

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1226 05-0009 — 0142

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 11/25/85
disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 10.28.85 Date combined w/ FoF

_____ Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
? Sufficiency see C. Eller's memo re

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

✓ Mailing list Certificate

✓ Publication in State Register BUT see Eller's memo re mix-up in notices
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/ Order Adopting

N/A LCRAR Report or agency Affidavit

_____ Certificate of Board's Resolution Adopting Rules

_____ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness in two parts

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 Christy Eller re Notice as published in SR

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: MARK B. DAYTON, Commissioner
Department of Energy and Economic Development

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 State Department of Energy and Economic Development Governing District Heating Design and 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

RR1226

Department of Energy and Economic Development

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

Rules as Adopted

4200.2100 DEFINITIONS.

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

Subp. 2. **Applicability of statute.** 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 4200.2750 are authorized by Minnesota Statutes, section 116J.36, subdivision 11.

Subp. 2. **Purpose.** Parts 4200.2100 to 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 4200.2750 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 Minnesota Statutes, section 116J.36 and parts 4200.2100 to 4200.2750 shall be submitted to the commissioner in the form required under parts ~~4300.4700~~ 8300.4700 and ~~4300.4800~~ 8300.4800. Ten complete

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copies shall be submitted. Applications will be accepted beginning on the date parts 4200.2100 to 4200.2750 become effective.

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~~ 8300.4500 to ~~4200.5000~~ 8300.5000, 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~~ 8300.4500 to ~~4200.5000~~ 8300.5000.

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, 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 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~~ 8300.4500 to ~~4200.5000~~ 8300.5000. 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.

4200.3000 DEFINITIONS.

Subpart 1. [Unchanged.]

Subp. 2. **Applicability of statute.** 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.

Subp. 12. [Unchanged.]

OFFICE OF THE REVISOR OF STATUTES CHIEF CLERK

4200.3100 PURPOSE.

The purpose of parts 4200.3000 to 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 4200.4300 apply to the department and to any municipality applying for construction loans under Minnesota Statutes, section 116J.36.

4200.3900 APPLICATION PROCEDURES.

Subpart 1. **Submitting.** Applications for construction loans under Minnesota Statutes, section 116J.36 and parts 4200.3000 to 4200.4300 must be submitted to the commissioner in the form prescribed under parts ~~4200.4500~~ 8300.4500 to ~~4200.5000~~ 8300.5000.

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

Subp. 3. [Unchanged.]

4200.4000 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

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each application for a loan under Minnesota Statutes, section 116J.36 and parts ~~4200.4500~~ 8300.4500 to ~~4200.5000~~ 8300.5000, 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.

4200.4050 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 parts ~~4200.4500~~ 8300.4500 to ~~4200.5000~~ 8300.5000;

C. to G. [Unchanged.]

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~~ 8300.4500 to ~~4200.5000~~ 8300.5000.

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

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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~~ 8300.4500 to ~~4200.5000~~ 8300.5000. 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

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC 2 1985
Joan Anderson Growe
Secretary of State

11:21 A M

APPROVED AS TO FORM AND LEGALITY
December 2 1985
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY MJ Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

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.

APPROVED BY REVISOR'S OFFICE

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

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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:

(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,

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

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.

State of Minnesota

Department of Energy and Economic Development

In the Matter of the Proposed Adoption of Rules of the State Department of Energy and Economic Development Governing Distict Heating Design and Construction Loan Program	ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED THIS 14 day of June, 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 and Economic Development for that purpose and be published in the State Register.

STATE OF MINNESOTA

Mark B. Dayton
COMMISSIONER Of Department of Energy and Economic Development.

should be "Dept"

DEPARTMENT OF ENERGY AND ECONOMIC DEVELOPMENT

Proposed Rules Relating to District Heating

should be "36"

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

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.

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

CERTIFICATE

In the Matter of the Proposed Adoption
of the permanent rules for the Minnesota
Department of Energy and Economic Development
governing the 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

In the Matter of the Proposed Adoption of Rules of the State Department of Energy and Economic Development 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 State Department of Energy and Economic Development for the purpose of receiving notice of the propsoed adoption of rules by this Department.

Norma Riley

Subscribed and sworn to before me this 27th day of June 1985.

Dennis M. Devereaux

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

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

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 5 to 8 [10 SR 5].

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 date 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.

Rules as Proposed

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.

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.

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.

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 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 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.

4200.3000 DEFINITIONS.

Subp. 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.

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.

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.

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

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 Department, to request a public hearing on the proposed rules, or to request notification of the submission of final rules to the Attorney General.

The Department 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 Department makes the following:

Findings

1. In the same State Register as these rules (which define the Commissioner's role in the district heating loan program) there were also published rules which define the Authority's role in the district heating loan program. The Commissioner rules were published an Pages 8-12. The Authority's rules were published on pages 5-8. 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 116J.36, subd. 11 is the correct statute to be cited for these rules. The statute which was cited in the published Notice, 116M.10, subd. 7, is the statute which is cited for the Authority's rules.

   The Commissioner 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. More over, the correct set of notices were mailed to all persons who had registered with the Authority or the Department of Energy and Economic Development.

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 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 16 day of October, 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

MLG:nr

Amendments to
Design Loan Rules

Statement of Need
and Reasonableness Part (1)

INTRODUCTION

The 1981 Minnesota Legislature enacted the District Heating Bonding Act, Laws of 1981 chapter 334, codified as Minnesota Statute, 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 such as petroleum and natural gas.

Under this 1981 legislation, the Legislative Advisory Commission (LAC) and the Governor were charged with evaluating the projects and recommending loans to be made by the commissioner of finance under 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 loans to a municipality.

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

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

Essentially, the amended design loan rules deal with the commissioner's administration of the application process. The new permanent authority rules deal with application contents and the authority's role in the application approval process.

The following Statement of Need and Reasonableness describes the changes to the permanent design loan rules. Deletions from the original rules are indicated by a dashed line through the words to be repealed. Additions to the rules are indicated by underlining. Following each change is an explanation of the need for and reasonableness of each change.

State of Minnesota
Department of Energy and Economic Development

AMENDMENTS TO DISTRICT HEATING PROGRAM DESIGN LOAN RULES

STATEMENT OF NEED AND REASONABLENESS

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.

It is necessary and reasonable to eliminate "4200.2700" and replace it with "4200.2750", because in the course of amending these rules it has become necessary to add a section.

It also is necessary and reasonable to eliminate "subparts 2 to 7" and replace it with "this part" since that will encompass all of the subparts.

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.

It is necessary to eliminate this definition of "act" because it no longer applies. Laws of Minnesota 1981, Chapter 334, has been codified as Minn. Stat. 116J.36. "Act" now refers to Minnesota Statute ch. 116M; so it is reasonable to eliminate this out-of-date definition.

The sentence which has been added is needed to clarify that the definitions already in use in the statutes and rules will also be used here. This is reasonable since it would be an unnecessary duplication of language to repeat the definitions.

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

It is necessary and reasonable to renumber this definition because the term before it has been eliminated.

It is also necessary and reasonable to add the words "district heating" because a definition of "project" has been added to the definitions in Minn. Rules 8300.0100 and it is necessary to differentiate between a "district heating project" and "project."

4200.2200 AUTHORITY PURPOSE, AND SCOPE.

Subpart 1. Authority. Parts 4200.2100 to 4200.2700 2750 are authorized by Minnesota Statutes, section 116J.36, subdivision 11.

It is necessary and reasonable to make this numbering change because the amending being done to these rules will change the original numbers because of adding a section.

Subpart 2. Purpose. Parts 4200.2100 to 4200.2700 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 2750 set forth

the procedures that municipalities must follow to apply for loans and establish the criteria by which the applications are reviewed.

It is necessary and reasonable to make this numbering change because the amending being done to these rules will change the original numbers because of adding a section.

4200.2300 APPLICATION PROCEDURE.

Applications for design loans under the act Minnesota Statute, Section 116J.36 and parts 4200.2100 to 4200.2700 2750 shall be submitted to the commissioner in the form required under parts 4300.4700 to 4300.4800. Ten complete copies shall be submitted. Application will be accepted beginning on the date parts 4200.2100 to 4200.2700 2750 become effective.

It is necessary and reasonable to eliminate "the act" and replace it with "Minnesota Statute, Section 116J.36" because at the time these rules were adopted "the act" meant the statute now codified as 116J.36. This change, therefore, eliminates the outdated wording.

It is also necessary and reasonable to change parts 4200.2700 to 4200.2750 because the amending being done to these rules will shorten the rules by one part.

Finally, in this part, it is necessary to make the addition concerning the required form for applications because this information is now contained in the permanent authority rules for district heating design and construction loans.

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 a at least four members in addition to the commissioner who shall act as chairperson.

Because this program only has one staff person, in order to provide for a comprehensive evaluation of applications, it is necessary that an advisory group of district heating experts be assembled. It is reasonable to include information about this group within these rules since the advisory group is provided for in the permanent district heating construction loan rules, Minn. Rules 4200.3000. Including the information here informs the applicants how their project application will be reviewed.

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

It is necessary to require advisory group members be knowledgeable in this field, since it is very specialized, and that they have no conflict of interest with district heating projects under review. It is reasonable to include this information since it informs applicants of the qualifications of the members and assures them that advisory task force members will have no conflict of interest.

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

This clarifies the commissioner's authority to replace members and specifies that replacement of members needs to meet the criteria described earlier. It is reasonable to assume that members will need to be replaced due to circumstances which make it impossible for them to continue to serve on the advisory committee, such as changing jobs, moving out-of-state, or members having limitations on their time and cannot serve any longer. The commissioner is qualified to determine when a member needs to be replaced and who will fill the vacancy.

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

This subpart is needed to clarify the duties that the advisory task force will be expected to carryout. It is also needed to specify that the commissioner does hold final authority for all requirements. It is reasonable to assume an applicant will want to know where the task force's responsibilities end and the commissioner's begin.

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 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.

This information is needed because the applicant needs to be informed about the monthly deadline for submitting an application. Because of the time necessary 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 reasonable assurance to an applicant that efforts are being made to assist them in the loan approval process. Complete applications are necessary because the authority meets only once each month and the agenda for this monthly meeting is quickly filled. This tight time frame allows no time for the authority to review incomplete applications.

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

This is needed because it informs the applicant when the application is considered complete and there will be no misunderstanding about that point. It is reasonable to clarify what will consititute a complete application.

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

This subpart is needed to explain to applicants the procedure which will be followed in all cases of incomplete applications. It is reasonable to require the information be forwarded to the commissioner within 60 days, since this should be an adequate amount of time to collect information. It is also reasonable to require an applicant to re-apply if the information is not forwarded within 60 days, since after that amount of time aspects of the project may have altered and, therefore, need to be re-evaluated. This subpart is also needed to eliminate incomplete applications which would be pending for months and months with no action being taken on them.

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.

This is needed to inform all applicants that they and their project will be reviewed for eligibility. It is reasonable to inform applicants that this review will take place and to remind them where to find the eligibility requirements.

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.

This information is needed to inform applicants of the procedure which will be followed in all cases of an ineligible project or applicant. The provisions included here are reasonable, allowing an applicant time to amend an application found ineligible. It is reasonable to assume that if the ineligibility cannot be corrected within this time, then the project should no longer be considered for a loan under this program.

Subp. 6. Economic and technical feasibility review. The commissioner shall review the application in accordance with parts 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.

This subpart is needed to clarify when the commissioner's evaluation of an application is complete and a recommendation is finally made. This recommendation is signified by the commissioner submitting the application to the authority. It is reasonable for an applicant to know what are the final procedures of the commissioner .

Subp. 7. Rejection of application based on economic and technical feasibility. 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 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.

This subpart is needed to inform applicants that if their application is rejected for economic or technical feasibility by the commissioner they will be notified. They are also informed that if they do so request, within 30 days, their rejected application will be submitted to the authority for its review. If approved by the authority, the application will move on to the next step in the processing.

This is a reasonable provision since it gives the applicant a further means of having his application evaluated. Also, the applicant is assured that if the authority approves a previously rejected application, that the application will now be treated like one recommended by the commissioner.

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.

This is needed to inform the applicants of the final step in processing their application as provided for by the statute and rules. It is reasonable for the applicant to have this information. It is also reasonable for the commissioner to notify the applicant if the application is disapproved.

Parts from these rules which have been repealed can be found, with reasons for repealing, at the end of Minnesota Rules part 4200.4300.

Amendments to
Construction Loan Rules

Statement of Need
and Reasonableness Part (2)

INTRODUCTION

The 1981 Minnesota Legislature enacted the District Heating Bonding Act, Laws of 1981 Chapter 334,codified as Minnesota Statute, 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 such as petroleum and natural gas.

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 under 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 construction loans to a municipality.

However,later in 1983, the legislture created Minnesota Statute, Section 116M.10, Subdivision 6, the Minnesota energy and economic development authority, referred to as the "authority". The authority was charged with evaluating distict heating projects and recommending to the commissioner of finance when a district heating construction loan be made.

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

Essentially, the amended construction loan rules deal with the commissioner's administration of the application process. The new permanent authority rules deal with application contents and the authority's role in the application approval process.

The following Statement of Need and Reasonableness describes the changes to the permanent construction loan rules. Deletions from the original rules are indicated by a dashed line through the words to be repealed. Additions to the rules are indicated by underlining. Following each change is an explanation of the need for and reasonableness of each change.

STATE OF MINNESOTA
DEPARTMENT OF ENERGY AND ECONOMIC DEVELOPMENT

AMENDMENTS TO PERMANENT
DISTRICT HEATING CONSTRUCTION
CONSTRUCTION LOAN RULES

STATEMENT OF NEED
AND REASONABLENESS

4200.3000 DEFINITIONS

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

It is necessary to eliminate this definition of "act" because it no longer applies. "Act" now refers to Minn. Stat. ch. 116M; so it is reasonable to eliminate this out-of-date definition.

The sentence which has been added is needed to clarify that the definitions already in use in the statutes and rules will also be used here. This is reasonable since it would be an unnecessary duplication of language to repeat the definitions.

Subp. 4a Construction loan. "Construction loan" means a loan to fund all construction costs as defined in Minnesota Statute Section 116J.36 Subdivision 2.

It is necessary to add this definition because these rules govern contruction loans, but no definition of what construction costs are covered by the loans was previously included in the rules. It is reasonable to direct the reader to the governing statute's list of costs which are funded by the loan, rather than repeat all covered costs within the rules.

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

It is necessary and reasonable to add the words "district heating" because a definition of "project" has been added to the definitions in part 8300.0100 and it is necessary to differentiate between a "district heating project" and a "project."

It is also necessary and reasonable to eliminate the phrase "as described by the business plan" since a business plan is no longer called for by these amended rules. The information contained in the business plan has been moved to the authority rules for district heating design and construction loans, part 4200.4500 to 4200.5000.

4200.3100 PURPOSE.

The purpose of parts 4200.3000 to 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.

It is necessary and reasonable to make this numbering change because the amending being done to these rules will result in fewer parts to the rules.

4200.3200 Scope.

Parts 4200.3000 to 4200.4200 4300 apply to the department and to any municipality applying for construction loans under the act Minnesota Statute, Section 116J.36.

It is necessary and reasonable to make this numbering change because the amending being done to these rules will result in fewer parts to the rules.

It is also necessary and reasonable to update the rules by eliminating "the act" and replacing it with "Minnesota Statute, Section 116J.36". "The act" used to refer to Minnesota Statute, Section 116J.36, the statute which governs the Department of Energy and Economic Development and its programs, including district heating. However, Minn. Stat. ch. 116M, created in 1983 the Minnesota Energy and Economic Development Authority and is now refered to as "the act."

4200.3900 APPLICATION PROCEDURES

Subpart 1. Submitting. Application for construction loans under the act Minnesota Statute, Section 116J.36 and parts 4200.3000 to 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 4300 become effective.

It is necessary and reasonable to eliminate "the act" and replace it with "Minnesota Statute, Section 116J.36" because at the time these rules were adopted "the act" meant the statute now codified as 116J.36. This change, therefore, eliminates the outdated wording.

It is also necessary and reasonable to change 4200.4200 to 4200.4300 because the amending being done to these rules change the number of sections to these rules.

Finally, in the part, it is necessary to make the addition concerning the required form for applications because this information is now contained in the permanent authority rules for district heating design and construction loans.

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 a 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 Statute, 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.

It is necessary and reasonable to eliminate the reference to "the act" and replace it with "Minnesota Statute, Section 116J.36" because when these rules were adopted "the act" meant Minn. Stat. 116J.36. However, "the act" now refers to Minn. Stat. Ch. 116M.

It is also necessary and reasonable to eliminate "the requirements of the act and parts 4200.3000 to 4200.4200" and replace it with "his or her responsibilities". This shorter phrase more accurately encompasses the aid given to the commissioner by the advisory task force.

It is also necessary to eliminate references to the "assistant commissioner of energy." In Minnesota Statute, Section 116J.36 subd. 8 the commissioner of the Department of Energy and Economic Development is assigned the duty of submitting to the authority the names of applicants for district heating design and construction loans. Since it is the commissioner's responsibility to evaluate these applicants for economic and technical feasibility, with the aid of the task force, it is

reasonable for the commissioner and not the assistant commissioner to chair the task force.

4200.4050 FEASIBILITY ASSESSMENT.

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

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

It is necessary and reasonable to eliminate a reference to "the business plan" and replace it with a reference to parts 4200.4500 to 4200.5000 because the business plan is no longer included as a part of these construction rules but is incorporated in parts 4200.4500 to 4200.5000, the authority rules for district heating design and construction loan rules.

4200.2600 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.

This information is needed because the applicant needs to be informed about the monthly deadline for submitting an application. Because of the time necessary 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 reasonable assurance to an applicant that efforts are being made to assist them in the loan approval process. Complete applications are necessary because the authority meets only once each month and the agenda for this monthly meeting is quickly filled. This tight time frame allows no time for the authority to review incomplete applications.

Subp. 2 Completed applications. An application is complete when the commissioner receives all required documention and exhibits under Minnesota Statute, Section 116J.36 and parts 4200.4500 to 4200.5000.

This is needed because it informs the applicant when the application is considered complete and there will be no misunderstanding about that point. It is reasonable to clarify what will constitute a complete application.

Subp. 3 Incomplete application. 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.

This subpart is needed to explain to applicants the procedure which will be followed in all cases of incomplete applications. It is reasonable to require the information be forwarded to the commissioner within 60 days, since this should be an adequate amount of time to collect information. It is also reasonable to require an applicant to re-apply if the information is not forwarded within 60 days, since after that amount of time aspects of the project may have altered and, therefore, need to be re-evaluated. This subpart is also needed to eliminate incomplete applications which would be pending for months and months with no action being taken on them.

Subp. 4 Review of eligibility of project and applicant. The commissioner shall review all completed applications to determine if the project and applicant are eligible and meet the requirements of Minnesota Statutes, Section 116J.36. Supb. 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.

This information is needed to inform applicants of the procedure which will be followed in all cases of an ineligible project or applicant. The provisions included here are reasonable, allowing an applicant time to amend an application found ineligible. It is reasonable to assume that if the ineligibility cannot be corrected within this time, then the project should no longer be considered for a loan under this program.

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 he authority at a board meeting is conclusive evidence that the commissioner has made the determinations required pursuant to parts 4200.3000 to 4200.4300.

This subpart is need to clarify when the commissioner's evaluation of an application is complete and a recommendation is made. This recommendation is signified by the commissioner submitting the application to the authority. It is reasonable for an applicant to know the final procedures of the commissioner.

Subp. 7. Rejection of application based on economic or 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 the 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.

This subpart is needed to inform applicants that if their application is rejected for economic or technical feasibility by the commissioner they will be notified. They are also informed that if they do so request, within 30 days, their rejected application will be submitted to the authority for its review. If approved by the authority, the application will move on to the next step in the processing.

This is a reasonable provision since it gives the applicant a further means of having his application evaluated. Also, the applicant is assured that if the authority approves a previously rejected application, that the application will now be treated like one recommended by the commissioner.

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.

This is needed to inform the applicants of the final step in processing their application as provided for by the statute and rules. It is reasonable for the applicant to have this information. It is also reasonable for the commissioner to notify the applicant if the application is disapproved.

REPEALER

4200.2100 DEFINITIONS

Subpart 3. Commissioner.

It is necessary and reasonable to repeal this term because the definition is found in Minnesota Rules part 8300.0100 and so it does not need to be repeated here.

Subpart 6. Preliminary engineering design.

It is necessary and reasonable to repeal this definition since it is no longer used in these amended rules.

4200.2400 APPLICATION CONTENTS

The 1983 Minnesota Statute chapter 116M created the Minnesota Energy and Economic Development Authority which has the power to recommend to the commissioner of finance that a district heating design or construction loan be made to a municipality. It has, therefore, become necessary for permanent rules which clarify the dutues and responsibilities of the commissioner and the authority. It is, therefore, necessary and reasonable to repeal this part because its contents are now incorporated into the permanent authority rules for district heating design and construction loans. Minnesota Statutes, section 116J.36 subdivision 5 states, "Application for a loan to be made pursuant to subdivision 6 or 7 shall be made by a municipality to the authority on a form prescribed by the authority." Therefore, APPLICATION CONTENTS are appropriately found in the authority's rules.

4200.2500 CONTENTS OF COMPREHENSIVE BUSINESS PLAN

For the same reasons as the previous part, this part is repealed because its contents are now incorporated into the permanent authority rules for district heating design and construction loans.

4200.2700 EXPENDITURES NOT REQUIRED

This part is repealed due to there being no sufficient need to continue to include this information in these rules. it is reasonable that with no need for this part, this part should be repealed.

4200.3000 DEFINITIONS

Subpart 3. Assistant Commissioner of energy.

It is necessary and reasonable to eliminate this definition since it is no longer used in these amended rules.

Subpart 4. Commissioner.

It is necessary and reasonable to repeal this term because the definition is found in Minnesota Rules part 8300.0100 and so it does not need to be repeated here.

Subpart 9. Gross revenues.

It is necessary and reasonable to eliminate this term because it is no longer used in these amended rules.

Subpart 10. Operating expenses.

It is necessary and reasonable to eliminate this term because it is no longer used in these amended rules.

4200.3300 CONTENTS OF APPLICATION.

In 1983, Minn. Stat. ch. 116M created the Minnesota Energy and Economic Development Authority which was then given the authority to recommend to the commissioner of finance that a district heating design or construction loan be made to a municipality. It has therefore become necessary for the district heating program to write permanent rules which clarify the duties and responsibilities of the authority.

It is, therefore, necessary and reasonable to repeal this part because its contents are now incorporated into the permanent authority rules for district heating design and construction loans. Minnesota Statute, Section 116J.36 subd. 5 states, "Application for a loan to be made pursuant to subdivision 6 or 7 shall be made by a municipality to the authority on a form prescribed by the authority." Therefore, CONTENTS OF APPLICATION are appropriately found in the authority's rules.

4200.3400 COMPREHENSIVE BUSINESS PLAN.

For the same reasons as the two previous parts, it is necessary and reasonable to repeal this part. Its contents are now incorpored into the permanent authority rules for district heating design and construction loans.

4200.3600 MARKET STUDY.

For the same reason as the three previous parts, it is necessary and reasonable to repeal this part. Its contents are now incorporated into the permanent authority rules for district heating design and construction loans.

4200.3700 ECONOMIC ANALYSIS.

For the same reason as the four previous parts, it is necessary and reasonable to repeal this part. Its contents are now incorporated into the permanent authority rules for district heating design and contruction loans.

4200.3800 RESOLUTION IN SUPPORT OF PROJECT.

For the same reason as the five previous parts, it is necessary and reasonable to repeal this part. Its contents are now incorporated into the permanent authority rules for district heating design and construction loans.

In the Matter of the Proposed Adoption of Rules of the State Department of energy and Economic Development Governing 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 11-13-85

Christie B. Eller
Special Assistant
Attorney General

SF-00006-04

DEPARTMENT : ATTORNEY GENERAL - Bremer Tower

STATE OF MINNESOTA

Office Memorandum

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.