24 months following the energy financial assistance closing that shows the financial position of the applicant and that includes the proposed financing.

D. A marketing plan that describes:

(1) the industry the business entity is in;

(2) the industry outlook for the next three to five years; and

(3) the major characteristics of the industry, names, locations, products or services provided, duration and conditions of contracts in the plan, and the percentage of annual sales volume for each major customer over the previous three years.

E. Current resumes of key personnel and signed personal financial statements dated as of the date of the application for any person who owns 20 percent or more interest in the business.

F. A resolution of support or other comparable preliminary approval from the local government unit.

G. A statement of informed consent by the individual subject regarding the use and dissemination of the private data as provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d). If the subject of the data is a corporation, then an authorized representative shall provide a statement of informed consent in a form similar to that provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d).

H. Certification that the employer does not discriminate in employment.

I. Certification of business compliance with all federal, state, or local laws or regulations that affect the conduct of business in the state.

Subp. 3. Business plan. As part of the application, the applicant shall submit to the commissioner a comprehensive business plan. The business plan must include, but is not limited to, the following:

A. a management summary of the plan including:

(1) name of the business;

(2) business location and plan description;

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.

(3) discussion of the product, market, and competition;

(4) expertise of management team;

(5) summary of financial projections;

(6) amount of energy financial assistance requested;

(7) form of and purpose for the financial assistance; and

(8) business goals;

B. a description of the company including the following:

(1) date and state of incorporation, date and state of formation of partnership, or date and state of formation of sole proprietorship;

(2) history of the company; and

(3) principals and the roles they played in the evolution of the company;

C. a market analysis including:

(1) description of the current industry status and industry trends;

(2) effects of major social, economic, technological, or regulatory trends on the industry;

(3) description of the total market, principal market participants, and their performance; and

(4) discussion of the target market and competition;

D. a description of the product or product line including:

(1) list of patents, copyrights, licenses, or statement of the proprietary interest in the product or product line;

(2) discussion of technical and legal considerations;

(3) comparisons to competitors' products or product lines; and

(4) description of research and development and future plans for research and development;

E. a description of the marketing strategy including:

(1) overall strategy;

(2) pricing policy;

(3) sales channels and terms;

(4) method of selling, distributing, and servicing product;

(5) estimated sales and market share; and

(6) advertising, public relations, and promotion;

F. the management plan including:

(1) form of business organization;

(2) board of directors composition, if applicable;

(3) officers organization chart and responsibilities; and

(4) resumes of key personnel;

G. an operating plan including:

(1) schedule of upcoming work for the next one to two years;

(2) facilities plan or planned capital improvements for the next three years;

(3) manufacturing processes; and

(4) staffing plan (number of employees);

H. a schedule indicating the completion dates for realizing the significant aspects of the business plan;

I. a discussion of the risks and problems inherent to the business plan, including both the negative factors and plans to minimize the impact of those factors; and

J. financial data including:

(1) a funding request indicating the desired financing, capitalization, use of funds, and future financing;

(2) financial statements for the past three years, if applicable;

(3) current financial statements;

(4) monthly cash flow financial projections including the proposed financing for two years; and

(5) projected balance sheets, income statement, and statement of changes in financial position for two years including the proposed financing.

8300.4013 [Emergency] COLLATERAL REQUIREMENTS AND ADDITIONAL INFORMATION OR CERTIFICATIONS.

Subpart 1. Collateral requirements. The authority shall require collateral in accordance with generally accepted commercial lending practices as it deems necessary to protect the interests of the authority in the energy financial assistance. At a minimum, the collateral will take one or more of the following forms:

A. mortgage on real property;

B. security position on personal property;

C. security of its energy financial assistance with assets being financed by the energy financial assistance and other assets of the company to protect the interests of the state's financial participation;

D. letter of credit or equivalent instrument;

E. guarantees of affiliates of the applicant;

F. guarantees of shareholders or partners who have 20 percent or more ownership in the applicant; and

G. bond insurance or other credit enhancements.

Subp. 2. Additional information or certifications. The following additional information is required by the authority, if applicable, prior to disbursing energy financial assistance and other information that the authority in it sole discretion deems advisable for prudent financial management of authority energy financial assistance:

A. a lease agreement on property or equipment;

B. a listing of collateral, including serial numbers for machinery and equipment that will serve as collateral to the energy financial assistance;

C. certification of insurance for workers' compensation and employer's liability;

D. a statement provided by the Internal Revenue Service of tax clearance;

E. an appraisal of collateral offered to the authority for the energy financial assistance; and

F. a certificate of the insurers of all collateral that insurance is in force and effect. Prior to expiration of any insurance policy, the applicant shall furnish the commissioner with evidence that the policy has been renewed, replaced, or is no longer required.

8300.4014 [Emergency] PROCEDURES FOR APPLICATION PROCESSING.

Subpart 1. Deadline for submission. The applicant shall submit a complete application to the commissioner by the first business day of any month in order for the authority to consider it in that month. If an application is received after the first of the month and can be reviewed by the commissioner for eligibility and financial feasibility prior to the authority agenda deadline, the authority may consider the application at the meeting in that month.

Subp. 2. Completed applications. An application is complete when the commissioner receives all required documentation and exhibits, together with the required fee, if applicable.

Subp. 3. Incomplete applications. If an incomplete application is received, the commissioner shall notify the applicant of specific deficiencies in the application. The applicant has 60 days from the date of mailing of the commissioner's notification to

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complete the application. If the application is not completed and received by the commissioner within 60 days, the application is deemed to be rejected and the applicant shall reapply to be further considered.

Subp. 4. Review of eligibility of project and applicant. The commissioner shall review all completed applications to determine if the project and the applicant are eligible and meet the requirements of the act and any of parts 8300.4010 to 8300.4014 [Emergency] and any parts relating to the energy financial assistance for which the applicant has applied.

If the project and applicant are eligible, the commissioner shall review the application for economic feasibility as provided in subpart 6.

Subp. 5. Ineligible project or applicant. The commissioner shall notify the applicant in writing if the applicant or the project is ineligible. The applicant has 30 days from the date of the commissioner's notification to amend the application.

Upon receipt of an amended application, the commissioner shall review the amended application under subpart 4. The commissioner shall reject the amended application if the project and applicant are ineligible. If the project and applicant are eligible, the commissioner shall review the amended application for economic feasibility under subpart 6.

If the application is not amended within 30 days, the application must be rejected and will not receive any further consideration.

Subp. 6. Economic feasibility review. The commissioner shall review the application in accordance with generally accepted commercial lending practices, including the use of the standards as printed in the most current annually updated version of the Annual Statement Studies, issued by Robert Morris Associates, Philadelphia, PA.

The commissioner shall obtain any other credit information when available from private credit rating agencies including, but not limited to, Standard & Poors and Dun & Bradstreet. In accordance with generally accepted commercial lending practices, the commissioner may check personal references.

The commissioner shall determine if the applicant can generate sufficient cash flow and maintain a sound financial condition.

The commissioner shall determine if there is sufficient collateral for the energy financial assistance.

Subp. 7. Rejection of application based on economic feasibility. The commissioner shall notify the applicant in writing if the application is not economically feasible and the application is rejected.

If the application is rejected due to economic feasibility, the applicant may, within 30 days after written notification by the commissioner, request that the commissioner submit the rejected application to the authority for review at the next regularly scheduled meeting of the authority for which the agenda has not been established.

If the authority approves the application at its board meeting, the application will be treated in accordance with subpart 8.

Subp. 8. Authority evaluation procedure. Applications approved for processing by the commissioner must be presented to the authority for approval or disapproval. If the authority disapproves the application, the commissioner shall so notify the applicant. If the authority approves the energy financial assistance, it shall pass a preliminary or a final resolution giving approval to the project to be financed and stating the name of the owner, a brief description of the project, the maximum amount of the energy financial assistance, and other provisions as the authority in its sole discretion deems advisable for prudent financial management of authority energy financial assistance. The commissioner shall notify the applicant of the authority's approval and provide the applicant with a copy of the resolution passed. If the energy financial assistance is funded by bonds, then passage of a preliminary and a final resolution as provided in subpart 9 are required before energy financial assistance is approved. Throughout this process if the authority does not extend energy financial assistance, the authority shall remain without liability to the applicant.

Subp. 9. Funding of energy financial assistance by bonds. If the authority intends to fund the energy financial assistance by issuing bonds, the authority shall first pass a preliminary resolution. The preliminary resolution does not obligate the authority to issue bonds or to fund energy financial assistance, but only constitutes an expression of current intention of the authority to issue bonds or to fund the energy financial assistance. If the authority subsequently determines that there are no adverse changes in the financial conditions or key personnel of the applicant, market conditions, availability of bond issuance authority, and other financial conditions that the authority deems necessary and the authority decides to fund the financial assistance, the authority shall pass a final resolution that authorizes the issuance and sale of bonds to fund the energy financial assistance. The final resolution must specify the terms and conditions under which bonds will be issued. The preliminary resolution may contain a time limit with respect to the issuance of the bonds, may be revoked or amended by the authority at any time prior to the final resolution of the authority without liability to the authority, and may impose any conditions or requirements that the authority deems desirable. The commissioner shall notify the applicant of the authority's approval and provide the applicant with a copy of the resolution passed. Throughout this process, if the authority does not extend energy financial assistance, the authority shall remain without liability to the applicant.

Subp. 10. Preparation of documents. The commissioner has the authority and responsibility to prepare or cause to be prepared all necessary documents and to execute them on behalf of the authority.

ENERGY DEVELOPMENT LOAN PROGRAM

8300.4020 [Emergency] PURPOSE.

The energy development loan program issues energy financial assistance in the form of energy loans funded by proceeds of the authority's revenue bonds that may be secured by a guarantee or insurance from the energy development fund or energy loans made directly with money in the energy development fund. Energy loans funded by the proceeds of the authority's revenue bonds must be made in accordance with parts 8300.4010 to 8300.4024 [Emergency]. Energy loans funded directly with money in the energy development fund must be made in accordance with parts 8300.4010 to 8300.4023 [Emergency] and part 8300.4025.

8300.4021 [Emergency] ELIGIBLE APPLICANTS FOR ENERGY DEVELOPMENT LOAN PROGRAM.

Any business as defined in the act is eligible to apply for an energy loan.

8300.4023 [Emergency] ELIGIBLE LOANS FOR ENERGY DEVELOPMENT LOAN PROGRAM.

Subpart 1. In general. The authority shall make energy loans to applicants in compliance with the act and parts 8300.0100 to 8300.0600 and 8300.4010 to 8300.4014 [Emergency].

Subp. 2. Purpose of loan. An energy loan must be used to provide interim or long-term financing for certain capital expenditures as provided in the act, and for expenditures that meet the requirements of federal industrial development bond laws where applicable, including:

A. acquisition costs of land, buildings, or both:

B. site preparation;

C. construction costs;

D. engineering costs;

E. costs of equipment, machinery, or both;

F. Bond issuance costs;

G. underwriting or placement fees;

H. trustee's fees;

I. fee of guarantor, insurer, or financial institution, other than the authority, who provides letters of credit, surety bonds, or equivalent security;

J. authority fees, including application and guaranty fees of the authority and administrative costs and expenses;

K. certain contingency costs;

L. interest costs during construction;

M. legal fees, including those of the authority's bond counsel; and

N. debt service reserve fund.

Working capital loans are not eligible for energy financial assistance under the energy development loan program. However, energy loans for certain finished equipment inventory that constitute qualified energy projects that are funded out of the energy development fund or the proceeds of revenue bonds issued by the authority to the extent permitted under federal tax law are permitted.

Subp. 3. Equity requirements. The maximum loan percentage of authorized project cost is 80 percent for equipment and 90 percent for other authorized costs. The authority may accept letters of credit or other credit enhancements as part of the equity contribution by the applicant.

Subp. 4. Maximum term. The maximum term of an energy loan may not exceed the average useful life of the real property, or 80 percent of the useful life of equipment or machinery or 21 years, whichever is less.

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Subp. 5. Security requirements. Energy financial assistance, either for real property or equipment, must be secured as follows:

A. a mortgage or other adequate security as determined by the authority on the real property to be financed;

B. a lien or other adequate security as determined by the authority on equipment to be financed by the authority;

C. other security as determined by the commissioner to have a value at least equal to the principal amount to be financed by the authority less the value, as determined by the authority, of the security provided in items A and B, which other security shall be in the form and kind satisfactory to the authority and may consist of some or all of the following:

(1) a senior, junior, or parity lien on other assets of the applicant; or

(2) a senior, junior, or parity lien on assets of certain owners, officers, and affiliated persons of the applicant (including sole proprietors and their spouses, partners and their spouses, and major shareholders of corporate officers and their spouses);

D. a guarantee of owners, officers, and affiliated persons of the applicant (including sole proprietors and their spouses, partners and their spouses, and major shareholders of corporate officers and their spouses), or other related entities such as subsidiaries or parent corporations of the applicant;

E. Additional forms of security, if necessary to strengthen the authority's collateral position on the financial assistance; and

F. in addition to or in substitution for any of the items A to E, any guarantee as required by insurers of the bonds, other than the authority.

Subp. 6. Findings of public purpose. The authority shall review and consider approval of an application for an energy loan on the basis of effectuating the purposes of the act, including determinations regarding the following:

A. that the project will be economically feasible in that the borrower reasonably can be expected to maintain a sound financial condition and to retire the principal and pay the interest on the loan made, in accordance with the terms of the loan agreement;

B. that the project will be cost-effective in accordance with part 8300.4011 [Emergency], subpart 5;

C. that the qualified energy project and its development is economically advantageous to the state, that the provision to meet increased demand upon public facilities as a result of the qualified energy project is reasonably assured and any feedstock availability, resource base, or energy sources necessary to support the successful operation of the qualified energy project is adequate;

D. that the qualified energy project will tend to facilitate a reliable supply of energy to Minnesota's households, business establishments, or municipalities, tend to diminish Minnesota's dependence on imported energy sources, or serve some other energy related public purpose;

E. that the borrower is a business under the act;

F. that the qualified energy project satisfies the priorities and criteria of the act;

G. that other things being equal in the event that there are more otherwise eligible applications submitted to the authority than there is funding available to assist, the energy loan allows greater leverage of the energy development fund than other competing applications.

8300.4024 [Emergency] ENERGY LOANS FUNDED BY BONDS.

Subpart 1. In general. If the authority intends to fund an energy loan by issuing revenue bonds, it must do so in conformance with part 8300.4014 [Emergency], subpart 9 and this part. The income from bonds issued by the authority for energy loans will be subject to taxation by the federal government or exempt from taxation by the federal government. If the income from the bonds is to be subject to taxation by the federal government, the preliminary resolution must acknowledge that the bonds will be subject to applicable federal taxes.

Subp. 2. Interest rate. The authority shall set interest rates at a negotiated rate that approximates the market rate of interest for securities of equivalent value at the time the bonds are initially sold.

Subp. 3. Debt service reserve fund. In conjunction with each amount of financial assistance it extends, the authority shall establish and fund a debt service reserve fund sufficient to cover approximately 12 month's debt service. The reserve must be funded through the proceeds of the bonds to be issued and sold in conjunction with each particular amount of financial assistance extended. The interest earned on the debt service reserve fund must accrue to the benefit of the applicant. This amount must be applied to offset the principal and interest payments on an annual basis provided that the financial assistance is current.

Subp. 4. Final resolution. After the authority passes a preliminary resolution, it may pass a final resolution that authorizes the issuance and sale of bonds to fund the financial assistance to the applicant, as discussed in part 8300.4014 [Emergency], subpart 9. The final resolution for an application under the program depends, in part, upon a determination that there are no adverse changes in the financial condition or key personnel of the applicant, market conditions, availability of bond issuance authority, if applicable, and other financial conditions that the authority deems necessary.

Upon passage of the final resolution, the authority shall commence to issue bonds in accordance with market conditions and the other legal conditions that govern the issuance of its bonds and notes. This issuance must be in accordance with the contents of any insurance contracts, agreements with lenders providing letters of credit, or other forms of financial assistance and other terms and conditions necessary to effectuate a bond sale. Funds will not be disbursed at the loan closing until it has been determined that there are no adverse changes in the financial condition or key personnel of the business entity applying for the financial assistance. After the bonds are issued and sold, there will be a loan closing where the funds are transferred and documents are signed in accordance with the terms of the final resolution and the respective documents.

8300.4025 [Emergency] ENERGY LOANS FUNDED DIRECTLY FROM MONEY IN THE ENERGY DEVELOPMENT FUND.

Subpart 1. In general. The authority may make energy loans funded directly from money in the energy development fund only after it has made the following determinations:

A. that the qualified energy project achieves the public purposes listed in part 8300.4023 [Emergency], subpart 6;

B. that no other sources of financing including bonds issued by the authority are available to the project in sufficient quantities or at interest rates which will not render the project economically infeasible; and

C. that a direct loan provides the best available leverage of money in the energy development loan fund.

Subp. 2. Maximum loan amount. The principal amount of energy loans made directly with money in the energy development fund must not exceed $500,000.

Subp. 3. Leverage of other money. The maximum percentage of authorized project costs which may be financed by an energy loan made directly with money in the energy development loan fund is 70 percent for equipment and 80 percent for other authorized costs as listed in part 8300.4023 [Emergency], subpart 2. The percentage of authorized project cost not eligible to be financed by the authority must be financed by one or a combination of the following other sources of funds:

A. equity in the form of cash, land, or other tangible or real property provided by the owner or investors in the project;

B. loans, letters of credit, or other sources of debt financing or insurance provided by financial institutions; or

C. grants of money, land, or other property loans from a unit of government where such grant or loan comprises no more than 50 percent of that portion of the total project cost not eligible to be financed with the energy loan.

Subp. 4. Interest rates. The interest rate of the energy loans funded directly from the energy development fund must not exceed the interest rate for a full-faith-and-credit obligation of the United States government of comparable maturity, nor be lower than five percent per annum, nor be lower than the percentage rate necessary to establish a debt service coverage ratio of 1.3 to 1, whichever of the latter two conditions is greater.

Subp. 5. Servicing of direct energy loans. The commissioner shall establish an amortization schedule and shall monitor the repayment of the principal and interest as set out in the amortization schedule. The commissioner shall monitor the terms and conditions of the contract for the energy financial assistance.

The commissioner may restructure the energy financial assistance at the request of the applicant or upon his or her own initiative if the commissioner determines that restructuring the energy financial assistance will increase the probability that the energy financial assistance will be repaid to the state.

If the applicant requests the commissioner to restructure the energy financial assistance, the commissioner shall charge the applicant a fee in the amount of one-half percent on the outstanding principal amount of the energy financial assistance.

ENERGY LOAN INSURANCE PROGRAM

8300.4030 [Emergency] SCOPE.

Parts 8300.0100 to 8300.0600; and 8300.4030 to 8300.4038 [Emergency] apply to applications for energy financial assistance

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from the energy loan insurance fund made available by the authority under Minnesota Statutes, section 116J.924. Unless otherwise specified, parts 8300.4010 to 8300.4014 [Emergency] do not apply to energy financial assistance provided by the authority under parts 8300.4030 to 8300.4038 [Emergency].

8300.4031 [Emergency] DEFINITIONS.

Subpart 1. Statutory terms. The definitions in Minnesota Statutes, section 116J.88, and parts 8300.0100 and 8300.4011 [Emergency] apply to parts 8300.4030 to 8300.4038 [Emergency].

Subp. 2. Borrower. "Borrower" means a business that submits or has submitted an application for an energy loan to a financial institution for a qualified energy project.

Subp. 3. Claim. "Claim" means a claim for reimbursement to the authority by a participating lender.

Subp. 4. Default. "Default" means the failure of the borrower to make a scheduled payment of principal and interest within 60 days of the date it is due.

Subp. 5. Energy loan insurance. "Energy loan insurance" means the direct insuring by the authority of an energy loan made by a financial institution under Minnesota Statutes, section 116J.924.

Subp. 6. Lender. "Lender" means either a participating lender or a financial institution that intends to submit an application to the authority to be a participating lender. For purposes of parts 8300.4031 to 8300.4038 [Emergency], lender is not restricted to financial institutions participating in a loans-to-lenders program.

Subp. 7. Participating lender. "Participating lender" means a financial institution that has been designated by the authority to participate in the energy loan insurance program.

Subp. 8. Participating lender's agreement. "Participating lenders agreement" means the agreement in the form prescribed by the commissioner under which a financial institution is designated as a participating lender.

8300.4032 [Emergency] APPLICATIONS FOR ENERGY LOANS SUBMITTED TO FINANCIAL INSTITUTIONS.

Subpart 1. Contents of energy loan applications. To apply for an energy loan under the energy loan insurance program, a borrower shall submit an application for an energy loan to a participating lender or a financial institution that intends to submit an application to the authority to be participating lender on a form prescribed by the commissioner. An energy loan application must be completed, dated, and signed by an owner, general partner, or an authorized officer of the borrower. The energy loan application must contain the information required under part 8300.4012 [Emergency], subparts 2 and 3.

Subp. 2. Review by financial institution. The lender to which the application from the borrower is submitted shall review each application submitted to it to determine whether or not the lender will make an insured energy loan to the borrower for the purposes specified in the application. If the lender rejects the application, it must notify both the borrower and the commissioner in writing regarding its decision. If it decides to make an insured loan subject to the availability of energy loan insurance, the lender shall apply to the authority for insurance on a form provided by the commissioner.

Subp. 3. Fee. Lenders may require borrowers to pay application fees, origination fees, or commitment fees, only if these fees are normally required of the financial institution's other customers, and only if these fees do not exceed the usual and customary charges by the financial institution for similar loans to other borrowers. Any fees charged must be reported to the commissioner.

8300.4033 [Emergency] SUBMISSION OF APPLICATIONS FOR ENERGY LOAN INSURANCE.

Subpart 1. Contents of applications by lenders for energy loan insurance. Applications for energy loan insurance must be submitted by a lender to the commissioner on forms prescribed by the commissioner that must include the name of the lender, the name of the borrower, the principal amount of the energy loan to be insured, the amount and percentage of the insurance requested, the term of the loan, the interest rate, an amortization schedule, and other terms and conditions established by the lender pursuant to generally accepted commercial lending practices. A lender's application must be completed, dated, and signed by a duly authorized officer of the financial institution seeking the insurance. The completed lender's application must be accompanied by the following additional information:

A. a copy of the entire energy loan application submitted by the borrower to the lender;

B. a certification and supporting documentation that the lender has determined that the project is economically feasible in accordance with generally accepted commercial lending practices, including the use of the standards as printed in the most current annually updated version of the Annual Statement Studies, issued by Robert Morris Associates, Philadelphia, PA;

C. a signed letter of conditional commitment from the lender to make the energy loan subject to obtaining an energy loan insurance commitment from the authority;

D. a statement of the need for energy loan insurance which specifies reasons why the lender will not make the loan without energy loan insurance;

E. an appraisal of the value of the collateral for the loan including land, buildings, machinery, equipment, furniture, fixtures, inventory, accounts receivable, and other applicable collateral under part 8300.4013 [Emergency];

F. a statement of informed consent signed by a duly authorized officer of the financial institution regarding the use and dissemination of the private data as provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d).

G. a participating lender's agreement on a form prescribed by the commissioner in accordance with part 8300.4034 [Emergency] and executed by a duly authorized officer of the financial institution if the financial institution has not been previously designated a participating lender by the authority.

Subp. 2. Review by commissioner. Upon receipt of the lender's application for insurance and a signed participating lender's agreement, the commissioner shall review the application in accordance with the procedures set forth in part 8300.4014 [Emergency], subparts 1 to 6. The commissioner shall also review the financial institution's applications and required supporting information to determine if the qualified energy project is economically feasible, technically feasible, and cost-effective.

Subp. 3. Rejection of application. If the lender's application for insurance is incomplete, the commissioner shall notify the financial institution and the borrower in writing according to part 8300.4014 [Emergency], subpart 3. If either the borrower or the financial institution applying for insurance is ineligible for any reason, the commissioner shall follow the procedures in part 8300.4014 [Emergency]. If the commissioner determines that the qualified energy project proposed in the application for an energy loan is either technically or economically infeasible, the commissioner shall notify both the borrower and the financial institution in writing of the commissioner's decision to reject the application. If the application is rejected, the borrower or the financial institution may, within 30 days after written notification by the commissioner, requires that the commissioner submits the rejected application to the authority for review at the next regularly scheduled meeting of the authority for which the agenda has not been established.

If the authority approves the application at its board meeting, the application will be treated in accordance with part 8300.4014 [Emergency], subpart 4.

Subp. 4. Authority evaluation procedure. Applications approved for processing by the commissioner must be presented to the authority for approval or disapproval. The authority shall review and consider approval of the application on the basis of effectuating the purposes of the act, including determinations regarding the following:

A. that the project will be economically feasible in that the borrower can be reasonably expected to maintain a sound financial condition and to retire the principal and pay the interest on the loan made, in accordance with the terms of the loan agreement;

B. the project will be cost-effective in accordance with part 8300.4011 [Emergency], subpart 3;

C. that the qualified energy project and its development is economically advantageous to the state, that the provision to meet increased demand upon public facilities as a result of the qualified energy project is reasonably assured and any feedstock availability, resource base or energy sources necessary to support the successful operation of the qualified energy project is adequate;

D. that the qualified energy project will tend to facilitate a reliable supply of energy to Minnesota's households, business establishments of municipalities, tend to diminish Minnesota's dependence on imported energy sources, or serve some other energy related public purpose;

E. that the borrower is a business under the act;

F. that the qualified energy project satisfies the priorities and criteria of the act;

G. that other things being equal in the event that there are more otherwise eligible applications submitted to the authority than there is funding available to assist, the energy loan allows greater leverage of the energy development fund than other competing applications.

If the authority disapproves the application, the commissioner shall so notify the borrower and financial institution. If the authority approves the energy loan insurance, it shall pass a resolution giving approval to the project to be financed and stating

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the name of the financial institution, the name of the borrower, a brief description of the project, the maximum amount of the financial assistance, and other provisions as the authority in its sole discretion deems advisable for prudent financial management of authority energy loan insurance. The commissioner shall notify the borrower and financial institution of the authority's approval and provide the financial institution with a copy of the resolution passed.

Subp. 5. Preparation of documents. The commissioner has the authority and responsibility to prepare or cause to be prepared all necessary documents and to execute them on behalf of the authority.

8300.4034 [Emergency] PARTICIPATING LENDERS.

Subpart 1. Eligibility. In order to be eligible to receive energy financial assistance in the form of energy loan insurance from the energy loan insurance fund, a duly authorized officer of the financial institution seeking the assistance in conjunction with an energy loan must first sign a participating lender's agreement on the form prescribed by the commissioner that sets forth the terms and conditions under which an energy loan is to be made and specifies procedures to be followed in the case of a default by the borrower. The participating lender's agreement must require the financial institution seeking designation as a participating lender, and the authority to conform to the following conditions:

A. The insured portion of any energy loans insured by the authority shall not exceed $2.5 million and the maximum term of any energy loan shall not exceed the average useful life of the improvement or 21 years, whichever is less.

B. The authority shall insure no more than 90 percent of any loan.

C. The financial institution shall make no provision to accelerate loan payments due to default or any other reason, without prior written approval from the commissioner.

D. The financial institution shall make no provision to subordinate any loan security to other liens against such property, without prior written approval from the commissioner.

E. The financial institution shall not acquire any preferential security, surety, or insurance to protect its uninsured interest in a loan.

F. Security must be obtained for the full amount of the loan and must be pro-rated between the financial institution and the authority;

G. The financial institution shall require the borrower to adequately insure, maintain, and repair all parts of the qualified energy project for the purpose of protecting the security interests of the financial institution and the authority.

H. The authority shall not be liable for delinquency charges or late fees, assessed against the borrower by the financial institution.

I. The financial institution shall review and approve loans for qualified energy projects in accordance with generally accepted commercial lending practices.

J. The financial institution shall be responsible for servicing all loans it makes for qualified energy projects, either directly or by contracting with a servicing agent.

K. The financial institution shall not sell or transfer any loan insured by the authority, without prior written approval from the commissioner.

L. The financial institution shall, for the term of the loan insured by the authority, notify the commissioner of all principal and interest payments that are at least one week overdue. In addition, the financial institution shall make written reports to the commissioner on forms provided by the commissioner on the performance of the loans. These reports must be made on a schedule determined by the commissioner but not less than annually.

M. The aggregate principal amount of loans insured by the authority may not at any time exceed an amount equal to the current reserves in the insurance fund multiplied by ten.

N. The authority shall not insure any loan that carries an interest rate of three points above the lender's prime interest rate for variable rate loans or two points above the interest rate of a full-faith-and-credit obligation of the United States government of comparable maturity for a fixed-rate term loan.

In the event that the lender fails to comply in good faith with the provisions of the participating lenders agreement and the lender's failure causes substantial harm to the authority, the authority may withdraw its insurance on the affected loans, remove the lender from the program without refunding any fees paid by the lender, or do both.

P. The lender agrees not to make any amendments to the loan agreement after loan closing without the prior written approval of the authority.

Q. The lender agrees to make no waivers of default without prior written approval of the authority.

R. The authority shall not insure energy loans made by the lender prior to the execution of the "Participating Lender Agreement," and the lender shall not unconditionally commit to make an insured loan nor disburse funds for an insured loan under this program without prior approval from the authority.

Subp. 2. Designation of participating lender. To designate a financial institution as a participating lender, the authority must pass a resolution designating the financial institution as a participating lender and authorizing the commissioner on behalf of the authority to execute the participating lender's agreement which has been executed by a duly authorized officer of the financial institution.

8300.4035 [Emergency] PROCEDURES UPON DEFAULT.

The authority and participating lenders shall follow the following procedures in the event of a default:

A. In the event of a default by the borrower on the insured loan, the participating lender shall file with the commissioner, on form supplied by the commissioner, all claims for occurred losses within one year of the date of default.

B. The authority is liable for not more than the agreed percentage of the sum of the unpaid principal and the accrued interest to the date the claim is filed.

C. In the event of default and claims by the participating lender arising from such default, the participating lender shall pursue in good faith all legal rights it may have against the borrower.

D. In the event of a default by the borrower, the authority may cure the default by making payment due to the participating lender within 30 days of the date of the default. Any payment made by the authority to cure a default by a borrower must be repaid by the borrower or deducted from any claims submitted by the participating lender in connection with a default by the borrower for whom the payment was made by the authority.

E. If the borrower or the authority does not cure the default within 60 days, then the loan must be accelerated.

F. Upon nonpayment of the accelerated loan, the participating lender may file a claim with the authority. The security must then be liquidated by the participating lender.

G. The authority shall receive a pro-rated share of all liquidation proceeds. Upon receipt, the authority shall pay the claim of the participating lender.

8300.4036 [Emergency] APPLICATION AND CLAIM FORMS.

The commissioner must prepare application forms necessary for the administration of the energy loan insurance program. The commissioner must prescribe uniform energy loan insurance claim forms for use by participating lenders.

8300.4037 [Emergency] PRIOR COMMITMENT.

The authority may resolve to insure a loan prior to its execution or disbursement, if there is a firm commitment by the participating lender to make the loan upon the authority's resolution to insure the loan. If the participating lender fails to enter into a loan agreement with the borrower within 90 days of the authority's resolution, the authority shall reaffirm the resolution for an additional 90-day period if there has been no adverse change in the financial condition of the borrower or the financial institution.

8300.4038 [Emergency] REPORTS.

During the term of a loan insured by the authority, the borrower shall make written reports to the commissioner on forms approved by the commissioner regarding the acquisition, construction, installation, and operation of the qualified energy project on a schedule determined by the commissioner, but not less than annually.

The participating lender shall report to the commissioner any fees charged to the borrower for the energy loans within 30 days of the date on which the energy loan was closed.

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12-13-84

Judith,

We appreciate your assistance very much!

Thanks you.
Sandy Moen
Kathy Hahne's
office

12/14 agency notified that order dated 11/28 is not acceptable.

RECEIVED
DEC 13 1984
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

STATE OF MINNESOTA

DEPARTMENT OF ENERGY AND ECONOMIC DEVELOPMENT

In the matter of the Proposed
Adoption of Emergency Rules of
the State of Minnesota Governing
Energy Financial Assistance

ORDER ADOPTING
EMERGENCY RULES

Notice of the Commissioner's intent to adopt the above-entitled emergency rule was published on November 5, 1984. Interested parties were given an opportunity to submit comments for 25 days after Notice.

NOW THEREFORE IT IS ORDERED that these emergency rules identified as Emergency Rules of the Energy and Economic Development Authority Relating to Energy Financial Assistance as modified herein are adopted this first day of December 1984, pursuant to authority vested in me by Minnesota Statutes 116J.10 (a), (1983 Supp), 116J.08 (a) and Session Laws 1984, Chapter 595, Section 4.

Mark B. Dayton
Commissioner
Department of Energy and
Economic Development

STATE OF MINNESOTA

DEPARTMENT OF ENERGY AND ECONOMIC DEVELOPMENT

In the matter of the Proposed
Adoption of Emergency Rules of
the State of Minnesota Governing
Energy Financial Assistance

ORDER ADOPTING
EMERGENCY RULES

Notice of the Commissioner's intent to adopt the above-entitled emergency rule was published on November 5, 1984. Interested parties were given an opportunity to submit comments for 25 days after Notice.

NOW THEREFORE IT IS ORDERED that these emergency rules identified as Emergency Rules of the Energy and Economic Development Authority Relating to Energy Financial Assistance as modified herein are adopted this 28th day of November 1984, pursuant to authority vested in me by Minnesota Statutes 116J.10 (a), (1983 Supp), 116J.08 (a) and Session Laws 1984, Chapter 595, Section 4.

Mark B. Dayton
Commissioner
Department of Energy and
Economic Development

STATE OF MINNESOTA
DEPARTMENT OF ENERGY AND ECONOMIC DEVELOPMENT

In the Matter of the Proposed
Adoption of Emergency Rules of
the State of Minnesota Department
of Energy and Economic Development
Energy Financial Assistance

ORDER OF PUBLICATION
OF EMERGENCY RULES

IT IS ORDERED this 19th day of October, 1984 that the proposed emergency rules in the above-entitled matter be published in the State Register.

STATE OF MINNESOTA

MARK B. DAYTON, COMMISSIONER
DEPARTMENT OF ENERGY AND
ECONOMIC DEVELOPMENT

Authority #84-244
State of Minnesota
Energy & Economic Development Authority

In the matter of the adoption of Emergency Rules of the Minnesota Energy and Economic Development Authority Governing Administration of the Energy Loan Insurance Program and the Energy Development Loan Program

Certificate of the Authority's Authorizing Resolution to Adopt Emergency Rules

I, Mark B. Dayton, do hereby certify that I am a member and the Chairman of the Minnesota Energy and Economic Development Authority, an authority 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 Authority duly and properly called and held on the 28th day of November, 1984, that a quorum was present at said meeting, that a majority of those present voted for the resolution, that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "Resolved, that the emergency rules relating to the administration of the Energy Loan Insurance Program and the Energy Development Loan Program be and they hereby are approved and adopted provided that no comments are received within the remaining two days of the comment period, pursuant to authority vested in us by Minnesota Statutes section 116J.91 Subdivision 8 (1983 Supp) and 116J.91 Subdivision 4 (1983 Supp as amended Minnesota Laws 1984 Chapter 583 Section 17), and that Mark B. Dayton, Chairman of the Minnesota Energy and Economic Authority, Lyn Burton, Vice Chair and David L. Printy, Secretary, be and hereby are authorized to sign an order adopting these rules and further are 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 28th day of November, 1984.

Mark B. Dayton, Chairman of the Minnesota Energy & Economic Development Authority

Member

MINNESOTA
Department of Energy and Economic Development

Financial Management Division
Energy Finance 297-1332
Business Finance 297-3547

900 American Center
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

Date: November 1, 1984

To: Individuals or Organizations Wishing to be Notified of Proposed Rulemaking

From: Kathryn Hahne, Director KH
Shared Savings and Business Energy Finance

Subject: Proposed Emergency Rules Governing Energy Financial Assistance (October 22, 1984)

The Minnesota Department of Energy and Economic Development proposes to adopt the above entitled emergency rules according to the procedures set forth in Minn. Stat. 14.29 - 14.36 (1984).

Enclosed is a copy of the Notice of Intent to Adopt Rules Without a Public Hearing that will be published in the State Register November 5th. Please be advised that a free copy of the proposed rule is available on request from the address listed below. A notice of the date of submission of the proposed emergency rule to the Attorney General will be mailed to any person requesting to receive the notice.

Oral or written statements regarding the Energy Financial Assistance Rules should be directed to:

Kathryn Hahne
Energy Finance Division
Department of Energy & Economic Development
900 American Center Building
150 East Kellogg Blvd.
St. Paul, Minnesota 55101
Telephone: (612) 297-3719

All written material received will become part of the formal record of the rule in the event that rules are promulgated.

KH:sw

In the Matter of the Proposed
Adoption of Rules of the State
of Minnesota Governing Energy
Financial Assistance

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) SS.
COUNTY OF RAMSEY)

, being first duly sworn deposes and says:

That on the 5th day of November, 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, she served that attached Notice of Intent to Adopt Rules without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. 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 State of Minnesota for the purpose of receiving notice of the proposed adoption of rules by this Department.

Kathryn S. Lehne

Subscribed and sworn to before me this
3rd day of December, 1984.
Richard Nadeau

RICHARD B. NADEAU
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires Apr. 8, 1987

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

CERTIFICATE

In the Matter of the Proposed Adoption
of the temporary rules of the Department
of Energy and Economic Development Authority
pertaining to Energy Finance

I hereby certify that the list of persons, associations and other interested groups who have requested, pursuant to Minnesota Statute 14.14 subd.1, that their names be placed on file with and maintained by the State Department of Energy and Economic Development for both the Department and the Energy Economic Development Authority for the purpose of receiving notice of the proposed adoption of rules by both the Energy and Economic Development Authority and the Department of Energy and Economic Development is accurate and complete as of Wednesday, this 7 day of November, 1984.

Mary Anderson

State of Minnesota
Department of Energy and Economic Development

In the Matter of the Proposed Adoption of Emergency Rules Relating to Energy Financial Assistance

Findings of Fact and Conclusions Adopting Emergency Rules

Notice of Intent to adopt Emergency rules regarding the above-entitled matter was published in the State Register on November 5, 1984 at 9 SR 967-979 and was mailed to all persons who had registered their names with the Authority. The Notice afforded interested parties at least 25 days in which to submit comments to the Department on the proposed rules.

The Department received verbal comments from Jeff Nemecek, Lindquist & Vennum, bond counsel to the Authority, all of which have been incorporated into the following findings. The Authority received no other verbal or written comments on the rules or requests for a public hearing or for notification of submission of the final rules to the Attorney General.

After affording interested parties an opportunity to submit comments in the proposed emergency rules, and having received the sets of comments, the Authority makes the following:

Findings

1. Part 8300.4010 Subp. 9 should be changed because the Authority has the ability to both fund or secure a project through its energy financial assistance program. The definition of project now is "Project means that which is funded or secured or is proposed to be funded or secured by energy financial assistance." p.3
2. Part 8300.4012 Subp. 2.,paragraph A should be changed from "a written history of the business entity" to "a written history of the business". p.3 This deletion is technical in nature to eliminate duplicative language. Paragraph D clauses 2 to 5 should be changed to achieve additional clarity for the reader in listing the several components in a marketing plan. These new clauses now read as follows:

(2) the industry outlook for the next three to five years;

(3) the major characteristics of the industry, names, locations, products or services provided;

(4) the duration and conditions of the applicant's contracts currently in place; and

(5) the percentage of annual sales volume for each major customer over the previous three years. p.4

3. Part 8300.4012 Subp 2, paragraph H; should be changed by adding the following phrase "in a manner contrary to applicable federal or state laws and regulations". This was added to clarify that only illegal forms of discrimination are prohibited. p.5
4. Part 8300.4012 Subp 3. paragraph A, Clause (9) should be added to the eight necessary components of a management summary in a business plan. While the issue of the "purpose of undertaking the project" is implicitly addressed in clause (7), the purpose of the project may be a broader discussion than the purpose of the financial assistance. Thus clause (9)

was added to clarify the necessary components of a management summary and require the applicant to present a more complete description of the purpose of the project.

5. Part 8300.4013 Subp. 1 clauses (E) and (F) should be modified to clarify the various forms of security the Authority is allowed to require. The law requires the Authority to obtain the best available security and this can include other types of assurances of repayment instead of a guarantee which may come from other interested parties with respect to a project. For example, a contract from a utility guaranteeing purchase of electricity from a hydroelectric facility may be used by an applicant to give the Authority assurance of repayment as a necessary collateral requirement. Also assignments of leases or rents on property or equipment may also be required by the Authority when available to protect its interests. Thus, Part 8300.4013 Subp 1, (E) - (H) should be changed to read as follows:

E. guarantees or other assurances of repayment of affiliates of the applicant or other interested parties with respect to the project

F. guarantees or other assurances of repayment of shareholders or partners who have 20 percent or more ownership in the applicant;

G. bond insurance or other credit enhancements; and

H. assignments of leases or rents on property or equipment

6. Part 8300.4014 Subp 5, 2nd paragraph, 2nd sentence should be changed. Under the rules, Part 8300.4021, an applicant must be a business as defined in the act. A Project is also a defined term in Part 8300.4010 Subp 9. Thus either a project or an applicant may be ineligible. The sentence is amended to read, "the commissioner shall reject the amended application if the project or applicant are ineligible".

7. Part 8300.4014 Subp 6 should be changed. A fifth paragraph should be added as follows, "Submission of the application by the commissioner to the authority at a board meeting is deemed conclusive evidence that the commissioner has made the determinations required pursuant to this subpart". The addition of this paragraph clarifies the procedural process involved in bringing an application to the authority, and underscores the determinations that the commissioner must make before bringing an application to the authority.

8. Part 8300.4014 Subp 8 should be changed. The authority evaluation procedure should be amended as follows: "Applications approved for processing by the commissioner must be presented to the authority for approval or disapproval. If the authority disapproves the application, the commissioner shall so notify the applicant. If the authority approves the energy financial assistance, it shall pass a preliminary or a final resolution giving approval to the project to be financed and stating in either the preliminary or final resolution or combination of both the name of the owner, a brief description of the project, the maximum amount of bonds to be issued or the maximum amount of the loan to be made or the maximum amount of the loan to be guaranteed or insured, whichever is applicable and other provisions as the authority in its sole discretion deems advisable for prudent financial management of authority energy financial assistance". These amendments are desirable to simplify Authority approval procedures and to clarify the several types of financial assistance involved in preliminary or final resolutions.

9. Part 8300.4014 Subp 9 should be changed. Sentence 3 should be amended to clarify the standards used by the Authority in passing a final

resolution. The sentence should read: "If the authority subsequently determines that there are no adverse changes in the conditions or key personnel of the applicant, market conditions, availability of bond issuance authority, and other conditions that the authority deems necessary and the authority decides in accordance with generally accepted commercial lending practices to fund the financial assistance, the authority shall pass a final resolution that authorizes the issuance and sale of bonds to fund the energy financial assistance". p.11

10. Part 8300.4023, Subp 3 should be changed. The following sentence is added to the Subp. 3. "Instead of an equity contribution, the authority shall accept adequate security, collateral or guarantees sufficient to insure the repayment of the financial assets". Under the law and current rules for the program, there is no requirement that equity be injected into the project with the financial assistance; however, this is an option for the applicant. The equity requirement here is really one that seeks adequate collateral for the financial assistance, as evidenced in the 2nd sentence. Thus, a new 2nd sentence has been added to clarify for the applicant the types of equity contributions allowable. p.13

11. Part 8300.4023 Subp. 4 should be changed. A maximum term of 21 years was inadvertently used in these rules since that is often a standard in business loans. However, the useful life of many types of energy equipment and projects is often unusually long; ie. hydro facilities, generators, and wind farms. Thus, it makes good lending sense to amend the maximum term from 21 years to 31 years. p. 14

12. Part 8300.4023 Subp. 5 should be changed. This section should be amended to conform with the legislation. The authority is instructed by the legislation to obtain the best available security. Thus, "energy financial assistance, whether for real property or equipment, must be secured with the best available security, including one or more of the following:"

Clauses C and D should be amended for clarity to conform with the previous amendment to read as follows. Clauses 3 & 4 have been renumbered and clarified to conform with previous discussion of security allowable for the use of the applicant.

C. other security as determined by the commissioner to have a value at least equal to the principal amount to be financed by the Authority less the value, as determined by the authority, of the security provided in items A and B, if any. Such other security shall be in the form and kind satisfactory to the authority and may consist of some or all of the following:

(1) a senior, junior, or parity lien on other assets of the applicant; or

(2) a senior, junior, or parity lien on assets of certain owners, officers, and affiliated persons of the applicant (including sole proprietors and their spouses, partners and their spouses, and major shareholders of corporate officers and their spouses); or

(3) a guarantee of owners, officers and affiliated persons of the applicant (including sole proprietors and their spouses, partners and their spouses, and major shareholders of corporate officers and their spouses), or other related entities such as subsidiaries or parent corporations of the applicant; or

(4) Additional forms of security, if necessary to strengthen the Authority's collateral position on the financial assistance; and

D. in addition to or in substitution for any of the items A to C any guarantee or any other form of collateral or security as required by either insurers or other providers of collateral or security of the bonds, other than the Authority or as required by the Authority in accordance with generally accepted lending practices. p. 14, 15

13. Part 8300.4023 Subp 6. (A) should be amended. This should be amended to read: "that the project will be economically feasible in that the borrower reasonably can be expected to maintain a sound financial condition and to retire the principal and pay the interest on the loan anticipated to be made, in accordance with the terms of the loan agreement". This amendment is necessary to assure the applicant's understanding of the non-binding nature of the preliminary resolution on the Authority. p. 15

14. Part 8300.4023 Subp 6 (B) should be amended. This should be amended to read, "With respect to a resource recovery project, the project will be cost-effective in accordance with Part 8300.4011." Part 8300.4011 defines cost-effective. By law, it is only projects that fall into the resource recovery category that must be cost-effective in using the Energy Development Loan Program. p. 15

15. Part 8300.4024 Subp 3 should be amended. The amendments to sentences one, three, and four are necessary to allow our rules to conform with current Federal Industrial Development Bond regulations. The last sentence is added in contemplation of instances where there is a firm commitment, such as a take-or-pay contract for the purchase of power generated by a facility such as a hydroelectric facility or other energy facility, which will assure repayment of funds. With this type of commitment, there is no need of a debt service reserve fund. Thus, Subp 3 should be amended as follows

"Subp. 3. Debt service reserve fund. In conjunction with each amount of financial assistance it extends, the authority shall establish and fund a debt service reserve fund sufficient to cover approximately 12 month's debt service or such lesser amount to insure tax exempt status of interest on the bonds if such bonds are intend to be tax exempt. The reserve must be funded through the proceeds of the bonds to be issued and sold in conjunction with each particular amount of financial assistance extended. The interest earned on the debt service reserve fund must accrue to the benefit of the applicant except to the extent necessary to insure tax exempt status of interest on bonds if such bonds are intended to be tax exempt. This amount must be applied to offset the principal and interest payments on an annual basis or to redeem bonds prior to maturity provided that the financial assistance is current. Instead of a debt service reserve fund the authority shall accept other adequate security or guarantees to assure repayment of the bonds in accord with generally accepted commercial lending practices". p. 16

16. Part 8300.4024 Subp 4 should be amended. The last sentence of the paragraph should be amended to clarify for the applicant the standard used for passage of a final resolution. It should be amended as follows: "The final resolution for an application under the program depends, in part, upon a determination that there are no adverse changes in the financial condition or key personnel of the applicant, market conditions, availability of bond issuance authority, if applicable, and other conditions in accordance with generally accepted commercial lending

practices that the authority deems necessary". The third sentence in the second paragraph should again be amended to clarify for the applicant the standards used by the authority. "Funds will not be disbursed at the loan closing until it has been determined that there are no adverse changes in the condition of the business entity applying for the financial assistance or key personnel in accordance with generally accepted lending practices." p.17
17. Part 8300.4031 Subp 4 should be amended. The definition of Default has been enlarged to include other important terms in connection with the program's loan agreement. The breach of any loan clause may cause the lender and or the authority to become insecure and this breach should necessarily be part of the definition of a default. This definition is consistent with generally accepted commercial lending practices. The definition should be "Default. "Default" means the failure of the borrower to make a scheduled payment of principal and interest within 60 days of the date it is due or the breach by the borrower for more than 60 days after mailing of written notice of breach to the borrower by the lender of any material covenant in the note, loan agreement or in any instrument securing the loan which the lender determines constitutes an adverse change in the borrower's ability to repay the insured energy loan". p.19,20
18. Part 8300.4033 Subp 3, 2nd paragraph should be amended. This amendment serves to correct a timing error in the rules. First the application is submitted and then evaluated in accordance with Procedures of Application Processing. The amended sentence shall read: "If so submitted, the Authority shall evaluate the application at its board meeting, in accordance with part 8300.4014. p.23
19. Part 8300.4033 Subp. 4 (D) should be amended. This amendment is to clarify and correct a typing error. The clause shall read: "that the qualified energy project will tend to facilitate a reliable supply of energy to Minnesota's households, business establishments, or municipalities, tend to diminish Minnesota's dependence on imported energy sources, or serve some other energy related public purpose". p.23
20. Part 8300.4034 Participating Lenders Subp 1 clause (N) should be amended. The current practice and Participating Lenders Agreement in this program prohibit an interest rate of not more than 3 points over prime. The amendment in this section corrects the inadvertent deletion of "more than". The second amendment of the interest rate on fixed rate loans is a procedural simplification. This allows the program to be more easily administered with similar interest rate criteria. Thus, clause (N) reads: "The Authority shall not insure any loan that carries an interest rate of more than three points above the lender's prime interest rate for variable rate loans or more than three points above United States government securities of comparable maturity for a fixed-rate term loan". p.26

Conclusions

1. The Authority gave proper notice of its intent to adopt the proposed emergency rules.

2. The Authority has fulfilled the procedural requirements of Chapter 14, and all other procedural requirements of law or rule.

3. The Authority has statutory authority to adopt the proposed emergency rules, and amendments there to and has fulfilled all other substantive requirements of the law or rule within the meaning of the Administrative Procedures Act.

4. The Authority has determined the need for and reasonableness of these adopted emergency rules.

5. The Authority has determined that the amendments do not constitute a substantial change from the rules as originally proposed and published in the State Register.

Mark B. Dayton
Commissioner
Department of Energy and Economic Development

Authority #84-244
State of Minnesota
Energy & Economic Development Authority

In the matter of the adoption of Emergency Rules of the Minnesota Energy and Economic Development Authority Governing Administration of the Energy Loan Insurance Program and the Energy Development Loan Program

Certificate of the Authority's Authorizing Resolution to Adopt Emergency Rules

I, Mark B. Dayton, do hereby certify that I am a member and the Chairman of the Minnesota Energy and Economic Development Authority, an authority 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 Authority duly and properly called and held on the 28th day of November, 1984, that a quorum was present at said meeting, that a majority of those present voted for the resolution, that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "Resolved, that the emergency rules relating to the administration of the Energy Loan Insurance Program and the Energy Development Loan Program be and they hereby are approved and adopted provided that no comments are received within the remaining two days of the comment period, pursuant to authority vested in us by Minnesota Statutes section 116J.91 Subdivision 8 (1983 Supp) and 116J.91 Subdivision 4 (1983 Supp as amended Minnesota Laws 1984 Chapter 583 Section 17), and that Mark B. Dayton, Chairman of the Minnesota Energy and Economic Authority, Lyn Burton, Vice Chair and David L. Printy, Secretary, be and hereby are authorized to sign an order adopting these rules and further are 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 28th day of November, 1984.

Mark B. Dayton, Chairman of the Minnesota Energy & Economic Development Authority

Bernard Brommer
Member

MEEDA RESOLUTION NO. 84-133
MINNESOTA ENERGY AND ECONOMIC
DEVELOPMENT AUTHORITY
STATE OF MINNESOTA
ST. PAUL, MINNESOTA

In the Matter of the Proposed Emergency Rules of the Energy and Economic Development Authority Relating to Rules for Energy Development Loan Program.

Certificate of Authority's Authorizing Resolution

I, Mark B. Dayton, do hereby certify that I am a member and the Chairman of the Energy and Economic Development Authority, 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 Energy and Economic Development Authority duly and properly called and held on the 16th day of May, 1984, 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 Mark B. Dayton, Chairman of the Energy and Economic Development Authority, be and he hereby is granted the authority and directed to sign an Order of the Energy and Economic Development Authority directing the publication in the State Register of proposed emergency rules governing an Energy Development Loan Program as well as perform any and all acts incidental thereto.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 16th day of May, 1984.

BY: _____
Chair

ATTEST: _____
Member

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy & Economic Development Authority Governing Energy Financial Assistance

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I Christie B. Eller, Special Assistant Attorney General, 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 of 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.

Christie B Eller

Christie B. Eller
Special Assistant Attorney General