

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1225

05-0009-017

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 11-15-85
DATE FOR REVIEW 11-25-85
DATE DUE 12-2-85

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

Approved 12.2.85 mjc Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State _____ Revisor approved 11.18.85 disapproved _____

✓ Rule as Adopted

_____ Rule as Proposed

✓ Order Adopting 8.28.85 Date combined w/ FofF

_____ Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency see C. Ellers memo

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

✓ Mailing list Certificate

✓ Publication in State Register But see C. Ellers memo
7.1.85 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

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

_____ Agency's Findings of Fact combined w/ FofF

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

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

✓ Certificate of Compliance w/Rulemaking Procedures

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

✓ Notice of Submission to the Attorney General

✓ Memo from C. Eller re Notice as published in SR.

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: MARK B. DAYTON, Chairman
Energy and Economic Development Authority

DATE: 12/2/85

ATTN: CHRISTIE B. ELLER
Special Assistant Attorney General

FROM: MARTHA J. CASSERLY
Special Assistant Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Rules of the Energy and Economic Development Authority Governing the District Heating Design Construction Loan Program

The above-referenced rule has been approved as to its legality by the Attorney General on December 2, 1985.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies of the approved rule with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth copy is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

MJC:pmf

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

RR1225

AG copy.

Department of Energy and Economic Development

Adopted Rules Governing Design and Construction Loans; District Heating; Authority

Rules as Adopted

DISTRICT HEATING LOAN RULES

renumbering addressed in FFS

~~4200.4500~~ 8300.4500 DEFINITIONS.

Subpart 1. **Applicability.** The definitions in Minnesota Statutes, section 116J.36 and part 8300.0100 and the definitions in this part apply to parts ~~4200.4500~~ 8300.4500 to ~~4200.5000~~ 8300.5100.

Subp. 2. **Construction loan.** "Construction loan" means a loan to fund all construction costs as defined in Minnesota Statutes, section 116J.36, subdivision 2.

Subp. 3. **Design loan.** "Design loan" means a loan made to fund those activities required to be completed during the final design phase of a district heating system in order to finance and construct the system. These activities include conducting economic feasibility analyses, obtaining heat source commitments and customer contracts, structure financing, and related district heating project tasks.

Subp. 4. **District heating project.** "District heating project" means a district heating design or construction project for a new or existing system.

Subp. 5. **Existing system.** "Existing system" means a district heating system that has a minimum of one customer and which has been operational for more than one year.

Subp. 6. **Financial consultant.** "Financial consultant" means a reputable person or firm experienced in working with complex revenue-supported financial plans and qualified to assess the financial condition and operation of the district heating project.

Subp. 7. **Gross revenues.** "Gross revenues" means all revenues, fees, user charges, rents, franchise fees, special assessments, and other income and receipts derived from the

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ownership or operation of the district heating project, the proceeds of any insurance that insures against the loss of gross revenues, any investment income from money or securities derived from the state loan under Minnesota Statutes, section 116J.36, and any other income and receipts attributable to the ownership or operation of the project from whatever source derived, calculated on an annual basis.

Subp. 8. **New system.** "New system" means a district heating system that has a minimum of one customer and has been operational for less than one year.

Subp. 9. **Operating expenses.** "Operating expenses" means the expenses directly and properly attributable to the operation of the project on an annual basis including: expenses for operation, maintenance, repairs, ordinary replacement, ordinary acquisition of equipment, fuel and heat, labor and fringe benefits, lease rental payments, insurance premiums, administration, legal services, engineering services, payments of all indebtedness, and any other current expenses or obligations required to be paid by the municipality or owner of the district heating project, all to the extent properly and directly attributable to the operation of the district heating project. Operating expenses do not include any costs or expenses for new construction or any allowance for depreciation.

~~4200.4600~~ 8300.4600 PURPOSE.

Parts ~~4200.4500~~ 8300.4500 to ~~4200.5000~~ 8300.5100 are adopted for the purpose of allowing prompt and proper applications for design and construction loans after comprehensive preliminary engineering, economic, and, when applying for a construction loan, design studies have been completed. Applications to the authority must be submitted to the commissioner on behalf of the authority. The commissioner shall review applications to determine the eligibility of the municipality, eligibility of the district heating project, and application completeness. If the commissioner determines that an application is incomplete, the procedures in parts ~~4200.2750~~ 8300.2750 and ~~4200.4300~~ 8300.4300 apply.

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4200.4700 8300.4700 CONTENTS OF APPLICATION FOR NEW SYSTEM.

A completed application for a loan for a new system shall contain:

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

B. Complete engineering design of the district heating project, including:

(1) an analysis of the proposed piping layout which must address optimum service to the total designated area; reliability of service; system temperatures and pressure requirements; thermal and hydraulic operability for normal and emergency conditions; optimum piping configuration to provide service; and flexibility for future expansion;

(2) an analysis of the proposed piping design which must address reliability of service; ease of construction; ease of maintenance; installation methods; specifications and standards; and

(3) an analysis of the heat source design which must define the proposed roles of the following heat sources in the development and future operation of the system: base load heating plant; peaking plants; large boiler plants in existing buildings; mobile boilers; accumulators; and future heat sources such as solid waste, solar, and industrial waste heat.

C. A market study of customers who represent 90 percent of the proposed thermal load of the district heating system. This study must show detailed information on present fuel consumption or heating demand and the present heating system in each building.

D. A preliminary expansion plan showing how the system could be expanded to serve other parts of the community.

E. A complete economic analysis ~~which must include~~, including:

(1) a preliminary financing and development plan for the district heating system prepared by a financial consultant; ~~and also~~;

(2) cash flow, income, and balance sheets for the

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time period of the loan.~~---This analysis must also contain;~~

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

(4) a statement showing the source of all of the funds to be used by the applicant for the design or construction of the system, and the amount of funds from each of those sources.

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F. For construction loans, a certification by the municipality that a bid package for the construction of the project has been completed and is available to the department if requested.

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

H. Where applicable, a copy of any contract for the furnishing of heat and fuel for the district heating project.

I. A resolution in support of the project from the governing body of the municipality which must include the pledges the municipality proposes to make to guarantee repayment of the loan and evidence of the municipality's capability to sponsor the district heating project.

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

K. A list of key personnel and their qualifications as they relate to the district heating project.

L. An estimate of the type and amount of fuel to be saved per year from the full operation of the district heating system compared to the type and amount of fuel used by the existing system.

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M. A copy of a completed environmental impact statement, or a negative declaration of the need for an environmental impact statement from a completed environmental assessment worksheet, or in those cases where no environmental assessment worksheet is required, a statement as to the environmental effects of the project.

~~4200.4800~~ 8300.4800 CONTENTS OF APPLICATION FOR EXISTING SYSTEM.

A completed application for a loan to an existing system shall contain:

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

B. Background information on the existing system including ownership; type and size of heat source; heat source capacity; back-up boilers; customer base including information on process loads.

C. A complete engineering design of the expansion project including:

(1) an analysis of the proposed piping layout; system temperatures and pressure requirements; and flexibility for future expansion; and

(2) an analysis of the heat source including the capacity available and information concerning the back-up heat source.

D. A discussion of proposed customer load including information on present fuel consumption or heating demand and the present heating system in each building for new customers.

E. A complete discussion of how the loan is to be secured, the current outstanding debt of the applicant, and the cash flow for the term of the loan. This discussion must also contain a cost estimate and expenditure schedule for all transmission and distribution piping, heat source conversion, purchase or rental, operating and maintenance costs excluding fuel costs, and building heating conversion costs.

F. For construction loans, a certification by the municipality that a bid package for the construction of the

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project has been completed and is available to the department if requested.

G. A copy of the standard contract entered into with the customers of the project and a list of customers already under contract and the total load it represents.

H. A copy of any contract for the furnishing of heat.

I. A copy of any contract for the furnishing of fuel for the district heating project if this is a waste-to-energy project.

J. A resolution in support of the project from the governing body of the municipality which must include the pledges the municipality proposes to make to guarantee repayment of the construction loan and evidence of the municipality's capability to sponsor the district heating project.

K. Identification of all licenses, permits, zoning regulations, and other requirements of federal, state, or local governments with which the district heating project would be expected to comply and the present status of compliance with each.

~~4200.4900~~ 8300.4900 APPLICATION PROCEDURE.

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

Subp. 2. **Acceptance of applications.** Applications will be accepted beginning on the date parts ~~4200.4500~~ 8300.4500 to ~~4200.5000~~ 8300.5100 become effective.

Subp. 3. **Number of copies.** Ten copies of an application shall be submitted to the commissioner.

~~4200.5000~~ 8300.5000 AUTHORITY EVALUATION PROCEDURE.

Applications approved for processing by the commissioner and those applications rejected by the commissioner but appealed to the authority under parts ~~4200.2750~~ 8300.2750, subpart 7 and ~~4200.4300~~ 8300.4300, subpart 7 must be presented to the authority for approval or disapproval under the criteria contained in this part. The authority shall review each application presented to it as it is received according to the eligibility and priority criteria of Minnesota Statutes, section 116J.36; the sophistication and reasonableness of the technical approach as detailed in the application; the experience and qualifications of the applicant as they relate to the district heating project; the district heating project organization and personnel assignment; and the estimated cost of the district heating project. If the authority approves the application the commissioner shall forward the application to the commissioner of finance who may make loans to the municipality. If the authority disapproves the application, the commissioner shall notify the applicant in writing.

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8300.5100 REPORTS AND MONITORING.

Subpart 1. **Quarterly project status report.** The municipality shall submit to the authority, on forms provided by the authority, a quarterly project status report. This report is due within 30 days of the end of each calendar quarter until the design or construction of the district heating project is completed. Projects begun part way through a quarter must submit a quarterly report for the portion of the quarter during which the project was active. The project status report must indicate the progress of the implementation of the district heating project funded, problems encountered, the effect of the problems on the project, and the corrective action taken. If, at any time, the municipality fails to substantially comply with the start and end dates given in the loan application as approved, and if the municipality cannot reasonably justify to the authority its lack of progress, the entire loan amount may become due and payable at the discretion of the authority.

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Subp. 2. **Quarterly financial report.** The municipality

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shall submit to the authority, on forms provided by the authority, a quarterly financial status report that indicates expenditures of loan funds through the last date of each quarter. This report is due within 30 days of the end of each calendar quarter until the design or construction of the district heating project is completed and all expenses applicable to the loan are paid. Projects begun part way through a quarter must submit a quarterly report for the portion of the quarter during which the project was active.

Subp. 3. **Final report.** Within 60 days of the completion of the project, the municipality shall submit to the authority, on forms provided by the authority, a final financial status report that gives expenditures of the district heating project. The final financial report shall give actual expenditures for the costs incurred.

Subp. 4. **Failure to comply with provisions of part.** If the municipality fails to comply with any of the provisions of this part, the municipality may, with the advice and consent of the authority, be declared ineligible for further contracts with the state under the district heating loan program.

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APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC 2 1985
Joan Anderson
Secretary of State
11:21 AM

APPROVED AS TO FORM AND LEGALITY
December 2 19 85
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY MJ Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

In the Matter of the Adoption of Permanent Rules of the Department of Energy and Economic Development Governing Administration of the District Heating Design and Construction Loan Program

Supplemental Findings of Fact, Conclusions, and Order Adopting Permanent Rules

FINDINGS

1. The proposed rules pts. 4200.2100 to 4200.2750 relate to the Department of Energy and Economic Development's ("Department") district heating design and construction loan program. The proposed rules contain several cross references to pts. 4200.4500 to 4200.5000 which are proposed rules of Minnesota Energy and Economic Development Authority ("Authority") also relating to district heating design and construction loans. In adopting the proposed rules the Authority renumbered pts. 4200.4500 to 4200.5000 to pts. 8300.4500 to 8300.5000. The Authority adopted the renumbering of the rules since Minn. Rules ch. 8300 contains rules relating to the Authority. Chapter 4200 contains rules relating to the department. Because the Authority rules have been renumbered, it is necessary to change all cross references to the Authority rules pts. 4200.4500 to 4200.5000 to pts. 8300.4500 to 8300.5000. In addition on page 1 line 35, the reference to "pts. 4300.4700 to 4300.4800" should be corrected to "pts. 8300.4700 to 8300.4800."

2. In proposed part 4200.3000, subp. 2 a change is necessary to correct a cross reference to the definitions contained in pt. 8300.0100. The section is intended to incorporate the definitions in the district heating statute and the Authority rules. In order to effectuate that intent the part should be revised to read as follows:

   The definitions in Minnesota Statutes, section 116J.36 and part 8300.0100 apply to parts 4200.3000 to 4200.4300 ~~and part 8300.0100~~.

Conclusions

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

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

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

4. The Commissioner has determined that none of the changes proposed in the Supplemental Findings to the rules are a substantive change from the rules as published.

5. The Commissioner has determined the need for the reasonableness of these adopted rules.

Order Adopting Noncontroversial Rules

NOW THEREFORE, IT IS ORDERED that these rules identified as Permanent Rules of the Department of Energy and Economic Development Governing the Administration of the District Heating Design and Construction Loan Program are adopted this 2nd day of December, 1985, pursuant to authority vested in the Commissioner by Minnesota Statutes, section 116J.36, Subdivision 11.

STATE OF MINNESOTA

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

MEEDA Resolution #85-392
State of Minnesota
Energy and Economic Development Authority

In the Matter of the Adoption of Permanent Rules of the Minnesota Energy and Economic Development Authority Governing Administration of the District Heating Design and Construction Loan Program

Findings of Fact, Conclusions, and Order Adopting Permanent Rules

Notice of Intent to Adopt Rules without a Public Hearing regarding the above entitled matter was published in the State Register on July 1, 1985 at 10 S. R. 5-8 and was mailed to all persons who had registered their name with the Authority or the Department of Energy and Economic Development pursuant to Minnesota Statute Section 14.14. The Notice afforded interested parties 30 days in which to submit comments to the Authority, to request a public hearing on the proposed rules, or to request notification of the submission of final rules to the Attorney General.

The Authority received no written comments on the rules or requests for notification of submission of the rules to the Attorney General.

After affording interested parties an opportunity to submit comments and to request a public hearing on the proposed rules, the Authority makes the following:

Findings

1. In the same State Register as these rules (which define the Authority's role in the district heating loan program) there were also published rules which define the Commissioner's role in the district heating loan program. The Authority rules were published an Pages 5-8. The commissioners rules were published on pages 8-12. Although the correct Notice of Intent to Adopt Rules without a Public Hearing was delivered with each set of rules, once at the State Register the two Notices were apparently inadvertently exchanged.

   The major difference between these two Notices is the specific statute cited in each which gives "authority to adopt rules." Minnesota Statute 116M.10, subd. 7 is the correct statute to be cited for these rules. The statute which was cited in the published Notice, 116J.36, subd. 11, is the statute which is cited for the Commissioner's rules.

   The Authority does not feel this is substantive nor did this error affect a reader's understanding of these rules since the rules were published on adjacent pages in the same State Register. Moreover, the correct notices were mailed to all persons who had registered with the Authority or the Department of Energy and Economic Development.

2. The municipality which receives a district heating loan has responsibilities beyond repayment of the loan. These responsibilities are in the areas of regular reporting and assisting the State with monitoring of the loan. Therefore, the Authority has determined that a part shall be added to these rules which defines the reports and monitoring which a loan recipient is responsible for. The authority finds that this is not substantial change since it does not effect loan eligibility or loan terms.

The following part shall be added:

8300.5100 REPORTS AND MONITORING

Subpart 1. Quarterly project status report. The municipality shall submit to the authority, on forms provided by the authority, a quarterly project status report. This report is due with in 30 days of the end of each calendar quarter until the design or construction of the district heating project is completed. Projects begun part way through a quarter must submit a quarterly report for the portion of the quarter during which the project was active. The project status report must indicate the progress of the implementation of the district heating project funded, problems encountered, the effect of the problems on the project, and the corrective action taken. If, at any time, the municipality fails to substantially comply with the start and end dates given in the loan application as approved, and if the municipality cannot reasonably justify to the authority its lack of progress, the entire loan amount may become due and payable at the discretion of the authority.

Subp. 2. Quarterly financial report. The municipality shall submit to the authority, on forms provided by the authority, a quarterly financial status report that indicates expenditures of loan funds through the last date of each quarter. This report is due within 30 days of the end of each calendar quarter until the design or construction of the district heating project is completed and all expenses applicable to the loan are paid. Projects begun part way through a quarter must submit a quarterly report for the portion of the quarter during which the project was active.

Subp. 3. Final report. Within 60 days of the completion of the project, the municipality shall submit to the authority, on forms provided by the authority, a final financial status report that gives expenditures of the district heating project. The final financial report shall give actual expenditures for the costs incurred.

Subp. 4. Failure to comply with provisions of part. If the municipality fails to comply with any of the provisions of the part, the municipality may with the advice and consent of the authority, be declared ineligible for further contracts with the state

3. Part 4200.4700, subp E discusses economic analysis work which must be presented in a district heating loan application. The Authority has determined that one additional item shall be added to this analysis. A statement on sources and uses of funds shall be added in order for the Authority to determine, when evaluating an application, if the district heating loan will be used for only eligible costs. Sources and uses of funds are typically required as part of a loan application. Also, this statement on sources and uses of funds will help to determine that an applicant is not using other funding sources to cover the costs which this loan is expected to pay for. The authority finds that this is not a substantial change since it does not effect loan eligibility or loan terms and is not a burdensome requirement. The revisor has determined that this subpart would be easier to read if broken down into parts rather than remain in paragraph form.

   The following shall be added to part 4200.4700, subp. E:

   "(4) a statement showing the source of all of the funds to be used by the applicant for the design or construction of the system, and the amount of funds from each of those sources."

4. In part 4200.5000, the Revisor's office inadvertently omitted the words "district heating" in three instances. The following is the section of part 4200.5000 affected by the omission with the words "district heating" added. The Authority does not find that these were substantive omissions.

   . . . the sophistication and reasonableness of the technical approach as detailed in the application; the experience and qualifications of the applicant as they relate to the district heating project; the district heating project organization and personnel assignment; and the estimated cost of the district heating project.

   This part shall have the words "district heating" added in the three instances as shown above.

5. The proposed rules were numbered and proposed to be codified in Minnesota Rules Chapter 4200 which contains rules for the Department of Energy and Economic Development. The Revisor will renumber the rules as adopted as part of Minnesota Rules Chapter 8300 which contains rules of the Energy and Economic Development Authority.

CONCLUSIONS

1. The Authority gave proper notice of its intent to adopt the proposed 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 rules 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 that the addition to the rules of a part concerning reports required of loan receipients is necessary in order to more effectively monitor those recipients and the use of the State's loan funds. Therefore, part 8300.5100 will be added which details for recipients their responsibilities concerning reporting.

5. In order to more accurately evaluate a district heating loan application, the Authority has determined it is necessary to add a sentence to part 8300.4700, subp. E. which requires applicants to include a statement of sources and uses of funds.

6. In order to have consistency throughout the rules, the Authority has determined it is necessary to add the words "district heating" in three instances where it was omitted in part 8300.5000.

7. The Authority has determined that none of the changes proposed to the rules are a substantive change from the rules as published.

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

ORDER ADOPTING NONCONTROVERSIAL RULES

NOW, THEREFORE, IT IS ORDERED that these rules identified as Permanent Rules of the Energy and Economic Development Authority Governing the Administration of the District Heating Design and Construction Loan Program are adopted this 28th day of August, 1985, pursuant to authority vested in the Authority by Minnesota Statutes, section 116M.10, Subdivision 7.

STATE OF MINNESOTA

Mark B. Dayton, Chairman,
Minnesota Energy and Economic
Development Authority

ATTEST: _____
Member of the Authority

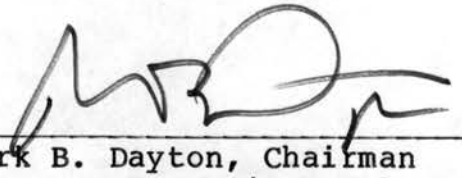
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STATE OF MINNESOTA
ENERGY & ECONOMIC DEVELOPMENT AUTHORITY

In the Matter of the Proposed Adoption of Rules of the Energy & Economic Development Authority Governing the District Heating Design and Construction Loan Program

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 8th day of April, 1985 that a Notice of Intent to Adopt Rules without public hearing in the above-entitled matter be given to all persons who have registered their names with the State Department of Energy & Economic Development for that purpose and be published in the State Register.



Mark B. Dayton, Chairman
Energy & Economic Development Authority

Authority #85-290
State of Minnesota
Energy & Economic Development Authority

In the Matter of the Adoption of Rules of the Minnesota Energy & Economic Development Authority Governing Administration of the District Heating Design and Construction Loan Program

Certificate of the Authority's Authorizing Resolution for Publication of Notice of Intent to Adopt Permanent Rules

I, Mark B. Dayton, do hereby certify that I am Chairman of the Minnesota Energy & Economic Development Authority, an authority 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 8th day of April, 1985, 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 Mark B. Dayton, Chairman of the Minnesota Energy & Economic Development Authority, Lyn Burton, Vice Chair or David Printy, Secretary, are hereby granted the authority and directed to sign an Order directing that Notice be given of Authority's intent to adopt without public hearing rules governing the District Heating Design and Construction Loan Program pursuant to Minnesota Statutes section 116J.36, and 116M.10 subdivision 6, to sign the Notice thereof, and to perform any and all acts incidental thereto. In the event a public hearing becomes necessary, they hereby are granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as perform any and all acts incidental thereto, including but without being limited to signing an Order for Hearing and Notice of Hearing as well as acting as the Authority's representative at all hearings."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 8th day of April, 1985.

Lyn Burton
Attest by another member of the Authority

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

MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY

Proposed Rules Relating to District Heating

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Energy and Economic Development Authority proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The specific statutory authority to adopt the rules is Minnesota Statutes section 116M.10, subd. 7.

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

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

Mary Lesch-Gormley
Manager, District Heating Programs
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
Telephone: 612/297-2324

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rules.

These rules govern loan application procedures for the Minnesota Energy and Economic Development Authority's district heating design and construction loan programs. Amendments to rules relating to the Department of Energy and Economic Development's administration of the district heating design and construction loan programs are being proposed concurrently. See July 1, 1985 State Register, pages 8 to 12.

A copy of the rule is available for review from Mary Lesch-Gormley at the above address upon request.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identified the data and information relied upon to support the proposed rule has been prepared and is available from Mary Lesch-Gormley.

If no hearing is required, upon adoption of the noncontroversial rule, the rule and the required supporting noncontroversial rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the data of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, must submit the written request to Mary Lesch-Gormley.

June 14, 1985

Mark B. Dayton
Chairman, Minnesota
Energy and Economic Development
Authority.

MINNESOTA
Department of Energy
and Economic Development

Financial Management Division
Energy Finance (612) 297-1332
Business Finance (612) 297-3547

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

June 25, 1985

To All Interested Parties:

The 1981 Minnesota Legislature enacted the District Heating Bonding Act, Laws of 1981 Chapter 334, codified as Minnesota Statutes, Section 116J.36, for the purpose of encouraging the establishment and improvement of economically viable district heating systems which have the potential to save energy and/or displace scarce fuels.

Under this 1981 legislation, the Legislative Advisory Commission (LAC) and the Governor were charged with evaluating the projects and recommending loans be made by the commissioner of finance through this program. Permanent rules to administer the program were adopted in February 1983, and reflected the role the LAC and Governor would play in making recommendations to the commissioner of finance, who would make district heating design and construction loans to a municipality.

However, later in 1983, the legislature created Minnesota Statutes, Section 116M.10 Subdivision 6 the Minnesota Energy and Economic Development Authority, referred to as the "authority." In 1984, the authority replaced the LAC and Governor and was charged with evaluating district heating projects and recommending to the commissioner of finance when a district heating design and construction loan be made.

In 1984, amendments to Minnesota Statutes 116J.36 further clarified the role the authority and commissioner of the department of energy and economic development would play in the operation of the district heating design and construction loan program.

It has, therefore, become necessary to amend the 1983 permanent rules of the district heating loan program to reflect the 1983 and 1984 statutory changes. The enclosed set of rules labled "1" concern the duties of the authority, dealing with application contents and the authority's role in the application approval process. The set of rules labeled "2" are simply amendments to the existing design and construction loan rules and deal with the commissioner's administration of the application process.

MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY

Proposed Rules Relating to District Heating

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Energy and Economic Development Authority proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The specific statutory authority to adopt the rules is Minnesota Statutes section 116M.10, subd. 7.

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

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

Mary Lesch-Gormley
Manager, District Heating Programs
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
Telephone: 612/297-2324

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rules.

These rules govern loan application procedures for the Minnesota Energy and Economic Development Authority's district heating design and construction loan programs. Amendments to rules relating to the Department of Energy and Economic Development's administration of the district heating design and construction loan programs are being proposed concurrently. See July 1, 1985 State Register, pages 8 to 12.

A copy of the rule is available for review from Mary Lesch-Gormley at the above address upon request.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identified the data and information relied upon to support the proposed rule has been prepared and is available from Mary Lesch-Gormley.

If no hearing is required, upon adoption of the noncontroversial rule, the rule and the required supporting noncontroversial rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the data of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, must submit the written request to Mary Lesch-Gormley.

June 14, 1985

Mark B. Dayton
Chairman, Minnesota
Energy and Economic Development
Authority.

(1)

Minnesota Energy and Economic Development Authority
District Heating Design and Construction Loan Rules

Rules as Proposed (all new material)

DISTRICT HEATING LOAN RULES

4200.4500 DEFINITIONS.

Subpart 1. **Applicability.** The definitions in Minnesota Statutes, section 116J.36 and part 8300.0100 and the definitions in this part apply to parts 4200.4500 to 4200.5000.

Subp. 2. **Construction loan.** "Construction loan" means a loan to fund all construction costs as defined in Minnesota Statutes, section 116J.36, subdivision 2.

Subp. 3. **Design loan.** "Design loan" means a loan made to fund those activities required to be completed during the final design phase of a district heating system in order to finance and construct the system. These activities include conducting economic feasibility analyses, obtaining heat source commitments and customer contracts, structure financing, and related district heating project tasks.

Subp. 4. **District heating project.** "District heating project" means a district heating design or construction project for a new or existing system.

Subp. 5. **Existing system.** "Existing system" means a district heating system that has a minimum of one customer and which has been operational for more than one year.

Subp. 6. **Financial consultant.** "Financial consultant" means a reputable person or firm experienced in working with complex revenue-supported financial plans and qualified to assess the financial condition and operation of the district heating project.

Subp. 7. **Gross revenues.** "Gross revenues" means all revenues, fees, user charges, rents, franchise fees, special assessments, and other income and receipts derived from the ownership or operation of the district heating project, the proceeds of any insurance that insures against the loss of gross revenues, any investment income from money or securities derived from the state loan under Minnesota Statutes, section 116J.36, and any other income and receipts attributable to the ownership or operation of the project from whatever source derived.

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calculated on an annual basis.

Subp. 8. **New system.** "New system" means a district heating system that has a minimum of one customer and has been operational for less than one year.

Subp. 9. **Operating expenses.** "Operating expenses" means the expenses directly and properly attributable to the operation of the project on an annual basis including: expenses for operation, maintenance, repairs, ordinary replacement, ordinary acquisition of equipment, fuel and heat, labor and fringe benefits, lease rental payments, insurance premiums, administration, legal services, engineering services, payments of all indebtedness, and any other current expenses or obligations required to be paid by the municipality or owner of the district heating project, all to the extent properly and directly attributable to the operation of the district heating project. Operating expenses do not include any costs or expenses for new construction or any allowance for depreciation.

4200.4600 PURPOSE.

Parts 4200.4500 to 4200.5000 are adopted for the purpose of allowing prompt and proper applications for design and construction loans after comprehensive preliminary engineering, economic, and, when applying for a construction loan, design studies have been completed. Applications to the authority must be submitted to the commissioner on behalf of the authority. The commissioner shall review applications to determine the eligibility of the municipality, eligibility of the district heating project, and application completeness. If the commissioner determines that an application is incomplete, the procedures in parts 4200.2750 and 4200.4300 apply.

4200.4700 CONTENTS OF APPLICATION FOR NEW SYSTEM.

A completed application for a loan for a new system shall contain:

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

B. Complete engineering design of the district

heating project, including:

(1) an analysis of the proposed piping layout which must address optimum service to the total designated area; reliability of service; system temperatures and pressure requirements; thermal and hydraulic operability for normal and emergency conditions; optimum piping configuration to provide service; and flexibility for future expansion;

(2) an analysis of the proposed piping design which must address reliability of service; ease of construction; ease of maintenance; installation methods; specifications and standards; and

(3) an analysis of the heat source design which must define the proposed roles of the following heat sources in the development and future operation of the system: base load heating plant; peaking plants; large boiler plants in existing buildings; mobile boilers; accumulators; and future heat sources such as solid waste, solar, and industrial waste heat.

C. A market study of customers who represent 90 percent of the proposed thermal load of the district heating system. This study must show detailed information on present fuel consumption or heating demand and the present heating system in each building.

D. A preliminary expansion plan showing how the system could be expanded to serve other parts of the community.

E. A complete economic analysis which must include a preliminary financing and development plan for the district heating system prepared by a financial consultant, and also cash flow, income, and balance sheets for the time period of the loan. This analysis must also contain a cost estimate and expenditure schedule for all transmission and distribution piping, heat source conversion, purchase or rental, operating and maintenance costs excluding fuel costs, and building heating conversion costs.

F. For construction loans, a certification by the municipality that a bid package for the construction of the project has been completed and is available to the department if

requested.

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

H. Where applicable, a copy of any contract for the furnishing of heat and fuel for the district heating project.

I. A resolution in support of the project from the governing body of the municipality which must include the pledges the municipality proposes to make to guarantee repayment of the loan and evidence of the municipality's capability to sponsor the district heating project.

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

K. A list of key personnel and their qualifications as they relate to the district heating project.

L. An estimate of the type and amount of fuel to be saved per year from the full operation of the district heating system compared to the type and amount of fuel used by the existing system.

M. A copy of a completed environmental impact statement, or a negative declaration of the need for an environmental impact statement from a completed environmental assessment worksheet, or in those cases where no environmental assessment worksheet is required, a statement as to the environmental effects of the project.

4200.4800 CONTENTS OF APPLICATION FOR EXISTING SYSTEM.

A completed application for a loan to an existing system shall contain:

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

B. Background information on the existing system

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including ownership; type and size of heat source; heat source capacity; back-up boilers; customer base including information on process loads.

C. A complete engineering design of the expansion project including:

(1) an analysis of the proposed piping layout; system temperatures and pressure requirements; and flexibility for future expansion; and

(2) an analysis of the heat source including the capacity available and information concerning the back-up heat source.

D. A discussion of proposed customer load including information on present fuel consumption or heating demand and the present heating system in each building for new customers.

E. A complete discussion of how the loan is to be secured, the current outstanding debt of the applicant, and the cash flow for the term of the loan. This discussion must also contain a cost estimate and expenditure schedule for all transmission and distribution piping, heat source conversion, purchase or rental, operating and maintenance costs excluding fuel costs, and building heating conversion costs.

F. For construction loans, a certification by the municipality that a bid package for the construction of the project has been completed and is available to the department if requested.

G. A copy of the standard contract entered into with the customers of the project and a list of customers already under contract and the total load it represents.

H. A copy of any contract for the furnishing of heat.

I. A copy of any contract for the furnishing of fuel for the district heating project if this is a waste-to-energy project.

J. A resolution in support of the project from the governing body of the municipality which must include the pledges the municipality proposes to make to guarantee repayment of the construction loan and evidence of the municipality's

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capability to sponsor the district heating project.

K. Identification of all licenses, permits, zoning regulations, and other requirements of federal, state, or local governments with which the district heating project would be expected to comply and the present status of compliance with each.

4200.4900 APPLICATION PROCEDURE.

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

Subp. 2. **Acceptance of applications.** Applications will be accepted beginning on the date parts 4200.4500 to 4200.5000 become effective.

Subp. 3. **Number of copies.** Ten copies of an application shall be submitted to the commissioner.

4200.5000 AUTHORITY EVALUATION PROCEDURE.

Applications approved for processing by the commissioner and those applications rejected by the commissioner but appealed to the authority under parts 4200.2750, subpart 7 and 4200.4300, subpart 7 must be presented to the authority for approval or disapproval under the criteria contained in this part. The authority shall review each application presented to it as it is received according to the eligibility and priority criteria of Minnesota Statutes, section 116J.36; the sophistication and reasonableness of the technical approach as detailed in the application; the experience and qualifications of the applicant as they relate to the project; the project organization and personnel assignment; and the estimated cost of the project. If the authority approves the application the commissioner shall

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forward the application to the commissioner of finance who may make loans to the municipality. If the authority disapproves the application, the commissioner shall notify the applicant in writing.

DEPARTMENT OF ENERGY AND ECONOMIC DEVELOPMENT

Proposed Rules Relating to District Heating

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Energy and Economic Development Authority proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The specific statutory authority to adopt the rules is Minnesota Statutes section 116J.37, subd. 11

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

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

Mary Lesch-Gormley
Manager, District Heating Programs
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
Telephone: 612/297-2324

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rules.

These rules amend existing rules and govern procedures for the Department's administration of the Energy and Economic Development Authority's district heating design and construction loan programs. Proposed rules of the Minnesota Energy and Economic Development Authority relating to the loan application procedures for the district heating loan programs are being concurrently proposed. See July 1, 1985 State Register, pages 5 to 8.

A copy of the rule is available for review from Mary Lesch-Gormley at the above address upon request.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identified the data and information relied upon to support the proposed rule has been prepared and is available from Mary Lesch-Gormley.

If no hearing is required, upon adoption of the noncontroversial rule, the rule and the required supporting noncontroversial rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the data of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, must submit the written request to Mary Lesch-Gormley.

June 14, 1985

Mark B. Dayton
Commissioner
Energy and Economic Development

Amendments to Permanent District Heating Design and Construction Loan Rules

Rules as Proposed

Design Loan Rules

4200.2100 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 4200.2100 to ~~4200.2700~~ 4200.2750 the terms defined in ~~subparts 2 to 7~~ this part have the meanings given them.

Subp. 2. **~~Act~~ Applicability of statute.** ~~"Act" means laws of Minnesota 1981, chapter 334~~ The definitions in Minnesota Statutes, section 116J.36 and part 8300.0100 apply to parts 4200.2100 to 4200.2750.

Subp. 3. [See Repealer.]

Subp. 4. and 5. [Unchanged.]

Subp. 6. [See Repealer.]

Subp. 7. **District heating project.** "District heating project" means a district heating design project.

4200.2200 AUTHORITY, PURPOSE, AND SCOPE.

Subpart 1. **Authority.** Parts 4200.2100 to ~~4200.2700~~ 4200.2750 are authorized by Minnesota Statutes, section 116J.36, subdivision 11.

Subp. 2. **Purpose.** Parts 4200.2100 to ~~4200.2700~~ 4200.2750 are promulgated for the purpose of allowing prompt and proper applications for design loans after comprehensive preliminary engineering, economic, and design studies have been completed. Parts 4200.2100 to ~~4200.2700~~ 4200.2750 set forth the procedures that municipalities must follow to apply for loans and establish the criteria by which the applications are reviewed.

Subp. 3. [See Repealer.]

4200.2300 APPLICATION PROCEDURE.

Applications for design loans under ~~the act~~ Minnesota Statutes, section 116J.36 and parts 4200.2100 to ~~4200.2700~~ 4200.2750 shall be submitted to the commissioner in the form required under parts 4300.4700 and 4300.4800. Ten complete copies shall be submitted. Applications will be accepted beginning on the date parts 4200.2100 to ~~4200.2700~~ 4200.2750 become effective.

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4200.2350 DISTRICT HEATING ADVISORY TASK FORCE.

Subpart 1. **Membership.** Under Minnesota Statutes, section 15.014, the commissioner shall appoint a district heating advisory task force consisting of at least four members in addition to the commissioner who shall act as chairperson.

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

The commissioner may from time to time add or delete task force members, subject only to the limitations in this subpart.

Subp. 2. **Task force duties.** The task force shall review each application for a loan under Minnesota Statutes, section 116J.36 and parts 4200.4500 to 4200.5000, and shall advise and assist the commissioner in carrying out his or her responsibilities. The commissioner shall retain final responsibility for all statutory and rule requirements.

4200.2750 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 commissioner to submit the application to the authority to consider it in that month. If an application is received after the first business day of the month and can be reviewed by the commissioner for eligibility and financial feasibility prior to the authority agenda deadline, the commissioner shall submit the application to the authority for consideration of the application at the meeting in that month.

Subp. 2. **Completed applications.** An application is complete when the commissioner receives all documentation and exhibits required under parts 4200.4500 to 4200.5000.

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

REVISOR OF STATUTES

commissioner's notification to complete the application. If the application is not completed and received by the commissioner within 60 days, the application is considered to be rejected and the applicant must 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 Minnesota Statutes, section 116J.36, and parts 4200.2100 to 4200.2750.

Subp. 5. **Ineligible project or applicant.** If the applicant or project is ineligible, the commissioner shall notify the applicant of that fact in writing. 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 or applicant is 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 and technical feasibility review.** The commissioner shall review the application in accordance with part 4200.2600 and this part. 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 part.

Subp. 7. **Rejection of application based on economic and technical unfeasibility.** If the application is rejected due to economic or technical unfeasibility, the commissioner shall notify the applicant in writing that the application is not economically or technically feasible and that the application has been rejected.

If the application is rejected due to economic or technical

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feasibility, the applicant may, within 30 days after receipt of the written notification of rejection, request that the commissioner submit the rejected application to the authority for review. The commissioner shall place the application on the agenda for evaluation by the authority under subpart 8 at the next regularly scheduled meeting of the authority for which the agenda has not been established. If the authority rejects the application, the commissioner shall so notify the applicant in writing.

Subp. 8. **Authority evaluation procedure.** Applications approved for processing by the commissioner must be presented to the authority for approval or disapproval under Minnesota Statutes, section 116J.36 and parts 4200.4500 to 4200.5000. If the authority approves the application the commissioner shall forward the application to the commissioner of finance who may make loans to the municipality. If the authority disapproves an application, the commissioner shall so notify the applicant in writing.

Construction Loan Rules

4200.3000 DEFINITIONS.

Subpart 1. [Unchanged.]

Subp. 2. **Act Applicability of statute.** ~~"Act" means~~ The definitions in Minnesota Statutes, section 116J.36 apply to parts 4200.3000 to 4200.4300 and 8300.0100.

Subp. 3. and 4. [See Repealer.]

Subp. 4a. **Construction loan.** "Construction loan" means a loan to fund all construction costs as defined in Minnesota Statutes, section 116J.36, subdivision 2.

Subp. 5. to 8. [Unchanged.]

Subp. 9. and 10. [See Repealer.]

Subp. 11. **District heating project.** "District heating project" means a district heating construction project ~~as described by the business plan~~.

Subp. 12. [Unchanged.]

4200.3100 PURPOSE.

The purpose of parts 4200.3000 to ~~4200-4200~~ 4200.4300 is to

allow district heating projects that have already completed comprehensive engineering, economic, and design studies to make prompt and proper application for construction loans. These parts set forth the procedures that municipalities must follow to apply for loans and establish the criteria by which the applications are reviewed.

4200.3200 SCOPE.

Parts 4200.3000 to ~~4200-4200~~ 4200.4300 apply to the department and to any municipality applying for construction loans under ~~the act~~ Minnesota Statutes, section 116J.36.

4200.3900 APPLICATION PROCEDURES.

Subpart 1. **Submitting.** Applications for construction loans under ~~the act~~ Minnesota Statutes, section 116J.36 and parts 4200.3000 to ~~4200-4200~~ 4200.4300 must be submitted to the commissioner in the form prescribed under parts 4200.4500 to 4200.5000.

Subp. 2. **Effective date.** The period for accepting applications begins on the date parts 4200.3000 to ~~4200-4200~~ 4200.4300 become effective.

Subp. 3. [Unchanged.]

4200.4000 DISTRICT HEATING ADVISORY TASK FORCE.

Subpart 1. **Membership.** Under Minnesota Statutes, section 15.014, the ~~assistant~~ commissioner ~~of energy~~ shall appoint a district heating advisory task force consisting of at least four members in addition to the ~~assistant~~ commissioner ~~of energy~~ who shall act as chairperson.

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

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

Subp. 2. **Task force duties.** The task force shall review each application for a loan under ~~the act~~ Minnesota Statutes,

section 116J.36 and parts 4200.4500 to 4200.5000, and shall advise and assist the commissioner in carrying out ~~the requirements of the act and parts 4200.3000 to 4200.4200~~ his or her responsibilities. The commissioner shall retain final responsibility for all statutory and rule requirements.

4200.4050 FEASIBILITY ASSESSMENT.

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

A. [Unchanged.]

B. the debt service coverage represented by ~~the business plan~~ parts 4200.4500 to 4200.5000;

C. to G. [Unchanged.]

Rules as Proposed (all new material)

4200.4300 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 commissioner to submit the application to the authority for consideration in that month. If an application is received after the first business day of the month and can be reviewed by the commissioner for eligibility and financial feasibility prior to the authority agenda deadline, the commissioner shall submit the application to the authority for consideration of the application at the meeting in that month.

Subp. 2. **Completed applications.** An application is complete when the commissioner receives all documentation and exhibits required under Minnesota Statutes, section 116J.36, and parts 4200.4500 to 4200.5000.

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 considered to be rejected and

the applicant must 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 Minnesota Statutes, section 116J.36.

Subp. 5. **Ineligible project or applicant.** If the applicant or project is ineligible, the commissioner shall notify the applicant of that fact in writing. 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 or applicant is 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 and technical feasibility review.** The commissioner shall review the application in accordance with parts 4200.4050 and 4200.4100. 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 parts 4200.3000 to 4200.4300.

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

If the application is rejected due to economic or technical unfeasibility, the applicant may, within 30 days after receipt of the written notification of rejection, request that the commissioner submit the rejected application to the authority for review. The commissioner shall place the application on the agenda for evaluation by the authority under subpart 8 at the next regularly scheduled meeting of the authority for which the

agenda has not been established. If the authority rejects the application, the commissioner shall so notify the applicant in writing.

Subp. 8. **Authority evaluation procedure.** Applications approved for processing by the commissioner must be presented to the authority for approval or disapproval under Minnesota Statutes, section 116J.36 and parts 4200.4500 to 4200.5000. If the authority approves the application the commissioner shall forward the application to the commissioner of finance who may make loans to the municipality. If the authority disapproves an application, the commissioner shall so notify the applicant in writing.

REPEALER. Minnesota Rules, parts 4200.2100, subparts 3 and 6; 4200.2200, subpart 3; 4200.2400; 4200.2500; 4200.2700; 4200.3000, subparts 3, 4, 9, and 10; 4200.3300; 4200.3400; 4200.3500; 4200.3600; 4200.3700; and 4200.3800 are repealed.

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

In the Matter of the Proposed Adoption of Permanent Rules of the Minnesota Energy and Economic Development Authority Governing the District Heating Design and Construction Loan Program Rules.

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

Norma Riley, being first duly sworn deposes and says:

That on the 25th day of June 1985, at the City of St. Paul, County of Ramsey, State of Minnesota she served the attached Notice of Intent to Adopt Rules Without 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 Energy and Economic Development Authority for the purpose of receiving notice of the proposed adoption of rules by this Authority.

Norma Riley

Subscribed and sworn to before me this 28th day of ~~June~~ OCTOBER, 1985.

Dennis M. Devereaux

SW

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

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

CERTIFICATE

In the Matter of the Proposed Adoption
of the permanent rules for the Energy and
Economic Authority governing District Heating
Design and Construction Programs.

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 Monday, this 24 day of June, 1985.

Mary Anderson

PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Energy and Economic Development

Proposed Rules Governing Design and Construction Loans; District Heating; Authority

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Energy and Economic Development Authority proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The specific statutory authority to adopt the rules is Minnesota Statutes section 116J.37, subd. 11.

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

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

Mary Lesch-Gormley
Manager, District Heating Programs
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
Telephone: 612/297-2324

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rules.

These rules amend existing rules and govern procedures for the Department's administration of the Energy and Economic Development Authority's district heating design and construction loan programs. Proposed rules of the Minnesota Energy and Economic Development Authority relating to the loan application procedures for the district heating loan programs are being concurrently proposed. See July 1, 1985 *State Register*, pages 8 to 12 [10 SR 8].

A copy of the rule is available for review from Mary Lesch-Gormley at the above address upon request.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identified the data and information relied upon to support the proposed rule has been prepared and is available from Mary Lesch-Gormley.

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

If no hearing is required, upon adoption of the noncontroversial rule, the rule and the required supporting noncontroversial rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the data of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, must submit the written request to Mary Lesch-Gormely.

June 14, 1985

Mark B. Dayton
Commissioner
Energy and Economic Development

Rules as Proposed (all new material)

DISTRICT HEATING LOAN RULES

4200.4500 DEFINITIONS.

Subpart 1. Applicability. The definitions in Minnesota Statutes, section 116J.36 and part 8300.0100 and the definitions in this part apply to parts 4200.4500 to 4200.5000.

Subp. 2. Construction loan. "Construction loan" means a loan to fund all construction costs as defined in Minnesota Statutes, section 116J.36, subdivision 2.

Subp. 3. Design loan. "Design loan" means a loan made to fund those activities required to be completed during the final design phase of a district heating system in order to finance and construct the system. These activities include conducting economic feasibility analyses, obtaining heat source commitments and customer contracts, structure financing, and related district heating project tasks.

Subp. 4. District heating project. "District heating project" means a district heating design or construction project for a new or existing system.

Subp. 5. Existing system. "Existing system" means a district heating system that has a minimum of one customer and which has been operational for more than one year.

Subp. 6. Financial consultant. "Financial consultant" means a reputable person or firm experienced in working with complex revenue-supported financial plans and qualified to assess the financial condition and operation of the district heating project.

Subp. 7. Gross revenues. "Gross revenues" means all revenues, fees, user charges, rents, franchise fees, special assessments, and other income and receipts derived from the ownership or operation of the district heating project, the proceeds of any insurance that insures against the loss of gross revenues, any investment income from money or securities derived from the state loan under Minnesota Statutes, section 116J.36, and any other income and receipts attributable to the ownership or operation of the project from whatever source derived, calculated on an annual basis.

Subp. 8. New system. "New system" means a district heating system that has a minimum of one customer and has been operational for less than one year.

Subp. 9. Operating expenses. "Operating expenses" means the expenses directly and properly attributable to the operation of the project on an annual basis including: expenses for operation, maintenance, repairs, ordinary replacement, ordinary acquisition of equipment, fuel and heat, labor and fringe benefits, lease rental payments, insurance premiums, administration, legal services, engineering services, payments of all indebtedness, and any other current expenses or obligations required to be paid by the municipality or owner of the district heating project, all to the extent properly and directly attributable to the operation of the district heating project. Operating expenses do not include any costs or expenses for new construction or any allowance for depreciation.

4200.4600 PURPOSE.

Parts 4200.4500 to 4200.5000 are adopted for the purpose of allowing prompt and proper applications for design and construction loans after comprehensive preliminary engineering, economic, and, when applying for a construction loan, design studies have been completed. Applications to the authority must be submitted to the commissioner on behalf of the authority. The commissioner shall review applications to determine the eligibility of the municipality, eligibility of the district heating project, and application completeness. If the commissioner determines that an application is incomplete, the procedures in parts 4200.2750 and 4200.4300 apply.

4200.4700 CONTENTS OF APPLICATION FOR NEW SYSTEM.

A completed application for a loan for a new system shall contain:

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

B. Complete engineering design of the district heating project, including:

(1) an analysis of the proposed piping layout which must address optimum service to the total designated area; reliability of service; system temperatures and pressure requirements; thermal and hydraulic operability for normal and emergency conditions; optimum piping configuration to provide service; and flexibility for future expansion;

(2) an analysis of the proposed piping design which must address reliability of service; ease of construction; ease of maintenance; installation methods; specifications and standards; and

(3) an analysis of the heat source design which must define the proposed roles of the following heat sources in the development and future operation of the system: base load heating plant; peaking plants; large boiler plants in existing buildings; mobile boilers; accumulators; and future heat sources such as solid waste, solar, and industrial waste heat.

C. A market study of customers who represent 90 percent of the proposed thermal load of the district heating system. This study must show detailed information on present fuel consumption or heating demand and the present heating system in each building.

D. A preliminary expansion plan showing how the system could be expanded to serve other parts of the community.

E. A complete economic analysis which must include a preliminary financing and development plan for the district heating system prepared by a financial consultant, and also cash flow, income, and balance sheets for the time period of the loan. This analysis must also contain a cost estimate and expenditure schedule for all transmission and distribution piping, heat source conversion, purchase or rental, operating and maintenance costs excluding fuel costs, and building heating conversion costs.

F. For construction loans, a certification by the municipality that a bid package for the construction of the project has been completed and is available to the department if requested.

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

H. Where applicable, a copy of any contract for the furnishing of heat and fuel for the district heating project.

I. A resolution in support of the project from the governing body of the municipality which must include the pledges the municipality proposes to make to guarantee repayment of the loan and evidence of the municipality's capability to sponsor the district heating project.

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

K. A list of key personnel and their qualifications as they relate to the district heating project.

L. An estimate of the type and amount of fuel to be saved per year from the full operation of the district heating system compared to the type and amount of fuel used by the existing system.

M. A copy of a completed environmental impact statement, or a negative declaration of the need for an environmental impact statement from a completed environmental assessment worksheet, or in those cases where no environmental assessment worksheet is required, a statement as to the environmental effects of the project.

4200.4800 CONTENTS OF APPLICATION FOR EXISTING SYSTEM.

A completed application for a loan to an existing system shall contain:

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

B. Background information on the existing system including ownership; type and size of heat source; heat source capacity; back-up boilers; customer base including information on process loads.

C. A complete engineering design of the expansion project including:

(1) an analysis of the proposed piping layout; system temperatures and pressure requirements; and flexibility for future expansion; and

(2) an analysis of the heat source including the capacity available and information concerning the back-up heat source.

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.

D. A discussion of proposed customer load including information on present fuel consumption or heating demand and the present heating system in each building for new customers.

E. A complete discussion of how the loan is to be secured, the current outstanding debt of the applicant, and the cash flow for the term of the loan. This discussion must also contain a cost estimate and expenditure schedule for all transmission and distribution piping, heat source conversion, purchase or rental, operating and maintenance costs excluding fuel costs, and building heating conversion costs.

F. For construction loans, a certification by the municipality that a bid package for the construction of the project has been completed and is available to the department if requested.

G. A copy of the standard contract entered into with the customers of the project and a list of customers already under contract and the total load it represents.

H. A copy of any contract for the furnishing of heat.

I. A copy of any contract for the furnishing of fuel for the district heating project if this is a waste-to-energy project.

J. A resolution in support of the project from the governing body of the municipality which must include the pledges the municipality proposes to make to guarantee repayment of the construction loan and evidence of the municipality's capability to sponsor the district heating project.

K. Identification of all licenses, permits, zoning regulations, and other requirements of federal, state, or local governments with which the district heating project would be expected to comply and the present status of compliance with each.

4200.4900 APPLICATION PROCEDURE.

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

Subp. 2. Acceptance of applications. Applications will be accepted beginning on the date parts 4200.4500 to 4200.5000 become effective.

Subp. 3. Number of copies. Ten copies of an application shall be submitted to the commissioner.

4200.5000 AUTHORITY EVALUATION PROCEDURE.

Applications approved for processing by the commissioner and those applications rejected by the commissioner but appealed to the authority under parts 4200.2750, subpart 7 and 4200.4300, subpart 7 must be presented to the authority for approval or disapproval under the criteria contained in this part. The authority shall review each application presented to it as it is received according to the eligibility and priority criteria of Minnesota Statutes, section 116J.36; the sophistication and reasonableness of the technical approach as detailed in the application; the experience and qualifications of the applicant as they relate to the project; the project organization and personnel assignment; and the estimated cost of the project. If the authority approves the application the commissioner shall forward the application to the commissioner of finance who may make loans to the municipality. If the authority disapproves the application, the commissioner shall notify the applicant in writing.

Department of Energy and Economic Development

Proposed Rules Governing Design and Construction Loans; District Heating; Commissioner

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Energy and Economic Development Authority proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The specific statutory authority to adopt the rules is Minnesota Statutes section 116M.10, subd. 7.

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient

In the Matter of the Adoption of Permanent Rules of the Department of Energy and Economic Development Governing Administration of the District Heating Design and Construction Loan Program

Supplemental Findings of Fact, Conclusions, and Order Adopting Permanent Rules

FINDINGS

1. The proposed rules pts. 4200.2100 to 4200.2750 relate to the Department of Energy and Economic Development's ("Department") district heating design and construction loan program. The proposed rules contain several cross references to pts. 4200.4500 to 4200.5000 which are proposed rules of Minnesota Energy and Economic Development Authority ("Authority") also relating to district heating design and construction loans. In adopting the proposed rules the Authority renumbered pts. 4200.4500 to 4200.5000 to pts. 8300.4500 to 8300.5000. The Authority adopted the renumbering of the rules since Minn. Rules ch. 8300 contains rules relating to the Authority. Chapter 4200 contains rules relating to the department. Because the Authority rules have been renumbered, it is necessary to change all cross references to the Authority rules pts. 4200.4500 to 4200.5000 to pts. 8300.4500 to 8300.5000. In addition on page 1 line 35, the reference to "pts. 4300.4700 to 4300.4800" should be corrected to "pts. 8300.4700 to 8300.4800."

2. In proposed part 4200.3000, subp. 2 a change is necessary to correct a cross reference to the definitions contained in pt. 8300.0100. The section is intended to incorporate the definitions in the district heating statute and the Authority rules. In order to effectuate that intent the part should be revised to read as follows:

   The definitions in Minnesota Statutes, section 116J.36 and part 8300.0100 apply to parts 4200.3000 to 4200.4300 ~~and part 8300.0100~~.

Conclusions

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

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

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

4. The Commissioner has determined that none of the changes proposed in the Supplemental Findings to the rules are a substantive change from the rules as published.

5. The Commissioner has determined the need for the reasonableness of these adopted rules.

Order Adopting Noncontroversial Rules

NOW THEREFORE, IT IS ORDERED that these rules identified as Permanent Rules of the Department of Energy and Economic Development Governing the Administration of the District Heating Design and Construction Loan Program are adopted this 2nd day of December, 1985, pursuant to authority vested in the Commissioner by Minnesota Statutes, section 116J.36, Subdivision 11.

STATE OF MINNESOTA

Mark B. Dayton

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

MEEDA Resolution #85-392
State of Minnesota
Energy and Economic Development Authority

In the Matter of the Adoption of Permanent Rules of the Minnesota Energy and Economic Development Authority Governing Administration of the District Heating Design and Construction Loan Program

Findings of Fact, Conclusions, and Order Adopting Permanent Rules

Notice of Intent to Adopt Rules without a Public Hearing regarding the above entitled matter was published in the State Register on July 1, 1985 at 10 S. R. 5-8 and was mailed to all persons who had registered their name with the Authority or the Department of Energy and Economic Development pursuant to Minnesota Statute Section 14.14. The Notice afforded interested parties 30 days in which to submit comments to the Authority, to request a public hearing on the proposed rules, or to request notification of the submission of final rules to the Attorney General.

The Authority received no written comments on the rules or requests for notification of submission of the rules to the Attorney General.

After affording interested parties an opportunity to submit comments and to request a public hearing on the proposed rules, the Authority makes the following:

Findings

1. In the same State Register as these rules (which define the Authority's role in the district heating loan program) there were also published rules which define the Commissioner's role in the district heating loan program. The Authority rules were published an Pages 5-8. The commissioners rules were published on pages 8-12. Although the correct Notice of Intent to Adopt Rules without a Public Hearing was delivered with each set of rules, once at the State Register the two Notices were apparently inadvertently exchanged.

   The major difference between these two Notices is the specific statute cited in each which gives "authority to adopt rules." Minnesota Statute 116M.10, subd. 7 is the correct statute to be cited for these rules. The statute which was cited in the published Notice, 116J.36, subd. 11, is the statute which is cited for the Commissioner's rules.

   The Authority does not feel this is substantive nor did this error affect a reader's understanding of these rules since the rules were published on adjacent pages in the same State Register. Moreover, the correct notices were mailed to all persons who had registered with the Authority or the Department of Energy and Economic Development.

2. The municipality which receives a district heating loan has responsibilities beyond repayment of the loan. These responsibilities are in the areas of regular reporting and assisting the State with monitoring of the loan. Therefore, the Authority has determined that a part shall be added to these rules which defines the reports and monitoring which a loan recipient is responsible for. The authority finds that this is not substantial change since it does not effect loan eligibility or loan terms.

The following part shall be added:

8300.5100 REPORTS AND MONITORING

Subpart 1. Quarterly project status report. The municipality shall submit to the authority, on forms provided by the authority, a quarterly project status report. This report is due with in 30 days of the end of each calendar quarter until the design or construction of the district heating project is completed. Projects begun part way through a quarter must submit a quarterly report for the portion of the quarter during which the project was active. The project status report must indicate the progress of the implementation of the district heating project funded, problems encountered, the effect of the problems on the project, and the corrective action taken. If, at any time, the municipality fails to substantially comply with the start and end dates given in the loan application as approved, and if the municipality cannot reasonably justify to the authority its lack of progress, the entire loan amount may become due and payable at the discretion of the authority.

Subp. 2. Quarterly financial report. The municipality shall submit to the authority, on forms provided by the authority, a quarterly financial status report that indicates expenditures of loan funds through the last date of each quarter. This report is due within 30 days of the end of each calendar quarter until the design or construction of the district heating project is completed and all expenses applicable to the loan are paid. Projects begun part way through a quarter must submit a quarterly report for the portion of the quarter during which the project was active.

Subp. 3. Final report. Within 60 days of the completion of the project, the municipality shall submit to the authority, on forms provided by the authority, a final financial status report that gives expenditures of the district heating project. The final financial report shall give actual expenditures for the costs incurred.

Subp. 4. Failure to comply with provisions of part. If the municipality fails to comply with any of the provisions of the part, the municipality may with the advice and consent of the authority, be declared ineligible for further contracts with the state under the district heating loan program.

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3. Part 4200.4700, subp E discusses economic analysis work which must be presented in a district heating loan application. The Authority has determined that one additional item shall be added to this analysis. A statement on sources and uses of funds shall be added in order for the Authority to determine, when evaluating an application, if the district heating loan will be used for only eligible costs. Sources and uses of funds are typically required as part of a loan application. Also, this statement on sources and uses of funds will help to determine that an applicant is not using other funding sources to cover the costs which this loan is expected to pay for. The authority finds that this is not a substantial change since it does not effect loan eligibility or loan terms and is not a burdensome requirement. The revisor has determined that this subpart would be easier to read if broken down into parts rather than remain in paragraph form.

The following shall be added to part 4200.4700, subp. E:

"(4) a statement showing the source of all of the funds to be used by the applicant for the design or construction of the system, and the amount of funds from each of those sources."

4. In part 4200.5000, the Revisor's office inadvertently omitted the words "district heating" in three instances. The following is the section of part 4200.5000 affected by the omission with the words "district heating" added. The Authority does not find that these were substantive omissions.

. . . the sophistication and reasonableness of the technical approach as detailed in the application; the experience and qualifications of the applicant as they relate to the district heating project; the district heating project organization and personnel assignment; and the estimated cost of the district heating project.

This part shall have the words "district heating" added in the three instances as shown above.

5. The proposed rules were numbered and proposed to be codified in Minnesota Rules Chapter 4200 which contains rules for the Department of Energy and Economic Development. The Revisor will renumber the rules as adopted as part of Minnesota Rules Chapter 8300 which contains rules of the Energy and Economic Development Authority.

CONCLUSIONS

1. The Authority gave proper notice of its intent to adopt the proposed 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 rules 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 that the addition to the rules of a part concerning reports required of loan receipients is necessary in order to more effectively monitor those recipients and the use of the State's loan funds. Therefore, part 8300.5100 will be added which details for recipients their responsibilities concerning reporting.

5. In order to more accurately evaluate a district heating loan application, the Authority has determined it is necessary to add a sentence to part 8300.4700, subp. E. which requires applicants to include a statement of sources and uses of funds.

6. In order to have consistency throughout the rules, the Authority has determined it is necessary to add the words "district heating" in three instances where it was omitted in part 8300.5000.

7. The Authority has determined that none of the changes proposed to the rules are a substantive change from the rules as published.

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

ORDER ADOPTING NONCONTROVERSIAL RULES

NOW, THEREFORE, IT IS ORDERED that these rules identified as Permanent Rules of the Energy and Economic Development Authority Governing the Administration of the District Heating Design and Construction Loan Program are adopted this 28th day of August, 1985, pursuant to authority vested in the Authority by Minnesota Statutes, section 116M.10, Subdivision 7.

STATE OF MINNESOTA

Mark B. Dayton, Chairman,
Minnesota Energy and Economic
Development Authority

ATTEST: _____
Member of the Authority

nr

MEEDA RESOLUTION NO. 85-396
MINNESOTA ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY
STATE OF MINNESOTA
ST. PAUL, MINNESOTA

In the Matter of the Proposed Permanent Rules of the Energy and Economic Development Authority Governing Administration of the District Heating Design and Construction Loan Program

CERTIFICATE OF BOARD'S RESOLUTION ADOPTING RULES.

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 28th day of August, 1985, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

"RESOLVED, that the rule governing administration of the district heating design and construction loan program be and it hereby is approved and adopted, pursuant to the authority vested in us by Minnesota Statutes 116J.36 and 116M.10, Subdivision 7 and that Mark B. Dayton, Chairman, Lyn Burton, Vice Chairman, or David L. Printy, Secretary of the Authority, be and hereby are authorized to sign an order adopting the rules and further are authorized to perform the necessary acts to provide that the rule shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 28th day of August, 1985.

BY: _____
Chair, Vice Chair, or Secretary

_____
Member of the Authority

nr

State of Minnesota
Department of Energy and Economic Development

DISTRICT HEATING PERMANENT DESIGN AND CONSTRUCTION LOAN RULES

STATEMENT OF NEED AND REASONABLENESS

AUTHORITY RULES

INTRODUCTION

The 1981 Minnesota Legislature enacted the District Heating Bonding Act, Laws of 1981 chapter 334, codified Minn. Stat. sect. 116J.36, for the purpose of fostering the establishment and improvement of district heating systems. (Hereafter in this statement, the phrase "the statute" refers to Minn. Stat. 116J.36 as amended.) In February, 1983, the Department of Energy and Economic Development has developed these rules under the authority of Section 1, Subdivision 11 of the District Heating Bonding Act for the purpose of administering a program of loans to municipalities for district heating design and construction, Minnesota Rules, parts 4200.2100 to 4200.4100.

Legislation creating the Minnesota Energy and Economic Development Authority was passed in 1983, Laws of 1983 Chapter 289, codified Minn. Stat. 116M, and the statute was subsequently amended transfering approval of district heating loans to the Minnesota Energy and Economic Development Authority.

The objective of the District Heating Design and Construction Loan Programs is to encourage the development and expansion of economically

viable district heating systems which have the potential to save energy and/or displace scarce fuels such as petroleum and natural gas.

To facilitate and solidify its commitment to the further development of district heating, the authority has proposed the adaption of a permanent set of rules through which to govern the district heating loan program. The department is also proposing amendments to its rules with respect to the district heating program.

This Statement of Need and Reasonableness describes the permanent rules proposed for operation of the district heating design and construction loan program and the manner in which the authority will provide loans to municipalities.

In explicating the proposed set of rules for the loan program, this Statement of Need and Reasonableness will state and underline each proposed rule and then follow with an explanation of the need and reasonableness of each rule.

4200.4500 DEFINITIONS

Subpart 1. Applicability. The definitions in Minnesota Statutes, section 116J.36 and part 8300.0100 and the definitions in this part apply to parts 4200.4500 to 4200.5000.

To allow for clear understanding of these rules, it is necessary to define frequently used terms which might not be understood by the reader or terms which appear in a shorthand manner. It is reasonable to have words mean the same thing in these rules as they do in the statutes. It

It would be an unnecessary duplication of statutory language to repeat all the definitions here. It is also reasonable to establish these definitions prior to the actual listing of the rules to alert the reader to such terms and to allow for a quick reference point.

Subp. 2. Construction loan. "Construction loan" means a loan to fund all construction costs as defined in Minnesota Statutes, Section 116J.36 subdivision 2.

This definition is needed to inform the reader of the type of activities that a construction loan may be used for and refers them to the statute which governs construction loans. This definition is reasonable to include here since construction loans are one of two types of loans governed by these rules.

Subp. 3. Design loan. "Design loan" means a loan made to fund those activities required to be completed during the final design phase of a district heating system in order to finance and construct the system. These activities include conducting economic feasibility analyses, obtaining heat source commitments and customer contracts, structuring financing, and related project tasks.

This definition is needed to inform the reader of the type of activities that a design loan may be used for and give several non-exclusive examples. This definition is reasonable to include here since design loans are one of two types of loans governed by these rules. This

definition is similar to the definition in the department rules Minnesota Rules, part 4200.2100, subpart 5.

Subp. 4. District heating project. "District heating project" means a district heating design or construction project for a new or existing system.

This term is needed since it defines the undertaking to develop a district heating system and this undertaking is what the design and construction loans will be used for. This definition is reasonable because it clearly separates a "district heating project" from a "project," which is defined in Minnesota Rules part 8300.0100. This definition is similar to the definitions in the department's rules Minnesoa RUles, parts 4200.2100, subp. 7 and 4200.3000, subp. 11.

Subp. 5. Existing system. "Existing system" means a district heating sytem which has a minimum of one customer and has been operational for more than one year.

This definition is needed to clarify the difference between an existing system and new system (subp. 8). The contents of the application for each type of system is different. It is reasonable to clearly define "existing system" because it is a phrase which can mean something different to each reader.

Subp. 6. Financial consultant. "Financial consultant" means a reputable person or firm experienced in working with complex revenue - supported financial plans and qualified to assess the financial condition and operation of the district heating project.

This definition is needed to stipulate the qualifications of the preparer of the complete economic analysis of the project. It is reasonable because the decisions of the authority are based in part on the financial statements. These statements must therefore be prepared by an experienced person or firm. This definition is the same as the definition in the department's rules Minnesota Rules part 4200.3000, subp. 8.

Subp. 7. Gross revenues. "Gross revenues" means all revenues, fees, user charges, rents, franchise fees, special assessments, and other income and receipts derived from the ownership or operation of the district heating project, the proceeds of any insurance that insures against the loss of gross revenues, any investment income from money or securities derived from the state loan under Minnesota Statuates, Section 116J.36, and any other income and receipts attributable to the ownership or operation of the project from whatever source derived, calculated on an annual basis.

This definition is needed to show what annual revenues will be considered in calculating the debt service coverage, and several non-exclusive examples of such revenues are given. It is reasonable for a reader to know what criteria will be used to calculate the debt service coverage. This definition is similar to the definition in the department's rules Minnesota Rules part 4200.3000, subp. 9.

Subp. 8. New system. "New system" means a district heating system which has a minimum of one customer and has been operational for less than one year.

This definition is needed to clarify the difference between a new system and an existing system (subp. 9). The contents of the application for each type of system are different. It is reasonable to clearly define "new system" because it is a phrase which can mean something different to each reader.

Subp. 9. Operating expenses. "Operating expenses" means the expenses directly and properly attributable to the operation of the project on an annual basis including: expenses for

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

This definition is needed to show what annual expenses for operation would be used in calculating the debt service coverage. Several non-exclusive examples of such expenses are given. Since there may be confusion over capital and depreciation expenses, these are specifically excluded. It is reasonable for a reader to know the criteria that will be used to calculate the debt service coverage. This definition is similar to the definition in the department's rules Minnesota Rules 4200.3000 subp. 10.

4200.4700 CONTENTS OF APPLICATION FOR A NEW SYSTEM

A completed application for a loan for a new system shall contain:

This part describes the contents of each loan application. It includes a complete description of the required contents of an application. The majority of the information required is needed to identify the applicant and contact individuals, and to describe in detail the preliminary work necessary before a district heating project is elegible for a loan. The information required in the application is similar to the information contained in the department's rules Minnesota Rules 4200.2100 to 4200.4200 which were adopted during the time the department administered the program. It is reasonable for the authority to adopt similar application content requirements.

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

It is reasonable to require this information so that the department will have a contact person for each application and because the authority must have a method of identifying each applicant and contacting responsible individuals in the event a question must be asked to clarify an issue prior to approval.

B. Complete engineering design of the district heating project including:

This is needed because a project must be thoroughly engineered before the application can be properly evaluated. Also, a municipality must do significant preliminary work to arrive at the point where a decision to design and build a district heating system can be made. It is reasonable to require such work be completed prior to loan approval.

(1) an analysis of the proposed piping layout which must address optimum service to the total designated area; reliability of service; system temperatures and pressure requirements; thermal and hydraulic operability for normal and emergency conditions; optimum piping configuration to provide service; and flexibility for future expansion.

In order to properly evaluate applications, it is necessary and reasonable for the commissioner to require the completion of a comprehensive engineering design of the district heating project.

The piping layout of a project will have a significant effect on the capital costs, reliability, operating

costs and the overall feasibility of a project. Because the expansion potential of a project is used by the authority to determine project priority, it is necessary for information for future expansion to be included in the application. It is reasonable to require applicants to furnish detailed information about piping layout since this information will affect the feasibility of the project, and also the project's priority as determined by the authority.

(2) an analysis of the proposed piping design which must address reliability of service; ease of construction; ease of maintenance; installation methods; and specifications and standards; and

Likewise, piping design is important in regard to the capital costs, reliability and operating costs of a project. Information concerning piping design is needed by the commissioner in order to properly evaluate applications.

(3) an analysis of the heat source design which must define the proposed rules of the following heat sources in the development and the future operation of the system: base load heating plant; peaking plants; large boiler plants in existing buildings; mobile boilers; accumulators; and future heat sources such as solid waste, solar, and industrial waste heat.

Additionally, the design of the heat source to be used in a district heating project is an important part of the preliminary engineering study. The heat source will absorb a majority of project funding. The heat source's dependability is essential for a system to be successful. Therefore, complete information concerning the heat source is necessary in order to evaluate the project's feasibility.

C. A market study of customers who represent 90 percent of the proposed thermal load of the district heating system. This study must show detailed information on present fuel consumption or heating demand and the present heating system in each building.

This information is necessary and reasonable because the heating demand must be sufficient to generate enough revenue to repay the loan.

D. A preliminary expansion plan showing how the system could be expanded to serve other parts of the community.

This is needed because it is a criteria which the authority will use to assign a higher priority to a project. This criteria is stated in Minnesota Statutes, Section 116J.36 Subd. 4.

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

E. A complete economic analysis which must include a preliminary financing and development plan for the district heating system prepared by a financial consultant, and also cash flow, income, and balance sheets for the time period of the loan. This analysis must also contain a cost estimate and expenditure schedule for all transmission and distribution piping, heat source conversion, purchase or rental, operating and maintenance costs excluding fuel costs, and building heating conversion costs.

This is needed because a comprehensive economic analysis with detailed cost figures is vitally important to any financial analysis. This information is needed to evaluate the reasonableness of the cost of the project; it is necessary to know the costs of the system's component parts. Cash flow information is necessary in order to verify if the loan for the district heating project can be repaid on an annual basis, while still maintaining reserve and repair accounts.

F. For construction loans, a certification by the municipality that a bid package for the construction of the project has been completed and is available to the department if requested.

This is needed because a construction bid package is an important step for construction and can ultimately have an effect on system quality and reliability. This is a reasonable request in the application because it may be necessary for the commissioner to examine the bid package in order to properly evaluate a proposal.

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

This is needed because the terms of the customer contract can have a significant effect on the financial viability of a system. The revenues of the project are based on the heat load. Therefore, customer commitment shows the district heating project's ability to produce revenues for loan repayment. It is reasonable to expect a legal commitment from customers at this point, if construction is to proceed, and therefore it is reasonable to include the commitment as part of the application.

H. Where applicable, a copy of any contract for the furnishing of heat and fuel for the district heating project.

This is needed since the contract terms for heat or fuel that a district heating system must comply with can have a major effect on operating costs. It is reasonable for the commissioner to have this information available when evaluating the financial stability of the project. This is especially true for solid waste and fiber fuels district heating projects. Contracts for the delivery of solid waste or fiber fuels is essential to guarantee that the project will have an adequate fuel supply to operate.

I. A resolution in support of the project from the governing body of the municipality which must include the pledges the municipality proposes to make to guarantee repayment of the loan and evidence of the municipality's capability to sponsor the district heating project.

Under Minnesota Statutes, Section 116J.36, Subd. 3 the authority must determine eligibility for loans and under what terms loans will be given. Therefore, each municipality's financial capability and repayment guarantees are needed to make such determinations. It is reasonable to expect a municipality to show evidence of financial capability before a loan is made to them and is also reasonable since the resolution indicates that the governing body is aware of the commitment it has undertaken for itself and the municipality.

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

This is necessary and reasonable in order to avoid project delay or interruption due to not having completed all required governmental regulations and permit processes.

K. A list of key personnel and their qualifications as they relate to the district heating project;

This is needed because the participation of qualified people is of vital importance to the success of district heating development. If district heating project personnel are not qualified, the system may not be designed properly. State funds would be in jeopardy because of inadequate system design.

L. An estimate of the type and amount of fuel to be saved per year from the full operation of the district heating system compared to the type and amount of fuel used by the existing system.

This is needed because two of the stated purposes of Minnesota Statutes, Section 116J.36, Subd. 1 are to increase energy efficiency and to reduce the need for imported energy supplies. This criteria is used by the authority to assign a higher priority to a project. It is reasonable to require energy information to determine if a project fulfills these purposes.

M. A copy of a completed environmental impact statement, or a negative declaration of the need for an environmental impact statement from a completed environmental assessment worksheet, or in those cases where no environmental assessment worksheet is required, a statement as to the environmental effects of the project.

Minnesota Statutes, Section 116J.36, subd. 4 gives priority to environmentally benign projects, so this information is needed by the authority to assign a higher priority to a project. In most cases, district heating projects will have minimal environmental effects. It is expected that few, if any will require an Environmental

Impact Statement (EIS). It is reasonable to require a negative declaration with a waiver provision. In those cases where an EIS is needed or if no environmental regulations apply, then the municipality must present environmental information to the authority because under Minnesota Statute Ch. 116E and Section 116P.04 subdivision 4 any state agency must consider impact upon the environment. In all cases, environmental information is submitted to the authority. This becomes part of the application and is therefore considered in the evaluation.

4200.4800 CONTENTS OF APPLICATION FOR AN EXISTING SYSTEM

This part describes the contents of each loan application for applicants with an existing district heating system. It includes a complete description of the required contents of an application. The majority of the information required is needed to identify the applicant and contact individuals, and to describe in detail the preliminary work necessary before a district heating project is eligible for a loan. The information required in the application is similar to the information contained in the department's rules Minnesota Rules 4200.2100 to 4200.4200 which were adopted during the time the department administered the program. It is reasonable for the authority to adopt similar application content requirements.

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

It is reasonable to require this information so that the department will have a contact person for each application and because the authority must have a method of identifying each applicant and contacting responsible individuals is the event a question must be asked to clarify an issue prior to approval.

B. Background information on the existing system including ownership; type and size of heat source; heat source capacity; back-up boilers; customers base including information on process loads.

This is needed to allow for a thorough understanding of the existing system by the authority. The information required here is needed in order to more fully understand the district heating project. Since all this information should be readily available to the applicant, this is a reasonable request.

C. Complete engineering design of the expansion project including:

This is needed because an expansion project must be thoroughly engineered before an application can be properly evaluated. Also, a municipality must do significant preliminary work to arrive at the point where an decision to expand a district heating system can be made. It is reasonable to require such work be completed prior to a loan approval.

(1) an analysis of the proposed piping layout; system temperatures and pressure requirements; and flexibility for future expansion; and

This information is needed because the piping layout of a project will have a significant effect on the capital costs, reliability, operating costs and the overall feasibility of a project. Because the expansion potential of a project is used by the authority to determine project priority, as stated in Minnesota Statutes, Section 116J.36, Subd. 4, it is necessary for information concerning flexibility for future expansion to be included in the application. It is reasonable to require applicants to furnish detailed information about piping layout since this information will affect the feasibility of the project, and also the project's priority as determined by the authority.

(2) an analysis of the heat source including the capacity available and information concerning the back-up heat source.

This is needed since the heat source is a vital part of the district heating system. It is reasonable to require an analysis of the primary and back-up heat

sources to be certain of their ability to handle the proposed expansion to the system. The heat source will also absorb a majority of project funding. The heat sources dependability is essential for a system to be successful. Therefore, complete information concerning the heat source is necessary in order to evaluate the project's feasibility.

D. A discussion of proposed customer load including information on present fuel consumption or heating demand and the present heating system in each building for new customers.

This information is necessary and reasonable because the heating demand must be sufficient to generate enough revenue to repay the loan.

E. A complete discussion of how the loan is to be secured, the current outstanding debt of the applicant and the cash flow for the term of the loan. This discussion must also contain a cost estimate and expenditure schedule for all transmission and distribution piping, heat source conversion, purchase or rental, operating and maintenance costs excluding fuel costs, and building heating conversion costs.

Under Minnesota Statutes, Section 116J.36, Subd. 3 the authority must determine eligibility for loans and under what terms loans will be given. Each municipality's financial capability and repayment guarantees are needed to make such determinations. An estimate of each item's costs and a schedule of when expenses are expected to occur are also needed to make a sound economic analysis. It is necessary that the authority know how the entire project is to be financed in order to review it. A municipality's outstanding debt must be seen in order to verify if cash flow will allow for loan repayment. Therefore, it is reasonable to ask for this information.

F. For construction loans, a certification by the municipality that a bid package for the construction of the project has been completed and is available to the department if requested.

This is needed because a construction bid package is an important step for construction and can ultimately have an effect on system quality and reliability. This is a reasonable request in the application because it may be necessary examine the bid package in order to properly evaluate a proposal.

G. A copy of the standard contract entered into with the customers of the project and a list of customers already under contract and the total load it represents.

This is needed because the terms of the customer contract can have a significant effect on the viability of a system. The revenues of the project are based on the heatload. Therefore, customer commitment shows the district heating project's ability to produce revenues for loan repayment. It is reasonable to expect a legal commitment from customers at this point, if construction is to proceed. Furthermore, a large number of customers generally indicate more stable revenues, in that if one or two customers withdraw, the effect is minimal. Therefore, it is reasonable to include the commitment as part of the application.

H. A copy of any contract for the furnishing of heat.

This is needed because the contract terms for the furnishing of heat which a district heating system must comply with can have a major effect on operating costs. It is reasonable for the authority to have this information available when evaluating the financial stability of the district heating project.

I. A copy of any contract for the furnishing of fuel for the district heating project if this is a waste-to-energy district heating project.

This is needed because the contract terms for the furnishing of the fuel, in a waste-to-energy project, can have a major effect on operating costs. It is reasonable for the authority to have this information available when evaluating the financial stability of the district heating project.

This is especially true for solid waste and fiber fuels district heating projects. Contracts for the delivery of solid waste or fiber fuels is essential to guarantee that the project will have an adequate fuel supply to operate.

J. A resolution in support of the project from the governing body of the municipality which must include the pledges the municipality proposes to make to guarantee repayment of the loan and evidence of the municipality's capability to sponsor the district heating project.

Under the Minnesota Statutes, Section 116J.36, subd. 3 the authority must determine eligibility for loans and under what terms loans are to be given. Therefore, a municipality's financial capability and repayment guarantees are needed before making a loan. It is reasonable to expect a municipality to show evidence of financial capability before a loan is made to them and also

reasonable since the resolution indicates that the governing body is aware of the commitment it has taken on for itself and the municipality.

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

This is necessary and reasonable in order to avoid project delay or interruption due to not having completed all required governmental regulations and permit processes.

4200.4900 APPLICATION PROCEDURE

This section is needed to inform applicants about the submitting process, the dates applications will first be accepted, and the number of copies which need to be submitted. It is reasonable to include this information in one section to provide a quick point of reference for applicants.

Subpart 1. Submitting. The applicant shall submit a complete application to the authority by the first business day of a month in order for the authority to consider it in that month. If an application is received after the first business day of the month and can be reviewed by the commissioner for eligibility and financial feasibility

prior to the authority agenda deadline, the commissioner shall submit the application to the authority for consideration and the authority may consider the application at the meeting in that month.

This information is needed because the applicant needs to be informed about the monthly deadline for submitting an application. Because of the necessary time needed to review each application, this deadline is reasonable. However, if a deadline is missed, the applicant is assured that, if time is available, the late application will be reviewed. This is a reasonable assurance to an applicant that efforts are being made to assist them in the loan approval process.

Subp. 2. Acceptance of applications. Applications will be accepted beginning on the date parts 4200.4500 to 4200.5000 become effective.

This is necessary and reasonable as it lets the applicants know when they may begin submitting applications.

Subp. 3. Number of copies. Ten copies of an application shall be submitted to the commissioner.

Because of the number of people who help to evaluate an application, it is necessary for an adequate number of copies to be available. Ten is a reasonable number since this will ensure each evaluator will have his or her own

copy, besides there being one file copy available.

4200.5000 AUTHORITY EVALUATION PROCEDURE

Applications approved for processing by the commissioner and those applications rejected by the commissioner but appealed to the authority under parts 4200.2750, subpart 7 and 4200.4300 subpart 7 must be presented to the authority for approval or disapproval under the criteria contained in this part. The authority shall review each application presented to it as it is received according to the eligibility and priority criteria of Minnesota Statutes, Section 116J.36; the sophistication and reasonableness of the technical approach as detailed in the application; the experience and qualifications of the applicant as they relate to the district heating project; the district heating project organization and personnel assignment; and the estimated cost of the district heating project. If the authority approves the application, the commissioner shall forward the application to the commissioner of finance who may make loans to the municipality. If the authority disapproves the application, the commissioner shall notify the applicant in writing.

This part is needed to clarify the procedure the authority will follow with each application it receives. It is reasonable to review the criteria used in making the final evaluation. It is also reasonable to inform the applicants that it is the commissioner of finance who makes the loans on the recommendation of the authority. It is also reasonable to inform, in writing, an applicant whose application has been rejected.

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy and Economic Development Authority Governing Administration of the District Heating Design and Construction Loan Program.

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 upon my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Christie B Eller 11-15-85

Christie B. Eller
Special Assistant
Attorney General

SF-00006-04

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : ATTORNEY GENERAL - Bremer Tower

PHONE : 6-9200

DATE : November 13, 1985

TO : JUDITH WEHRWEIN, Legal Assistant
Attorney General's Office - Administration Division

FROM : CHRISTIE B. ELLER CBE
Special Assistant Attorney General

SUBJECT : DEED & Authority District Heating Design and Construction Loan Rules.

Enclosed please find rulemaking documents relating to two related sets of proposed rules governing the District Heating Design and Construction Loan Program.

Under Minn. Stat. § 116J.36 both the Department of Energy and Economic Development ("DEED") and the Minnesota Energy and Economic Development Authority ("Authority") have responsibilities with respect to the District Heating and Design and Construction Loan Program. The proposed DEED rules are amendments to existing rules. The proposed Authority rules are new.

As noted in both the enclosed sets of Findings, both sets of proposed rules were published sequentially in the State Register. Unfortunately, the Notice of Intent to Adopt ("Notices") were transposed. The Authority notice preceded the proposed DEED rules and the DEED Notice preceded the proposed Authority rules. Both notices and both sets of proposed rules were mailed to all persons on the rulemaking mailing list for DEED and the Authority with a joint cover memo explaining the need for two sets of proposed rules.

In addition to the transposition of the Notices, the first line of the DEED Notice refers to "The Minnesota Energy and Economic Development Authority . . . . " instead of "the Department of Energy and Economic Development." Other references in the DEED Notice are to the Department. The citation to the statutory authority for the rules in the DEED Notice contains a typographical error. It refers to Minn. Stat. § 116J.37, subd. 11 rather than to Minn. Stat. § 116J.36, subd. 11. The correct citation was contained in the cover memo

with respect to the rules sent to all persons on the rule-making mailing list maintained by DEED and the Authority. The correct citation is also contained in the text of the proposed rules. See Minn. Rules, pt. 4200.2100, subp. 2 and 4200.2200, subp. 1 (proposed).

Both the Commissioner and the Authority have determined that these errors were nonsubstantive since both sets of proposed rules were published on adjacent pages of the State Register and were mailed at the same time. In my opinion, the errors in the Notices constitute harmless errors. Certainly anyone interested in District Heating was put on notice that both DEED and the Authority were proposing to adopt rules relating to the District Heating Design and Construction Loan Program. In addition, the correct citation to statutory authority for the DEED rules was contained in the cover memo sent with the Notice and it is also contained in the text of the proposed rules. In light of these circumstances, the errors in the Notices are unlikely to have prejudiced anyone and, thus, in my view, constitutes harmless errors.

Please do not hesitate to contact me if you have any questions regarding the enclosed sets of rulemaking documents.

CBE:bl
Enclosures
cc: Mary Lesch Gormley, Energy & Economic Development Dept.