

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

RULE REVIEW CHECKLIST

File No. 146

DATE RECEIVED 4/13/88

REVIEW DATE 4/22/88

DUE DATE 4/27/88

APPROVED

DISAPPROVED

WITHDRAWN 4/27/88

Docket No. 05.0009.0731

ADOPTED W/O HEARING X

EMERGENCY RULE

withdrawn

REVISOR APPROVED

REVISOR DISAPPROVED

FIELD W/SEC.STATE

RETURNED TO AGENCY

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion

6/1/87 Date published in State Register

None Comments

~~Petition for Adoption of a Rule~~

~~Board's Authorizing Resolution~~

✓ Proposed rule

yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule

216C.02 Statutory Authority

no Small Business Statement

no Expenditure of public money statement

yes Signature

✓ Statement of Need and Reasonableness

yes Small Business Statement

n/a Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

2/8/88 Date (30)/25 days before adoption

✓ Publication in State Register

2/8/88 Date (30)/25 days before adoption

~~Resolution Adopting~~

✓ Findings of Fact, Conclusions & Order Adopting

3/30/88 Date

2 Written requests, submissions or comments

✓ Declaration of attorney

Audrey Zibelman Name of SAAG representing agency

~~Notice of Submission to Attorney General~~

~~Affidavit of Mailing Notice to Attorney General~~

CBE

Version as sent to Governor

A bill for an act

relating to energy; providing for the powers and duties of the commissioner of public service; clarifying definitions; regulating fluorescent lamp ballasts; authorizing certain Indian tribes to create community energy councils; providing the purpose for which an appropriation may be spent; amending Minnesota Statutes 1986, sections 116J.09; 116J.10; 116J.19, subdivision 6, and by adding a subdivision; 116J.381, subdivision 2; and Laws 1981, chapter 334, section 11, subdivision 1.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1986, section 116J.09, is amended to read:

116J.09 [DUTIES.]

The commissioner shall:

(a) manage the department as the central repository within the state government for the collection of data on energy;

(b) prepare and adopt an emergency allocation plan specifying actions to be taken in the event of an impending serious shortage of energy, or a threat to public health, safety, or welfare;

(c) undertake a continuing assessment of trends in the consumption of all forms of energy and analyze the social, economic, and environmental consequences of these trends;

(d) carry out energy conservation measures as specified by the legislature and recommend to the governor and the

legislature additional energy policies and conservation measures as required to meet the objectives of sections 116J.05 to 116J.30;

(e) collect and analyze data relating to present and future demands and resources for all sources of energy;

(f) evaluate policies governing the establishment of rates and prices for energy as related to energy conservation, and other goals and policies of sections 116J.05 to 116J.30, and make recommendations for changes in energy pricing policies and rate schedules;

(g) study the impact and relationship of the state energy policies to international, national, and regional energy policies;

(h) design and implement a state program for the conservation of energy; this program shall include but not be limited to, general commercial, industrial, and residential, and transportation areas; such program shall also provide for the evaluation of energy systems as they relate to lighting, heating, refrigeration, air conditioning, building design and operation, and appliance manufacturing and operation;

(i) inform and educate the public about the sources and uses of energy and the ways in which persons can conserve energy;

(j) dispense funds made available for the purpose of research studies and projects of professional and civic orientation, which are related to either energy conservation, resource recovery, or the development of alternative energy technologies which conserve nonrenewable energy resources while creating minimum environmental impact;

(k) charge other governmental departments and agencies involved in energy related activities with specific information gathering goals and require that those goals be met;

(l) design a comprehensive program for the development of indigenous energy resources. The program shall include, but not be limited to, providing technical, informational, educational, and financial services and materials to persons, businesses, municipalities, and organizations involved in the development of

solar, wind, hydropower, peat, fiber fuels, biomass, and other alternative energy resources. The program shall be evaluated by the alternative energy technical activity; and

(m) dispense loans, grants, or other financial aid from money received from litigation or settlement of alleged violations of federal petroleum pricing regulations made available to the department for that purpose. The commissioner shall adopt rules under chapter 14 for this purpose. Money dispersed under this clause must not include money received as a result of the settlement of the parties and order of the United States District Court for the District of Kansas in the case of In Re Department of Energy Stripper Well Exemption Litigation, 578 F. Supp. 586 (D.Kan. 1983) and all money received after the effective date of this section by the governor, the commissioner of finance, or any other state agency resulting from overcharges by oil companies in violation of federal law.

Further, the commissioner may participate fully in hearings before the public utilities commission on matters pertaining to rate design, cost allocation, efficient resource utilization, utility conservation investments, small power production, cogeneration, and other rate issues. The commissioner shall support the policies stated in section 116J.05 and shall prepare and defend testimony proposed to encourage energy conservation improvements as defined in section 216B.241.

Sec. 2. Minnesota Statutes 1986, section 116J.10, is amended to read:

116J.10 [POWERS.]

The commissioner may:

(a) Adopt rules pursuant to chapter 14 as necessary to carry out the purposes of sections 116J.05 to 116J.30 and, when necessary for the purposes of section 116J.15, adopt emergency rules pursuant to sections 14.29 to 14.36;

(b) make all contracts pursuant to sections 116J.05 to 116J.30 and do all things necessary to cooperate with the United States government, and to qualify for, accept and disburse any grant intended for the administration of sections 116J.05 to

116J.30. Notwithstanding any other law the commissioner is designated the state agent to apply for, receive and accept federal or other funds made available to the state for the purposes of sections 116J.05 to 116J.30;

(c) provide on-site technical assistance to units of local government in order to enhance local capabilities for dealing with energy problems;

(d) administer for the state, energy programs pursuant to federal law, regulations or guidelines, except for the crisis fuel assistance and low income weatherization programs administered by the department of jobs and training, and coordinate the programs and activities with other state agencies, units of local government and educational institutions;

(e) design and administer a statewide program for the energy and economic development authority and actively involve major organizations and community leaders in its work and shall solicit funds from all sources;

(f) develop a state energy investment plan with yearly energy conservation and alternative energy development goals, investment targets, and marketing strategies;

(g) perform market analysis studies relating to conservation, alternative and renewable energy resources, and energy recovery;

(h) assist with the preparation of proposals for innovative conservation, renewable, alternative, or energy recovery projects;

(i) manage and disburse funds made available for the purpose of research studies or demonstration projects related to energy conservation or other activities deemed appropriate by the commissioner; ~~and~~

(j) intervene in certificate of need proceedings before the public utilities commission; and

(k) collect fees from recipients of loans, grants, or other financial aid from money received from litigation or settlement of alleged violations of federal petroleum pricing regulations, which fees shall be used to pay the department's costs in

administering those financial aids.

Sec. 3. Minnesota Statutes 1986, section 116J.19, subdivision 6, is amended to read:

Subd. 6. Beginning April 20, 1977, no person shall use a decorative gas lamp in Minnesota except as provided in this subdivision and in subdivision 7. The commissioner shall, at the request of a homeowner who is 65 years old or older, grant a variance allowing the homeowner to operate a decorative gas lamp or lamps at the homeowner's principal place of residence. The variance shall be valid for the life of the recipient, but shall be renewed every four years. The commissioner may not issue a variance after August 1, 1992, except variances issued before that date may be renewed under this subdivision.

Sec. 4. Minnesota Statutes 1986, section 116J.19, is amended by adding a subdivision to read:

Subd. 15. [FLUORESCENT LAMP BALLASTS.] No person may sell or install a fluorescent lamp ballast in this state that does not comply with the energy efficiency standards for fluorescent lamp ballasts adopted by the commissioner under subdivision 8.

Sec. 5. Minnesota Statutes 1986, section 116J.381, subdivision 2, is amended to read:

Subd. 2. [COMMUNITY ENERGY COUNCILS; CREATION.] Statutory and home rule charter cities ~~or~~, counties, or Indian tribal governments of federally recognized Minnesota based bands or tribes, individually or through the exercise of joint powers agreements, may create community energy councils. Membership on a council shall include representatives of labor, small business, voluntary organizations, senior citizens, and low and moderate income residents, and may include city ~~and~~, county, and Indian tribal government officials, and other interested parties.

Sec. 6. Laws 1981, chapter 334, section 11, subdivision 1, is amended to read:

Subdivision 1. The sum of $43,170,000 is appropriated from the state building fund to the commissioner of finance for the purpose of making loans to municipalities for district heating systems and qualified energy improvements pursuant to section ~~1~~

116J.36.

Sec. 7. [RULES.]

The commissioner of public service shall adopt rules under Minnesota Statutes, section 116J.19, subdivision 8, establishing minimum energy efficiency standards for fluorescent lamp ballasts by January 1, 1989.

Sec. 8. [EFFECTIVE DATE.]

Section 4 is effective January 1, 1991, and applies to fluorescent lamp ballasts placed in inventory after the effective date of rules adopted by the commissioner of public service establishing minimum energy efficiency standards for fluorescent lamp ballasts under Minnesota Statutes, section 116J.19, subdivision 8. Section 7 is effective the day following final enactment.

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC SERVICE

ENERGY DIVISION

In the Matter and the Proposed Adoption of the Rule of the State Department of Public Service Governing the Institutional Energy Loan Program for Public and Private Non-profit Institutions.

WITHDRAWAL OF RULE FROM REVIEW BY ATTORNEY GENERAL

Notice is hereby given that the Minnesota Department of Public Service has ordered the withdrawal of the above named proposed Rule from review by the Attorney General.

April 27, 1988

Ken Nickolai
Deputy Commissioner
Department of Public Service

DEPARTMENT OF PUBLIC SERVICE

ENERGY DIVISION

In the Matter of the Proposed Adoption of the Rule of the State Department of Public Service Governing the Institutional Energy Loan Program for public and private non-profit institutions.	NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the State Department of Public Service intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is contained in Minnesota Statutes section 216C.02, Subdivision 3.

All persons 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. Comment is encouraged. Each comment should identify the portion of the proposed rule 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 in writing. 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.

Comments or written requests for a public hearing must be submitted to:

Claudia Anderson
Department of Public Service
Energy Division
900 American Center
150 E. Kellogg Boulevard
St. Paul, MN 55101
Telephone: (612) 297-1220

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Ms. Anderson upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted 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 adopted rule, must submit the written request to Ms. Anderson at the address given above.

Dated: January 21, 1988

Tony Perpich, Commissioner
Department of Public Service

Department of Public Service

Proposed Permanent Rules Relating to Institutional Energy Loan Program (IELP)

Rules as Proposed (all new material)

7605.0010 PURPOSE OF INSTITUTIONAL ENERGY LOAN PROGRAM.

The purpose of this chapter is to establish the application procedures by institutions and set criteria for review and recommendation of loan applications.

7605.0020 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of this chapter, the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a public or private nonprofit institution, as defined in this part that is making application for funds under this program.

Subp. 3. **Building.** "Building" means any existing, separate structure owned and operated by a public or private nonprofit institution as defined in this part.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Department of Public Service.

Subp. 5. **Conservation measure.** "Conservation measure" means an installation or modification of an installation to a building or stationary energy using system outside of a building, that is primarily intended to reduce energy consumption or allow the use of an alternative energy source including solar, wind, peat, wood, and agricultural residue.

Subp. 6. **Financial institution.** "Financial institution" means a bank, bank or trust company, trust company, mortgage company, credit union, mortgage banker, national banking association, savings bank, savings association, savings and loan association, building and loan association, insurance company, securities broker-dealer, financial organizations relating to commercial credit or venture capital, or a lender certified by the secretary of housing and urban development or by the

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administrator of veterans affairs, or approved or certified by the administrator of the Farmers Home Administration or any other financial or lending institution, whether organized under federal law or the laws of any state of the United States, and whether located within or without this state.

Subp. 7. **Hospital.** "Hospital" means a public or private nonprofit facility licensed under Minnesota Statutes, section 144.50, subdivision 2, which is primarily engaged in providing to inpatients by or under the supervision of physicians:

A. diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons; or

B. rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

Subp. 8. **Lender.** "Lender" means the Minnesota Department of Finance, a private or community foundation, or a financial institution as defined in this part which issues a loan to an applicant to implement energy conservation measures.

Subp. 9. **Nursing home.** "Nursing home" means a public or private nonprofit facility or that part of a facility licensed under Minnesota Statutes, section 144A.01, subdivision 5, which provides nursing care to five or more persons.

Subp. 10. **Payback.** "Payback" means the simple payback that is equal to the sum of the design, acquisition, and installation costs of a conservation measure divided by the estimated first year energy cost savings attributable to that measure.

Subp. 11. **Private nonprofit institution.** "Private nonprofit institution" means an institution owned and operated by a school, hospital, or nursing home or joint power of these as defined in this part which is also exempt from income tax under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1986.

Subp. 12. **Project.** "Project" means all proposed work in a loan application.

Subp. 13. **Public institution.** "Public institution" means

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any public school district or hospital, statutory or home rule charter city, county, or town in Minnesota, or a joint power entity consisting of these units.

Subp. 14. **School.** "School" means a public or private nonprofit institution:

A. that provides, and is legally authorized to provide, elementary education or secondary education or both on a day or residential basis;

B. that:

(1) provides, and is legally authorized to provide, a program of education beyond secondary education on a day or residential basis;

(2) admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;

(3) is accredited by a nationally recognized accrediting agency or association; and

(4) provides an educational program for which it awards a bachelor's degree or higher degree or provides not less than a two-year program which is acceptable for full credit toward such a degree at any institution which meets the preceding requirements and which provides such a program; or

C. that provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions in item B, subitems (1) to (3).

7605.0030 **LOAN ELIGIBILITY CRITERIA.**

Subpart 1. **In general.** The commissioner shall approve IELP applications from applicants in compliance with this chapter for conservation measures that have a payback of ten years of less.

Subp. 2. **Eligibility.** Funds are available to applicants to finance:

A. projects which have not previously received funds under this program;

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B. an amendment to an existing loan, to fund cost overruns for projects in progress, or previously unidentified but related work which is necessary for successful implementation of the previously approved project, provided the projects as amended continue to meet the requirements of this chapter.

Subp. 3. **Prior approval required.** Except for the amendments in subpart 2, projects for which acquisition or installation have been contracted for or begun before approval by the commissioner are ineligible. This prior approval requirement does not apply to design activities.

Subp. 4. **Useful life.** Funds may not be awarded to buildings or energy using systems with a remaining useful life less than or equal to the payback of the conservation measure proposed. Funds may not be awarded for a conservation measure if the payback of the conservation measure proposed is greater than or equal to the useful life of the measure.

Subp. 5. **New construction.** Only projects for existing buildings and energy using systems are eligible. New construction is only eligible if it is necessary for successful implementation of a conservation measure for an existing building or stationary energy using system.

7605.0040 LOAN LIMITS.

Funds issued under this program will be used to participate in loans originating from a lender up to a maximum of 50 percent of the loan principal or $200,000, whichever is less. While more than one loan may be issued to an applicant, the sum of funds issued from this program may not exceed $200,000.

7605.0050 APPLICATION CONTENTS.

Subpart 1. **In general.** An applicant shall submit a complete application to the commissioner on forms provided by the commissioner. An application must be signed in ink by an authorized official of the applicant, must include the authorized official's title, and must be dated.

Subp. 2. **Contents.** An application must contain, at a

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minimum:

A. the name and complete mailing address, including county, of the applicant;

B. a contact person's name, title, and telephone number;

C. a list of buildings or stationary energy using systems included in the application and the dollar amount requested per building or stationary energy using system;

D. the name and address, total floor area in square footage, or number of units in a stationary energy using system;

E. the original construction date and addition construction dates of the building;

F. the age of a stationary energy using system; and

G. the state legislative district affected by the application.

An application must also contain a summary description of each proposed conservation measure, including its estimated cost, loan amount requested, estimated annual energy cost savings, estimated annual fuel and electric savings, estimated payback, and the estimated dates the conservation measure will be started and completed.

Subp. 3. **Technical support materials.** All applications for IELP funds must contain fuel and electric consumption data for the most recent completed period July 1 to June 30, for each building or stationary energy using system in the application. Applications must also contain a description of the current condition of the building, the building component, equipment or stationary energy using system to be improved, and the proposed conservation measure. Sufficient engineering analysis to determine technical feasibility and project payback must be included. All conservation measures must be analyzed using the energy conservation development sheet format available from the commissioner.

Applications for matching loans of $25,000 or more shall have the analysis for projects conducted by a Minnesota registered mechanical engineer, electrical engineer, or

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architect. Applications must include an Engineering Analysis Report Summary or a Maxi-Audit Report Form available from the commissioner.

Subp. 4. **Assurances.** An applicant must also submit assurances that:

A. it has provided for the proper and efficient operation and maintenance of the proposed conservation measures;

B. the work performed with loan funds will meet all Minnesota building code requirements;

C. it has provided funds to pay any portion of the project cost not eligible for program funds specifically identifying the source of those funds;

D. it has met requirements for voter approval, if applicable; and

E. it is able to accept and repay the proposed program funds without exceeding applicable debt and levy limits.

Subp. 5. **Incomplete applications.** If an incomplete application is received, the commissioner shall notify the applicant of specific deficiencies in the application. The applicant has 30 days from the date of the commissioner's notification to complete the application. If the application is not completed and received by the commissioner within 30 days, the application is considered withdrawn. To be further considered, the applicant must reapply.

7605.0060 LENDER.

In order to be eligible to receive funds under this program, a participating lender's agreement provided by the commissioner must be signed by an authorized officer of the lender. The agreement shall set the terms and conditions under which a loan is to be made and specify procedures to be followed in the event of default by the applicant. The agreement must require the lender and the commissioner to conform to the following conditions:

A. The lender will enter into a loan agreement with the applicant. The loan agreement will include the following:

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(1) an agreement that the commissioner may review upon request all financial data of the applicant and may inspect any and all buildings, equipment, and stationary energy using systems associated with a loan; and

(2) an irrevocable resolution of the applicant's governing body guaranteeing that it will use all loan funds solely for the eligible costs of the proposed project; it will repay the loan according to the terms of the loan; and it will annually levy or otherwise collect funds to meet the annual repayment costs of the loan.

B. The lender shall make no provision to subordinate any loan collateral to other liens against such property without prior written approval from the commissioner.

C. The lender shall not acquire any preferential collateral, surety, or insurance to protect its interest in a loan.

D. All collateral must be prorated between the lender and the commissioner.

E. The lender shall require the applicant to adequately insure, maintain, and repair all collateral.

F. The lender shall review and approve qualified energy projects in accordance with generally accepted commercial lending practices.

G. The lender is responsible for servicing all loans it makes for conservation measures either directly or by contracting with a servicing agent.

H. The lender shall not sell or transfer any loan without prior written approval from the commissioner.

I. The lender, for the term of the entire loan, shall promptly notify the commissioner of any loan payments that are two weeks overdue. The lender shall provide the commissioner with any and all past due notices at the same time they are sent to the applicant. In addition, the lender must submit an annual loan performance report to the commissioner on a form provided by the commissioner.

J. The commissioner shall not participate in any loan

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that either carries an interest rate in excess of three points above the lender's prime rate or base rate for variable or rate loans.

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

L. The lender agrees to make no waivers of default without prior written approval from the commissioner.

M. The department shall not participate in loans made by a lender before the execution of the participating lender's agreement.

N. The commissioner may review upon request all financial data associated with the execution and servicing of a loan made by the lender.

O. Any and all payments received by the lender shall first be credited to interest due on a pro rata basis and then be credited to the principal balance due, on a pro rata basis.

7605.0070 APPLICATION REVIEW.

Subpart 1. **Administrative review.** The commissioner shall examine the loan application to verify that the applicant is eligible, that the required forms are included and correctly completed, that the required assurances and irrevocable resolution are included, and that the application is properly signed and dated.

Subp. 2. **Technical review.** The commissioner shall examine the technical support materials included in the application to verify that the proposed conservation measures are analyzed with adequate details of existing conditions and proposed modifications or additions, that appropriate calculation procedures are used, that the proposed conservation measures are eligible, and that the proposed conservation measures are technically feasible and meet requirements of this chapter.

Subp. 3. **Rejection and resubmission.** The commissioner may accept, reject, or modify a loan application as necessary based on the application review. The commissioner shall notify an

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applicant of cause for modification or rejection of an application and the options available to correct those problems for resubmission of the application. If some of the conservation measures in an application are accepted as submitted, the applicant may choose to accept a loan for those measures.

7605.0080 REPORTS AND MONITORING.

Subpart 1. **In general.** An applicant that receives IELP funds shall submit the reports listed in subparts 2 to 5.

Subp. 2. **Annual project status report.** The applicant shall submit to the commissioner on forms provided by the commissioner an annual project status report covering the period July 1 through June 30. This report is due each July 31 until the project is completed.

The project status report must indicate the progress of the implementation of the project, problems encountered, the effect of the problems on the project, and the corrective action taken. If at any time the applicant fails to substantially comply with the start and end dates given in the loan application as approved, and if the applicant cannot reasonably justify to the commissioner its lack of progress, the entire loan amount may become due and payable at the discretion of the commissioner.

Subp. 3. **Semiannual financial report.** The applicant shall submit to the commissioner on forms provided by the commissioner, a semiannual financial status report that indicates expenditures of loan funds through the last date of each report period. This report is due on July 31 for the period January 1 to June 30, and January 31 for the period July 1 to December 31 until the project is completed.

Subp. 4. **Final report.** Within 60 days of the completion of the project, the applicant shall submit to the commissioner, on forms provided by the commissioner, a final project status report and a financial status report that gives actual expenditures of the conservation measures implemented.

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Subp. 5. **Annual energy report.** The applicant shall submit to the commissioner, on forms provided by the commissioner, an annual fuel and electric consumption report due each October 31 for the duration of the loan contract period, or for a minimum of three years after project completion if the loan is paid in less than three years, unless the commissioner cancels this requirement before the end of the loan contract period.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Institutional Energy Loan Program (IELP)

AGENCY: Department of Public Service

MINNESOTA RULES: Chapter 7605

The attached rules are approved for publication in the State Register

David S. Niss
Assistant Revisor

2/8/88

Statement of Need and Reasonableness

Institutional Energy Loan Program (IELP)

I. The Commissioner of the Minnesota Department of Public Service presents herein facts and justifications establishing the need and reasonableness of the proposed rules governing the Institutional Energy Loan Program. This program is funded with $6 million of the $36 million Exxon restitution allocation that the State of Minnesota received in 1986. Governor Perpich decided that $6 million be dedicated to energy conservation loans for schools, hospitals and public buildings and that the Minnesota Department of Public Service administer the program. Distribution of these funds was continqent upon approval of this program by the U. S. Department of Energy. A state plan amendment to the State Energy Conservation Plan program outlining the intent for use of these funds was submitted to the U. S. Department of Energy and approved in June of 1987. These rules for the loan program are now being promulgated.

II. Impact on small business

The proposed rules create a voluntary program of financial assistance to Minnesota public and private non-profit schools, hospitals, nursing homes and units of local government to implement energy

conservation improvements and, as such, have no direct effect on small business. Rules covering programs such as this are exempted from Minnesota Statutes Section 14.115 (1986) by subd. 7(b) which exempts rules which do not directly affect small businesses.

III. Need and Reasonableness of each Rule Provision

A. Proposed part 7605.0010 states the purpose of the proposed rules. This part is needed to introduce the proposed rules and its reasonableness is self evident.

B. Definitions

Proposed part 7605.0020 defines terms which have distinct meanings when used within the context of these rules.

Subpart 1 is needed as an introductory and explanatory sentence regarding the use of the definitions. Its reasonableness is self evident.

Subpart 2 defines "applicant". Providing a shorthand term to reference those institutions eligible to borrow loan funds is needed and reasonable to make the rule more readable.

Subpart 3 defines "building". This definition is needed to identify those buildings which are eligible for the loan program. It is necessary and reasonable to specify existing because a conservation measure cannot be installed in a building not yet constructed. It is necessary to specify separate to make clear that when a building is referenced in rule, all parts of a building including wings and additions are implied.

It is reasonable to require that a building be owned and operated by a public or private-non-profit institution (a defined in this part) because, the Commissioner advised the U. S. DOE that loans would only be made to public and private-non-profit institutions. Approval by the U. S. DOE expenditure of these funds was made on that premise. It is also reasonable to require that a building be owned and operated by a private non-profit institution because the purpose of the loan program is to encourage such institutions to invest in energy saving capital improvements. While present ownership and operation does not guarantee that an institution will remain the beneficiary over the useful life of an improvement, if it is sold, such capital improvements should be reflected in the purchase price.

Subpart 4. Defines "commissioner". It is needed and reasonable to provide a shorthand term to make the rule more readable.

Subpart 5. defines "conservation measure". This definition is necessary to specify what kinds of projects are eligible. It is reasonable to limit projects to those eligible under the department's existing programs. This definition is consistent with the definition of conservation measure used in all of the department's other energy financing programs. Those capital improvement projects have a proven track record of energy savings.

Subpart 6. defines "financial institution". It is needed to specify who can make loans. It is reasonable to include a broad base of lenders to maximize use of program funds.

Subpart 7. defines "hospital". The Department of Public Service intends to broaden the definition in the final rule to match the definition of licenced hospitals as found in Minnesota Statutes Chapter 114.50.

Subpart 8. defines "lender" to mean the Minn. Department of Finance, a private or community foundation or a financial institution as defined in this part. It is reasonable to define lender to make clear what financing sources the Commissioner approve as lenders under the program. It is reasonable to include the Minnesota Department of Finance because a large

percentage of the money loaned under the program will be matched to loan funds distributed by the Department of Finance. It is reasonable to include private or community foundations because they often provide financial assistance to the institutions eligible for funds under this program. It is necessary and reasonable to limit the type of lenders because it will be the responsibility of the lender to conduct any credit analysis of loan applicants and to service the loan throughout the term of the loan.

Subpart 9. defines "nursing home." It is defined to insure that only licensed nursing homes can apply.

Subpart 10. defines "Payback". This definition is reasonable because it applies the most commonly used meaning, within the context of energy cost savings analysis, and is consistent with standard practice within the energy auditing field.

Subpart 11. defines "Private non-profit institutions". It is needed to clarify what private non-profit institutions can apply. It is reasonable because the U.S. DOE approved expenditure of these funds based on a plan that limited which private non-profit institutions are eligible for program funds.

Subpart 12. defines "Project". It is needed and reasonable to provide a shorthand term to make the rule more readable.

Subpart 13. defines "Public Institution". It is needed to clarify what public institutions are eligible for program funds. It is reasonable to limit eligibility to schools, hospitals, cities, counties and towns because the U. S. DOE approved expenditure of these funds based on a plan that limited the types of public institutions eligible for funds.

Subpart 14. defines "School" . It is needed to identify the types of schools eligible for program funds. It is reasonable to limit the type of school eligible to those eligible in other financing programs available in the department. It is reasonable to limit participation to public or private non-profit schools because these are the only institutions eligible to receive funds under this program.

C. Loan Eligibility Criteria

Subpart 1 establishes that the Commissioner approves IELP applications that comply with the rules for conservation measures that have a payback of ten years or less. It is necessary to specify Commissioner because he has the authority to approve or deny funds distributed under this program. It is reasonable to

limit the payback to ten years because the State funded Municipal Energy Loan Progam and the Federal Institutional Conservation Program have ten year pay back limitations. It is reasonable that guidelines of this program be consistent with other financing programs administered by this department. A considerable portion of this program's funds will be used to match funds from the State's loan program. It is necessary to limit conservation measures to those with paybacks of ten years or less so that program dollars go to cost-effective projects that will ultimately save applicants money through energy savings.

Subpart 2 identifies eligibility limitations for projects. It is necessary because it prevents an applicant from receiving double funding for a project, while allowing funds to be used for cost over-runs or additional project related work, provided the project continues to meet program requirements. It is reasonable because it will prevent misuse of funds while allowing for loan amendments to cover unanticipated but reasonable costs.

Subpart 3 describes the prior approval condition of the program. A loan may not be awarded for a project already contracted for or begun. This is necessary to prevent a situation in which an applicant starts work on a conservation project anticipating funds from this program before having that project reviewed for technical feasibility and program compliance.

Subpart 4 is necessary and reasonable because it prevents funding measures that do not payback within the life of a building or energy using system. This limitation is reasonable because it is not economically wise to fund a project in a building that's useful life is less than the payback of the measure.

Subpart 5 addresses the ineligibility of new construction except as a necessary part of a conservation measure for an existing building or energy using system. Because the purpose of this program is to reduce energy consumption with the primary criteria being how quickly a conservation measure pays for itself, it is reasonable that only projects affecting existing buildings or energy using systems be eligible. It is reasonable to allow new construction where it is necessary for the successful implementation of a conservation project because it would be considered part of the project and so that the investment in new construction does not become a financial burden to the applicant.

D. Loan Limits

This part limits the use of program funds issued under this program not to exceed a maximum of 50% of the loan principal or $200,000, whichever is less. The Department of Public Service staff and the program advisory committee concluded that the lesser of a 50% participation cap or a $200,000 limit was

necessary to achieve the goal of spreading program funds to a large number of projects while still providing inducement to invest. With the 50% cap, a public school or local government would be able to decrease by one-half the interest rate currently offered under the state's Municipal Energy Loan Program. Private non-profit schools, hospitals and nursing homes could borrow at a rate of one-half that currently offered by banks.

E. Application Contents

Proposed part 7605.0050 describes the contents of a loan application and procedures for applicants to use in order to apply for a loan. Subpart 1 states that applicants shall submit an application to the Commissioner on a form provided by the Commissioner. This subpart is needed to provide a consistent format for all applications. This subpart also states that each application must have an original ink signature by an authorized official of the applicant, must have the authorized official's title and must be dated. It is necessary and reasonable to have this requirement to ensure that the responsible official is aware of the loan application and proposed projects, and he/she has, in a capacity as an authorized official, approved of the loan application.

Subpart 2 describes the contents of each loan application The majority of the information required is needed to identify the applicant and contact individuals and to identify basic information about the proposed project or projects. It is necessary to require this information to determine eligibility and to maintain public records.

Subpart 3 describes the technical support materials that are required to be submitted with the application. The information required is necessary in order for DPS staff engineers to determine if the payback calculations that are submitted for projects are accurate and fall within program restrictions. This subpart requires that all conservation measures be analyzed using the energy conservation development sheet format available from the Commissioner. It is necessary to require this standard format so that eligible conservation measures are analyzed consistently for all applicants. It is reasonable to use the format available from the Commissioner because this format has been used for the past several years, and is the standard for many similar programs.

It is a necessary and reasonable requirement that for matching loans of $25,000 or more, the technical analysis be conducted by a Minnesota registered mechanical engineer, electrical engineer, or architect. Although it would be desirable if all projects

funded under this program were analyzed by an engineer or architect, the expense of this level of expertise may be prohibitive for projects funded with matching loans of less than $25,000. Because we want to encourage the greatest participation possible, funding both large and small scale energy conservation projects, it is reasonable to require the professional technical analysis only for loans for projects of $50,000 or more.

It is necessary that applications include either the Engineering Analysis Report Summary or the Maxi-Audit Report Form so that necessary information is presented in a standard format which facilitates the requisite data processing.

Subpart 4 requires that applications contain a number of assurances. The first of these is that the applicant has provided for proper and efficient operation and maintenance of a proposed project. This requirement is necessary to protect the investment in an installation. This provision is especially important if special training or a new maintenance practice is required to operate or maintain a project. The second assurance requires that all work meet Minnesota building code requirements. This is necessary to meet federal State Energy Conservation Plan rules. The third assurance requires that the applicant identify the source of any funds required to pay for

portions of a project not eligible for program funds. This is necessary to assure that the entire project has financial backing before any construction begins or program funds are committed. The third requirement is that the applicant submit documentation that applicable voter approval requirements are met. This is necessary to insure that all applicable laws are obeyed. The fourth requirement is that an applicant document that it is able to accept and repay funds without exceeding applicable debt and levy limits. This is necessary to protect the state's interest in issuing loan funds. It insures that the loan itself is legal under the laws of the state.

Subpart 5 explains the procedure that will be followed if incomplete applications are submitted. The Commissioner will notify an applicant of specific deficiencies in an application so that the applicant has the opportunity to correct them and participate in the program. The 30 day limit on submitting corrections to an application is needed to prevent the administrative problem created by an unlimited number of pending applications, which remain unprocessable for an indefinite period of time. It is reasonable because 30 days is adequate time to correct deficiencies and because applicants retain the option of reapplying if they so choose.

Lender

This part specifies the contents of the agreement that must be executed between the lender and the Commissioner regarding conditions under which loans can be made and procedures that are to be followed in the event of default by the applicant. This agreement is necessary and reasonable to protect the loan fund's interest in the financial assistance.

Application Review

Subpart 1 outlines the administrative review of an application. It is needed to confirm that the items referred to are completed and will be checked by the Commissioner. It is reasonable because the Commissioner is responsible to see that these requirements are carried out.

Subpart 2 outlines the items that the Commissioner will review regarding technical analysis of the projects for which funds are requested. It is reasonable because it is the Commissioner's responsibility to check if the technical analysis upon which project feasibility is based is sound to assure that only projects that meet program guidelines receive funds.

Subpart 3 outlines the procedures for rejections and resubmissions. It is necessary that an applicant be notified of any modifications made to the application and all options available to correct problems with the application. The subpart explains that if only some of the measures are deemed acceptable by the Commissioner, the applicant may choose to accept a loan for those measures. This is reasonable if the rejected measures are not able to be modified for resubmission for technical or administrative reasons and allows the appliant to receive a loan without having to resubmit a new application. This could be critical if program funds ever become competitive.

Reports and Monitoring

Proposed part 7605.0080 describes the various reports required of loan recipients by the state. Subpart 1 is simply an introduction to the proposed part. The need and reasonableness of this introductory subpart is self-evident. Each of the four following subparts describes a different report.

Subpart 2, describes the annual project status report. This report is needed to assure the Commissioner that the loan funds are indeed being used for the purpose described in the application. It is easiest for the district to simply fill out a

supplied form rather than create a document more complex and detailed than needed. A short form annual report is a reasonable requirement, to balance the Commissioner's need for information on the project's progress, against the desirability of having a minimum number of reports for the loan recipient to complete. The time period July 1 through June 30 is needed to conform with the state fiscal year, and is reasonable because the reports come to a state office covering the use of state funds. The due date of July 31 is given to set a reasonable time limit on how long loan recipients may take to complete the report and send it in; a month is a reasonable period of time in which to expect completion and submission of a relatively simple form report.

The subpart describes the contents of the status report. This section is needed for two reasons: for the Commissioner to determine that the project is actually in progress and the loan funds are being properly used; and also for the Commissioner to have early notification of any loan recipients having difficulties with project implementation. Those having difficulties may be offered assistance in resolving the problems if the problems are known about soon enough. This provision is reasonable because the Commissioner must have some method of

verifying that funds are correctly used and because, if informed, the Commissioner may be able to offer assistance not only to the loan recipient involved, but may be able to solve in advance potential problems for future loan recipients.

The subpart continues by stating that if at any time the loan recipient fails to substantially comply with the start and end dates given in the approved loan application, and if the loan recipient cannot reasonably justify its lack of progress, the entire loan amount may become due and payable at the discretion of the Commissioner. This part is needed as a sanction to use in the event it becomes obvious that a loan recipient is not using the loan as agreed upon by both parties. It is reasonable because the part allows leeway for loan recipients that fail to comply with start and end dates for good reason. It is also reasonable not to require the Commissioner to call in all loans which cannot meet their estimated timelines, since there can exist justifiable reasons for deviation from timelines.

Subpart 3 describes the semi-annual financial report. These reports are needed to assure the Commissioner that funds are, in fact, being disbursed as work proceeds on the project. This is reasonable because it keeps the Commissioner informed of expenditures on a timely basis.

Subpart 4 describes the final report that must be submitted to the Commissioner within 60 days of project completion on forms

supplied by the Commissioner. This report is necessary and reasonable for the reasons described for the two preceding report. In addition, final reports are needed stating that the work is completed and provide data necessary to evaluate the program's effectiveness.

Subpart 5 covers the annual energy report. This report is needed to provide to the Commissioner actual energy data on which to evaluate the effectiveness of the program. It is a reasonable requirement because the goal of the program is to conserve energy and reduce energy costs for loan recipients. Annual energy reports provide data to assess whether that goal has been met and continues to be met. A minimum of three years of these reports is needed and reasonable to give a minimum amount of information with which to assess the impact of the project.

For the reasons stated above; the Department of Public Service believes that each of the proposed parts is reasonable to effectively administer the financial assistance program to distribute loans for the purpose of energy conservation retofit in public and private non-profit schools, hospitals, nursing homes and city, county and town owned buildings. It is further believed that the proposed rules are reasonable and necessary to effect the purpose and intent of the statutory authorization.

Department of Public Service

Adopted Permanent Rules Relating to Institutional Energy Loan Program (IELP)

Rules as Adopted

7605.0010 PURPOSE OF INSTITUTIONAL ENERGY LOAN PROGRAM.

The purpose of this chapter is to establish the application procedures by institutions and set criteria for review and recommendation of loan applications.

7605.0020 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of this chapter, the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a public or private nonprofit institution, as defined in this part that is making application for funds under this program.

Subp. 3. **Building.** "Building" means any existing, separate structure owned and operated by a public or private nonprofit institution as defined in this part.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Department of Public Service.

Subp. 5. **Conservation measure.** "Conservation measure" means an installation or modification of an installation to a building or stationary energy using system outside of a building, that is primarily intended to reduce energy consumption or allow the use of an alternative energy source including solar, wind, peat, wood, and agricultural residue.

Subp. 6. **Financial institution.** "Financial institution" means a bank, bank or trust company, trust company, mortgage company, credit union, mortgage banker, national banking association, savings bank, savings association, savings and loan association, building and loan association, insurance company, securities broker-dealer, financial organizations relating to commercial credit or venture capital, or a lender certified by the secretary of housing and urban development or by the

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administrator of veterans affairs, or approved or certified by the administrator of the Farmers Home Administration or any other financial or lending institution, whether organized under federal law or the laws of any state of the United States, and whether located within or without this state.

Subp. 7. **Hospital.** "Hospital" means a public or private nonprofit facility licensed under Minnesota Statutes, section 144.50, subdivision 2~~,--which-is-primarily-engaged-in-providing to-inpatients-by-or-under-the-supervision-of-physicians:~~

~~A,--diagnostic-services-and-therapeutic-services-for medical-diagnosis,-treatment,-and-care-of-injured,-disabled,-or sick-persons;-or~~

~~B,--rehabilitation-services-for-the-rehabilitation-of injured,-disabled,-or-sick-persons~~.

Subp. 8. **Lender.** "Lender" means the Minnesota Department of Finance, a private or community foundation, or a financial institution as defined in this part which issues a loan to an applicant to implement energy conservation measures.

Subp. 9. **Nursing home.** "Nursing home" means a public or private nonprofit facility or that part of a facility licensed under Minnesota Statutes, section 144A.01, subdivision 5, which provides nursing care to five or more persons.

Subp. 10. **Payback.** "Payback" means the simple payback that is equal to the sum of the design, acquisition, and installation costs of a conservation measure divided by the estimated first year energy cost savings attributable to that measure.

Subp. 11. **Private nonprofit institution.** "Private nonprofit institution" means an institution owned and operated by a school, hospital, or nursing home or joint power of these as defined in this part which is also exempt from income tax under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1986.

Subp. 12. **Project.** "Project" means all proposed work in a loan application.

Subp. 13. **Public institution.** "Public institution" means

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any public school district or hospital, statutory or home rule charter city, county, or town in Minnesota, or a joint power entity consisting of these units.

Subp. 14. **School.** "School" means a public or private nonprofit institution:

A. that provides, and is legally authorized to provide, elementary education or secondary education or both on a day or residential basis;

B. that:

(1) provides, and is legally authorized to provide, a program of education beyond secondary education on a day or residential basis;

(2) admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;

(3) is accredited by a nationally recognized accrediting agency or association; and

(4) provides an educational program for which it awards a bachelor's degree or higher degree or provides not less than a two-year program which is acceptable for full credit toward such a degree at any institution which meets the preceding requirements and which provides such a program; or

C. that provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions in item B, subitems (1) to (3).

7605.0030 LOAN ELIGIBILITY CRITERIA.

Subpart 1. **In general.** The commissioner shall approve IELP applications from applicants in compliance with this chapter for conservation measures that have a payback of ten years of less.

Subp. 2. **Eligibility.** Funds are available to applicants to finance:

A. projects which have not previously received funds under this program;

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B. an amendment to an existing loan, to fund cost overruns for projects in progress, or previously unidentified but related work which is necessary for successful implementation of the previously approved project, provided the projects as amended continue to meet the requirements of this chapter.

Subp. 3. **Prior approval required.** Except for the amendments in subpart 2, projects for which acquisition or installation have been contracted for or begun before approval by the commissioner are ineligible. This prior approval requirement does not apply to design activities.

Subp. 4. **Useful life.** Funds may not be awarded to buildings or energy using systems with a remaining useful life less than or equal to the payback of the conservation measure proposed. Funds may not be awarded for a conservation measure if the payback of the conservation measure proposed is greater than or equal to the useful life of the measure.

Subp. 5. **New construction.** Only projects for existing buildings and energy using systems are eligible. New construction is only eligible if it is necessary for successful implementation of a conservation measure for an existing building or stationary energy using system.

7605.0040 LOAN LIMITS.

Funds issued under this program will be used to participate in loans originating from a lender up to a maximum of 50 percent of the loan principal or $200,000, whichever is less. While more than one loan may be issued to an applicant, the sum of funds issued from this program may not exceed $200,000.

7605.0050 APPLICATION CONTENTS.

Subpart 1. **In general.** An applicant shall submit a complete application to the commissioner on forms provided by the commissioner. An application must be signed in ink by an authorized official of the applicant, must include the authorized official's title, and must be dated.

Subp. 2. **Contents.** An application must contain, at a

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minimum:

A. the name and complete mailing address, including county, of the applicant;

B. a contact person's name, title, and telephone number;

C. a list of buildings or stationary energy using systems included in the application and the dollar amount requested per building or stationary energy using system;

D. the name and address, total floor area in square footage, or number of units in a stationary energy using system;

E. the original construction date and addition construction dates of the building;

F. the age of a stationary energy using system; and

G. the state legislative district affected by the application.

An application must also contain a summary description of each proposed conservation measure, including its estimated cost, loan amount requested, estimated annual energy cost savings, estimated annual fuel and electric savings, estimated payback, and the estimated dates the conservation measure will be started and completed.

Subp. 3. **Technical support materials.** All applications for IELP funds must contain fuel and electric consumption data for the most recent completed period July 1 to June 30, for each building or stationary energy using system in the application. Applications must also contain a description of the current condition of the building, the building component, equipment or stationary energy using system to be improved, and the proposed conservation measure. Sufficient engineering analysis to determine technical feasibility and project payback must be included. All conservation measures must be analyzed using the energy conservation development sheet format available from the commissioner.

Applications for matching loans of $25,000 or more shall have the analysis for projects conducted by a Minnesota registered mechanical engineer, electrical engineer, or

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architect. Applications must include an Engineering Analysis Report Summary or a Maxi-Audit Report Form available from the commissioner.

Subp. 4. **Assurances.** An applicant must also submit assurances that:

A. it has provided for the proper and efficient operation and maintenance of the proposed conservation measures;

B. the work performed with loan funds will meet all Minnesota building code requirements;

C. it has provided funds to pay any portion of the project cost not eligible for program funds specifically identifying the source of those funds;

D. it has met requirements for voter approval, if applicable; and

E. it is able to accept and repay the proposed program funds without exceeding applicable debt and levy limits.

Subp. 5. **Incomplete applications.** If an incomplete application is received, the commissioner shall notify the applicant of specific deficiencies in the application. The applicant has 30 days from the date of the commissioner's notification to complete the application. If the application is not completed and received by the commissioner within 30 days, the application is considered withdrawn. To be further considered, the applicant must reapply.

7605.0060 LENDER.

In order to be eligible to receive funds under this program, a participating lender's agreement provided by the commissioner must be signed by an authorized officer of the lender. The agreement shall set the terms and conditions under which a loan is to be made and specify procedures to be followed in the event of default by the applicant. The agreement must require the lender and the commissioner to conform to the following conditions:

A. The lender will enter into a loan agreement with the applicant. The loan agreement will include the following:

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(1) an agreement that the commissioner may review upon request all financial data of the applicant and may inspect any and all buildings, equipment, and stationary energy using systems associated with a loan; and

(2) an irrevocable resolution of the applicant's governing body guaranteeing that it will use all loan funds solely for the eligible costs of the proposed project; it will repay the loan according to the terms of the loan; and it will annually levy or otherwise collect funds to meet the annual repayment costs of the loan.

B. The lender shall make no provision to subordinate any loan collateral to other liens against such property without prior written approval from the commissioner.

C. The lender shall not acquire any preferential collateral, surety, or insurance to protect its interest in a loan.

D. All collateral must be prorated between the lender and the commissioner.

E. The lender shall require the applicant to adequately insure, maintain, and repair all collateral.

F. The lender shall review and approve qualified energy projects in accordance with generally accepted commercial lending practices.

G. The lender is responsible for servicing all loans it makes for conservation measures either directly or by contracting with a servicing agent.

H. The lender shall not sell or transfer any loan without prior written approval from the commissioner.

I. The lender, for the term of the entire loan, shall promptly notify the commissioner of any loan payments that are two weeks overdue. The lender shall provide the commissioner with any and all past due notices at the same time they are sent to the applicant. In addition, the lender must submit an annual loan performance report to the commissioner on a form provided by the commissioner.

J. The commissioner shall not participate in any loan

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that either carries an interest rate in excess of three points above the lender's prime rate or base rate for variable or fixed rate loans.

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

L. The lender agrees to make no waivers of default without prior written approval from the commissioner.

M. The department shall not participate in loans made by a lender before the execution of the participating lender's agreement.

N. The commissioner may review upon request all financial data associated with the execution and servicing of a loan made by the lender.

O. Any and all payments received by the lender shall first be credited to interest due on a pro rata basis and then be credited to the principal balance due, on a pro rata basis.

7605.0070 APPLICATION REVIEW.

Subpart 1. **Administrative review.** The commissioner shall examine the loan application to verify that the applicant is eligible, that the required forms are included and correctly completed, that the required assurances and irrevocable resolution are included, and that the application is properly signed and dated.

Subp. 2. **Technical review.** The commissioner shall examine the technical support materials included in the application to verify that the proposed conservation measures are analyzed with adequate details of existing conditions and proposed modifications or additions, that appropriate calculation procedures are used, that the proposed conservation measures are eligible, and that the proposed conservation measures are technically feasible and meet requirements of this chapter.

Subp. 3. **Rejection and resubmission.** The commissioner may accept, reject, or modify a loan application as necessary based on the application review. The commissioner shall notify an

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applicant of cause for modification or rejection of an application and the options available to correct those problems for resubmission of the application. If some of the conservation measures in an application are accepted as submitted, the applicant may choose to accept a loan for those measures.

7605.0080 REPORTS AND MONITORING.

Subpart 1. **In general.** An applicant that receives IELP funds shall submit the reports listed in subparts 2 to 5.

Subp. 2. **Annual project status report.** The applicant shall submit to the commissioner on forms provided by the commissioner an annual project status report covering the period July 1 through June 30. This report is due each July 31 until the project is completed.

The project status report must indicate the progress of the implementation of the project, problems encountered, the effect of the problems on the project, and the corrective action taken. If at any time the applicant fails to substantially comply with the start and end dates given in the loan application as approved, and if the applicant cannot reasonably justify to the commissioner its lack of progress, the entire loan amount may become due and payable at the discretion of the commissioner.

Subp. 3. **Semiannual financial report.** The applicant shall submit to the commissioner on forms provided by the commissioner, a semiannual financial status report that indicates expenditures of loan funds through the last date of each report period. This report is due on July 31 for the period January 1 to June 30, and January 31 for the period July 1 to December 31 until the project is completed.

Subp. 4. **Final report.** Within 60 days of the completion of the project, the applicant shall submit to the commissioner, on forms provided by the commissioner, a final project status report and a financial status report that gives actual expenditures of the conservation measures implemented.

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Subp. 5. **Annual energy report.** The applicant shall submit to the commissioner, on forms provided by the commissioner, an annual fuel and electric consumption report due each October 31 for the duration of the loan contract period, or for a minimum of three years after project completion if the loan is paid in less than three years, unless the commissioner cancels this requirement before the end of the loan contract period.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Adopted Permanent Rules Relating to Institutional Energy Loan Program (IELP)

AGENCY: Department of Public Service

MINNESOTA RULES: Chapter 7605

The attached rules are approved for
filing with the Secretary of State

David S. Niss
Assistant Revisor

AG Copy

Department of Public Service

Adopted Permanent Rules Relating to Institutional Energy Loan Program (IELP)

Rules as Adopted

7605.0010 PURPOSE OF INSTITUTIONAL ENERGY LOAN PROGRAM.

The purpose of this chapter is to establish the application procedures by institutions and set criteria for review and recommendation of loan applications.

7605.0020 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of this chapter, the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a public or private nonprofit institution, as defined in this part that is making application for funds under this program.

Subp. 3. **Building.** "Building" means any existing, separate structure owned and operated by a public or private nonprofit institution as defined in this part.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Department of Public Service.

Subp. 5. **Conservation measure.** "Conservation measure" means an installation or modification of an installation to a building or stationary energy using system outside of a building, that is primarily intended to reduce energy consumption or allow the use of an alternative energy source including solar, wind, peat, wood, and agricultural residue.

Subp. 6. **Financial institution.** "Financial institution" means a bank, bank or trust company, trust company, mortgage company, credit union, mortgage banker, national banking association, savings bank, savings association, savings and loan association, building and loan association, insurance company, securities broker-dealer, financial organizations relating to commercial credit or venture capital, or a lender certified by the secretary of housing and urban development or by the

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administrator of veterans affairs, or approved or certified by the administrator of the Farmers Home Administration or any other financial or lending institution, whether organized under federal law or the laws of any state of the United States, and whether located within or without this state.

Subp. 7. **Hospital.** "Hospital" means a public or private nonprofit facility licensed under Minnesota Statutes, section 144.50, subdivision 2~~,--which-is-primarily-engaged-in-providing to-inpatients-by-or-under-the-supervision-of-physicians:~~

~~A,--diagnostic-services-and-therapeutic-services-for medical-diagnosis,-treatment,-and-care-of-injured,-disabled,-or sick-persons;-or~~

~~B,--rehabilitation-services-for-the-rehabilitation-of injured,-disabled,-or-sick-persons~~.

Subp. 8. **Lender.** "Lender" means the Minnesota Department of Finance, a private or community foundation, or a financial institution as defined in this part which issues a loan to an applicant to implement energy conservation measures.

Subp. 9. **Nursing home.** "Nursing home" means a public or private nonprofit facility or that part of a facility licensed under Minnesota Statutes, section 144A.01, subdivision 5, which provides nursing care to five or more persons.

Subp. 10. **Payback.** "Payback" means the simple payback that is equal to the sum of the design, acquisition, and installation costs of a conservation measure divided by the estimated first year energy cost savings attributable to that measure.

Subp. 11. **Private nonprofit institution.** "Private nonprofit institution" means an institution owned and operated by a school, hospital, or nursing home or joint power of these as defined in this part which is also exempt from income tax under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1986.

Subp. 12. **Project.** "Project" means all proposed work in a loan application.

Subp. 13. **Public institution.** "Public institution" means

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any public school district or hospital, statutory or home rule charter city, county, or town in Minnesota, or a joint power entity consisting of these units.

Subp. 14. **School.** "School" means a public or private nonprofit institution:

A. that provides, and is legally authorized to provide, elementary education or secondary education or both on a day or residential basis;

B. that:

(1) provides, and is legally authorized to provide, a program of education beyond secondary education on a day or residential basis;

(2) admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;

(3) is accredited by a nationally recognized accrediting agency or association; and

(4) provides an educational program for which it awards a bachelor's degree or higher degree or provides not less than a two-year program which is acceptable for full credit toward such a degree at any institution which meets the preceding requirements and which provides such a program; or

C. that provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions in item B, subitems (1) to (3).

7605.0030 LOAN ELIGIBILITY CRITERIA.

Subpart 1. **In general.** The commissioner shall approve IELP applications from applicants in compliance with this chapter for conservation measures that have a payback of ten years of less.

Subp. 2. **Eligibility.** Funds are available to applicants to finance:

A. projects which have not previously received funds under this program;

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B. an amendment to an existing loan, to fund cost overruns for projects in progress, or previously unidentified but related work which is necessary for successful implementation of the previously approved project, provided the projects as amended continue to meet the requirements of this chapter.

Subp. 3. **Prior approval required.** Except for the amendments in subpart 2, projects for which acquisition or installation have been contracted for or begun before approval by the commissioner are ineligible. This prior approval requirement does not apply to design activities.

Subp. 4. **Useful life.** Funds may not be awarded to buildings or energy using systems with a remaining useful life less than or equal to the payback of the conservation measure proposed. Funds may not be awarded for a conservation measure if the payback of the conservation measure proposed is greater than or equal to the useful life of the measure.

Subp. 5. **New construction.** Only projects for existing buildings and energy using systems are eligible. New construction is only eligible if it is necessary for successful implementation of a conservation measure for an existing building or stationary energy using system.

7605.0040 LOAN LIMITS.

Funds issued under this program will be used to participate in loans originating from a lender up to a maximum of 50 percent of the loan principal or $200,000, whichever is less. While more than one loan may be issued to an applicant, the sum of funds issued from this program may not exceed $200,000.

7605.0050 APPLICATION CONTENTS.

Subpart 1. **In general.** An applicant shall submit a complete application to the commissioner on forms provided by the commissioner. An application must be signed in ink by an authorized official of the applicant, must include the authorized official's title, and must be dated.

Subp. 2. **Contents.** An application must contain, at a

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minimum:

A. the name and complete mailing address, including county, of the applicant;

B. a contact person's name, title, and telephone number;

C. a list of buildings or stationary energy using systems included in the application and the dollar amount requested per building or stationary energy using system;

D. the name and address, total floor area in square footage, or number of units in a stationary energy using system;

E. the original construction date and addition construction dates of the building;

F. the age of a stationary energy using system; and

G. the state legislative district affected by the application.

An application must also contain a summary description of each proposed conservation measure, including its estimated cost, loan amount requested, estimated annual energy cost savings, estimated annual fuel and electric savings, estimated payback, and the estimated dates the conservation measure will be started and completed.

Subp. 3. **Technical support materials.** All applications for IELP funds must contain fuel and electric consumption data for the most recent completed period July 1 to June 30, for each building or stationary energy using system in the application. Applications must also contain a description of the current condition of the building, the building component, equipment or stationary energy using system to be improved, and the proposed conservation measure. Sufficient engineering analysis to determine technical feasibility and project payback must be included. All conservation measures must be analyzed using the energy conservation development sheet format available from the commissioner.

Applications for matching loans of $25,000 or more shall have the analysis for projects conducted by a Minnesota registered mechanical engineer, electrical engineer, or

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architect. Applications must include an Engineering Analysis Report Summary or a Maxi-Audit Report Form available from the commissioner.

Subp. 4. **Assurances.** An applicant must also submit assurances that:

A. it has provided for the proper and efficient operation and maintenance of the proposed conservation measures;

B. the work performed with loan funds will meet all Minnesota building code requirements;

C. it has provided funds to pay any portion of the project cost not eligible for program funds specifically identifying the source of those funds;

D. it has met requirements for voter approval, if applicable; and

E. it is able to accept and repay the proposed program funds without exceeding applicable debt and levy limits.

Subp. 5. **Incomplete applications.** If an incomplete application is received, the commissioner shall notify the applicant of specific deficiencies in the application. The applicant has 30 days from the date of the commissioner's notification to complete the application. If the application is not completed and received by the commissioner within 30 days, the application is considered withdrawn. To be further considered, the applicant must reapply.

7605.0060 LENDER.

In order to be eligible to receive funds under this program, a participating lender's agreement provided by the commissioner must be signed by an authorized officer of the lender. The agreement shall set the terms and conditions under which a loan is to be made and specify procedures to be followed in the event of default by the applicant. The agreement must require the lender and the commissioner to conform to the following conditions:

A. The lender will enter into a loan agreement with the applicant. The loan agreement will include the following:

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(1) an agreement that the commissioner may review upon request all financial data of the applicant and may inspect any and all buildings, equipment, and stationary energy using systems associated with a loan; and

(2) an irrevocable resolution of the applicant's governing body guaranteeing that it will use all loan funds solely for the eligible costs of the proposed project; it will repay the loan according to the terms of the loan; and it will annually levy or otherwise collect funds to meet the annual repayment costs of the loan.

B. The lender shall make no provision to subordinate any loan collateral to other liens against such property without prior written approval from the commissioner.

C. The lender shall not acquire any preferential collateral, surety, or insurance to protect its interest in a loan.

D. All collateral must be prorated between the lender and the commissioner.

E. The lender shall require the applicant to adequately insure, maintain, and repair all collateral.

F. The lender shall review and approve qualified energy projects in accordance with generally accepted commercial lending practices.

G. The lender is responsible for servicing all loans it makes for conservation measures either directly or by contracting with a servicing agent.

H. The lender shall not sell or transfer any loan without prior written approval from the commissioner.

I. The lender, for the term of the entire loan, shall promptly notify the commissioner of any loan payments that are two weeks overdue. The lender shall provide the commissioner with any and all past due notices at the same time they are sent to the applicant. In addition, the lender must submit an annual loan performance report to the commissioner on a form provided by the commissioner.

J. The commissioner shall not participate in any loan

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that either carries an interest rate in excess of three points above the lender's prime rate or base rate for variable or fixed rate loans.

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

L. The lender agrees to make no waivers of default without prior written approval from the commissioner.

M. The department shall not participate in loans made by a lender before the execution of the participating lender's agreement.

N. The commissioner may review upon request all financial data associated with the execution and servicing of a loan made by the lender.

O. Any and all payments received by the lender shall first be credited to interest due on a pro rata basis and then be credited to the principal balance due, on a pro rata basis.

7605.0070 APPLICATION REVIEW.

Subpart 1. **Administrative review.** The commissioner shall examine the loan application to verify that the applicant is eligible, that the required forms are included and correctly completed, that the required assurances and irrevocable resolution are included, and that the application is properly signed and dated.

Subp. 2. **Technical review.** The commissioner shall examine the technical support materials included in the application to verify that the proposed conservation measures are analyzed with adequate details of existing conditions and proposed modifications or additions, that appropriate calculation procedures are used, that the proposed conservation measures are eligible, and that the proposed conservation measures are technically feasible and meet requirements of this chapter.

Subp. 3. **Rejection and resubmission.** The commissioner may accept, reject, or modify a loan application as necessary based on the application review. The commissioner shall notify an

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applicant of cause for modification or rejection of an application and the options available to correct those problems for resubmission of the application. If some of the conservation measures in an application are accepted as submitted, the applicant may choose to accept a loan for those measures.

7605.0080 REPORTS AND MONITORING.

Subpart 1. **In general.** An applicant that receives IELP funds shall submit the reports listed in subparts 2 to 5.

Subp. 2. **Annual project status report.** The applicant shall submit to the commissioner on forms provided by the commissioner an annual project status report covering the period July 1 through June 30. This report is due each July 31 until the project is completed.

The project status report must indicate the progress of the implementation of the project, problems encountered, the effect of the problems on the project, and the corrective action taken. If at any time the applicant fails to substantially comply with the start and end dates given in the loan application as approved, and if the applicant cannot reasonably justify to the commissioner its lack of progress, the entire loan amount may become due and payable at the discretion of the commissioner.

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Subp. 3. **Semiannual financial report.** The applicant shall submit to the commissioner on forms provided by the commissioner, a semiannual financial status report that indicates expenditures of loan funds through the last date of each report period. This report is due on July 31 for the period January 1 to June 30, and January 31 for the period July 1 to December 31 until the project is completed.

Subp. 4. **Final report.** Within 60 days of the completion of the project, the applicant shall submit to the commissioner, on forms provided by the commissioner, a final project status report and a financial status report that gives actual expenditures of the conservation measures implemented.

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Subp. 5. **Annual energy report.** The applicant shall submit to the commissioner, on forms provided by the commissioner, an annual fuel and electric consumption report due each October 31 for the duration of the loan contract period, or for a minimum of three years after project completion if the loan is paid in less than three years, unless the commissioner cancels this requirement before the end of the loan contract period.

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Department of Public Service

Adopted Permanent Rules Relating to Institutional Energy Loan Program (IELP)

Rules as Adopted

7605.0010 PURPOSE OF INSTITUTIONAL ENERGY LOAN PROGRAM.

The purpose of this chapter is to establish the application procedures by institutions and set criteria for review and recommendation of loan applications.

7605.0020 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of this chapter, the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a public or private nonprofit institution, as defined in this part that is making application for funds under this program.

Subp. 3. **Building.** "Building" means any existing, separate structure owned and operated by a public or private nonprofit institution as defined in this part.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Department of Public Service.

Subp. 5. **Conservation measure.** "Conservation measure" means an installation or modification of an installation to a building or stationary energy using system outside of a building, that is primarily intended to reduce energy consumption or allow the use of an alternative energy source including solar, wind, peat, wood, and agricultural residue.

Subp. 6. **Financial institution.** "Financial institution" means a bank, bank or trust company, trust company, mortgage company, credit union, mortgage banker, national banking association, savings bank, savings association, savings and loan association, building and loan association, insurance company, securities broker-dealer, financial organizations relating to commercial credit or venture capital, or a lender certified by the secretary of housing and urban development or by the

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administrator of veterans affairs, or approved or certified by the administrator of the Farmers Home Administration or any other financial or lending institution, whether organized under federal law or the laws of any state of the United States, and whether located within or without this state.

Subp. 7. **Hospital.** "Hospital" means a public or private nonprofit facility licensed under Minnesota Statutes, section 144.50, subdivision 2~~,-which-is-primarily-engaged-in-providing to-inpatients-by-or-under-the-supervision-of-physicians:~~

~~A,--diagnostic-services-and-therapeutic-services-for medical-diagnosis,-treatment,-and-care-of-injured,-disabled,-or sick-persons,-or~~

~~B,--rehabilitation-services-for-the-rehabilitation-of injured,-disabled,-or-sick-persons.~~

Subp. 8. **Lender.** "Lender" means the Minnesota Department of Finance, a private or community foundation, or a financial institution as defined in this part which issues a loan to an applicant to implement energy conservation measures.

Subp. 9. **Nursing home.** "Nursing home" means a public or private nonprofit facility or that part of a facility licensed under Minnesota Statutes, section 144A.01, subdivision 5, which provides nursing care to five or more persons.

Subp. 10. **Payback.** "Payback" means the simple payback that is equal to the sum of the design, acquisition, and installation costs of a conservation measure divided by the estimated first year energy cost savings attributable to that measure.

Subp. 11. **Private nonprofit institution.** "Private nonprofit institution" means an institution owned and operated by a school, hospital, or nursing home or joint power of these as defined in this part which is also exempt from income tax under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1986.

Subp. 12. **Project.** "Project" means all proposed work in a loan application.

Subp. 13. **Public institution.** "Public institution" means

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any public school district or hospital, statutory or home rule charter city, county, or town in Minnesota, or a joint power entity consisting of these units.

Subp. 14. **School.** "School" means a public or private nonprofit institution:

A. that provides, and is legally authorized to provide, elementary education or secondary education or both on a day or residential basis;

B. that:

(1) provides, and is legally authorized to provide, a program of education beyond secondary education on a day or residential basis;

(2) admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;

(3) is accredited by a nationally recognized accrediting agency or association; and

(4) provides an educational program for which it awards a bachelor's degree or higher degree or provides not less than a two-year program which is acceptable for full credit toward such a degree at any institution which meets the preceding requirements and which provides such a program; or

C. that provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions in item B, subitems (1) to (3).

7605.0030 LOAN ELIGIBILITY CRITERIA.

Subpart 1. **In general.** The commissioner shall approve IELP applications from applicants in compliance with this chapter for conservation measures that have a payback of ten years of less.

Subp. 2. **Eligibility.** Funds are available to applicants to finance:

A. projects which have not previously received funds under this program;

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B. an amendment to an existing loan, to fund cost overruns for projects in progress, or previously unidentified but related work which is necessary for successful implementation of the previously approved project, provided the projects as amended continue to meet the requirements of this chapter.

Subp. 3. **Prior approval required.** Except for the amendments in subpart 2, projects for which acquisition or installation have been contracted for or begun before approval by the commissioner are ineligible. This prior approval requirement does not apply to design activities.

Subp. 4. **Useful life.** Funds may not be awarded to buildings or energy using systems with a remaining useful life less than or equal to the payback of the conservation measure proposed. Funds may not be awarded for a conservation measure if the payback of the conservation measure proposed is greater than or equal to the useful life of the measure.

Subp. 5. **New construction.** Only projects for existing buildings and energy using systems are eligible. New construction is only eligible if it is necessary for successful implementation of a conservation measure for an existing building or stationary energy using system.

7605.0040 LOAN LIMITS.

Funds issued under this program will be used to participate in loans originating from a lender up to a maximum of 50 percent of the loan principal or $200,000, whichever is less. While more than one loan may be issued to an applicant, the sum of funds issued from this program may not exceed $200,000.

7605.0050 APPLICATION CONTENTS.

Subpart 1. **In general.** An applicant shall submit a complete application to the commissioner on forms provided by the commissioner. An application must be signed in ink by an authorized official of the applicant, must include the authorized official's title, and must be dated.

Subp. 2. **Contents.** An application must contain, at a

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minimum:

A. the name and complete mailing address, including county, of the applicant;

B. a contact person's name, title, and telephone number;

C. a list of buildings or stationary energy using systems included in the application and the dollar amount requested per building or stationary energy using system;

D. the name and address, total floor area in square footage, or number of units in a stationary energy using system;

E. the original construction date and addition construction dates of the building;

F. the age of a stationary energy using system; and

G. the state legislative district affected by the application.

An application must also contain a summary description of each proposed conservation measure, including its estimated cost, loan amount requested, estimated annual energy cost savings, estimated annual fuel and electric savings, estimated payback, and the estimated dates the conservation measure will be started and completed.

Subp. 3. **Technical support materials.** All applications for IELP funds must contain fuel and electric consumption data for the most recent completed period July 1 to June 30, for each building or stationary energy using system in the application. Applications must also contain a description of the current condition of the building, the building component, equipment or stationary energy using system to be improved, and the proposed conservation measure. Sufficient engineering analysis to determine technical feasibility and project payback must be included. All conservation measures must be analyzed using the energy conservation development sheet format available from the commissioner.

Applications for matching loans of $25,000 or more shall have the analysis for projects conducted by a Minnesota registered mechanical engineer, electrical engineer, or

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architect. Applications must include an Engineering Analysis Report Summary or a Maxi-Audit Report Form available from the commissioner.

Subp. 4. **Assurances.** An applicant must also submit assurances that:

A. it has provided for the proper and efficient operation and maintenance of the proposed conservation measures;

B. the work performed with loan funds will meet all Minnesota building code requirements;

C. it has provided funds to pay any portion of the project cost not eligible for program funds specifically identifying the source of those funds;

D. it has met requirements for voter approval, if applicable; and

E. it is able to accept and repay the proposed program funds without exceeding applicable debt and levy limits.

Subp. 5. **Incomplete applications.** If an incomplete application is received, the commissioner shall notify the applicant of specific deficiencies in the application. The applicant has 30 days from the date of the commissioner's notification to complete the application. If the application is not completed and received by the commissioner within 30 days, the application is considered withdrawn. To be further considered, the applicant must reapply.

7605.0060 LENDER.

In order to be eligible to receive funds under this program, a participating lender's agreement provided by the commissioner must be signed by an authorized officer of the lender. The agreement shall set the terms and conditions under which a loan is to be made and specify procedures to be followed in the event of default by the applicant. The agreement must require the lender and the commissioner to conform to the following conditions:

A. The lender will enter into a loan agreement with the applicant. The loan agreement will include the following:

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(1) an agreement that the commissioner may review upon request all financial data of the applicant and may inspect any and all buildings, equipment, and stationary energy using systems associated with a loan; and

(2) an irrevocable resolution of the applicant's governing body guaranteeing that it will use all loan funds solely for the eligible costs of the proposed project; it will repay the loan according to the terms of the loan; and it will annually levy or otherwise collect funds to meet the annual repayment costs of the loan.

B. The lender shall make no provision to subordinate any loan collateral to other liens against such property without prior written approval from the commissioner.

C. The lender shall not acquire any preferential collateral, surety, or insurance to protect its interest in a loan.

D. All collateral must be prorated between the lender and the commissioner.

E. The lender shall require the applicant to adequately insure, maintain, and repair all collateral.

F. The lender shall review and approve qualified energy projects in accordance with generally accepted commercial lending practices.

G. The lender is responsible for servicing all loans it makes for conservation measures either directly or by contracting with a servicing agent.

H. The lender shall not sell or transfer any loan without prior written approval from the commissioner.

I. The lender, for the term of the entire loan, shall promptly notify the commissioner of any loan payments that are two weeks overdue. The lender shall provide the commissioner with any and all past due notices at the same time they are sent to the applicant. In addition, the lender must submit an annual loan performance report to the commissioner on a form provided by the commissioner.

J. The commissioner shall not participate in any loan

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that either carries an interest rate in excess of three points above the lender's prime rate or base rate for variable or fixed rate loans.

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

L. The lender agrees to make no waivers of default without prior written approval from the commissioner.

M. The department shall not participate in loans made by a lender before the execution of the participating lender's agreement.

N. The commissioner may review upon request all financial data associated with the execution and servicing of a loan made by the lender.

O. Any and all payments received by the lender shall first be credited to interest due on a pro rata basis and then be credited to the principal balance due, on a pro rata basis.

7605.0070 APPLICATION REVIEW.

Subpart 1. **Administrative review.** The commissioner shall examine the loan application to verify that the applicant is eligible, that the required forms are included and correctly completed, that the required assurances and irrevocable resolution are included, and that the application is properly signed and dated.

Subp. 2. **Technical review.** The commissioner shall examine the technical support materials included in the application to verify that the proposed conservation measures are analyzed with adequate details of existing conditions and proposed modifications or additions, that appropriate calculation procedures are used, that the proposed conservation measures are eligible, and that the proposed conservation measures are technically feasible and meet requirements of this chapter.

Subp. 3. **Rejection and resubmission.** The commissioner may accept, reject, or modify a loan application as necessary based on the application review. The commissioner shall notify an

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applicant of cause for modification or rejection of an application and the options available to correct those problems for resubmission of the application. If some of the conservation measures in an application are accepted as submitted, the applicant may choose to accept a loan for those measures.

7605.0080 REPORTS AND MONITORING.

Subpart 1. **In general.** An applicant that receives IELP funds shall submit the reports listed in subparts 2 to 5.

Subp. 2. **Annual project status report.** The applicant shall submit to the commissioner on forms provided by the commissioner an annual project status report covering the period July 1 through June 30. This report is due each July 31 until the project is completed.

The project status report must indicate the progress of the implementation of the project, problems encountered, the effect of the problems on the project, and the corrective action taken. If at any time the applicant fails to substantially comply with the start and end dates given in the loan application as approved, and if the applicant cannot reasonably justify to the commissioner its lack of progress, the entire loan amount may become due and payable at the discretion of the commissioner.

Subp. 3. **Semiannual financial report.** The applicant shall submit to the commissioner on forms provided by the commissioner, a semiannual financial status report that indicates expenditures of loan funds through the last date of each report period. This report is due on July 31 for the period January 1 to June 30, and January 31 for the period July 1 to December 31 until the project is completed.

Subp. 4. **Final report.** Within 60 days of the completion of the project, the applicant shall submit to the commissioner, on forms provided by the commissioner, a final project status report and a financial status report that gives actual expenditures of the conservation measures implemented.

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Subp. 5. **Annual energy report.** The applicant shall submit to the commissioner, on forms provided by the commissioner, an annual fuel and electric consumption report due each October 31 for the duration of the loan contract period, or for a minimum of three years after project completion if the loan is paid in less than three years, unless the commissioner cancels this requirement before the end of the loan contract period.

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Department of Public Service

Proposed Permanent Rules Relating to Institutional Energy Loan Program (IELP)

Rules as Proposed (all new material)

7605.0010 PURPOSE OF INSTITUTIONAL ENERGY LOAN PROGRAM.

The purpose of this chapter is to establish the application procedures by institutions and set criteria for review and recommendation of loan applications.

7605.0020 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of this chapter, the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a public or private nonprofit institution, as defined in this part that is making application for funds under this program.

Subp. 3. **Building.** "Building" means any existing, separate structure owned and operated by a public or private nonprofit institution as defined in this part.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Department of Public Service.

Subp. 5. **Conservation measure.** "Conservation measure" means an installation or modification of an installation to a building or stationary energy using system outside of a building, that is primarily intended to reduce energy consumption or allow the use of an alternative energy source including solar, wind, peat, wood, and agricultural residue.

Subp. 6. **Financial institution.** "Financial institution" means a bank, bank or trust company, trust company, mortgage company, credit union, mortgage banker, national banking association, savings bank, savings association, savings and loan association, building and loan association, insurance company, securities broker-dealer, financial organizations relating to commercial credit or venture capital, or a lender certified by the secretary of housing and urban development or by the

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administrator of veterans affairs, or approved or certified by the administrator of the Farmers Home Administration or any other financial or lending institution, whether organized under federal law or the laws of any state of the United States, and whether located within or without this state.

Subp. 7. **Hospital.** "Hospital" means a public or private nonprofit facility licensed under Minnesota Statutes, section 144.50, subdivision 2, which is primarily engaged in providing to inpatients by or under the supervision of physicians:

A. diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons; or

B. rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

Subp. 8. **Lender.** "Lender" means the Minnesota Department of Finance, a private or community foundation, or a financial institution as defined in this part which issues a loan to an applicant to implement energy conservation measures.

Subp. 9. **Nursing home.** "Nursing home" means a public or private nonprofit facility or that part of a facility licensed under Minnesota Statutes, section 144A.01, subdivision 5, which provides nursing care to five or more persons.

Subp. 10. **Payback.** "Payback" means the simple payback that is equal to the sum of the design, acquisition, and installation costs of a conservation measure divided by the estimated first year energy cost savings attributable to that measure.

Subp. 11. **Private nonprofit institution.** "Private nonprofit institution" means an institution owned and operated by a school, hospital, or nursing home or joint power of these as defined in this part which is also exempt from income tax under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1986.

Subp. 12. **Project.** "Project" means all proposed work in a loan application.

Subp. 13. **Public institution.** "Public institution" means

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any public school district or hospital, statutory or home rule charter city, county, or town in Minnesota, or a joint power entity consisting of these units.

Subp. 14. **School.** "School" means a public or private nonprofit institution:

A. that provides, and is legally authorized to provide, elementary education or secondary education or both on a day or residential basis;

B. that:

(1) provides, and is legally authorized to provide, a program of education beyond secondary education on a day or residential basis;

(2) admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;

(3) is accredited by a nationally recognized accrediting agency or association; and

(4) provides an educational program for which it awards a bachelor's degree or higher degree or provides not less than a two-year program which is acceptable for full credit toward such a degree at any institution which meets the preceding requirements and which provides such a program; or

C. that provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions in item B, subitems (1) to (3).

7605.0030 LOAN ELIGIBILITY CRITERIA.

Subpart 1. **In general.** The commissioner shall approve IELP applications from applicants in compliance with this chapter for conservation measures that have a payback of ten years of less.

Subp. 2. **Eligibility.** Funds are available to applicants to finance:

A. projects which have not previously received funds under this program;

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B. an amendment to an existing loan, to fund cost overruns for projects in progress, or previously unidentified but related work which is necessary for successful implementation of the previously approved project, provided the projects as amended continue to meet the requirements of this chapter.

Subp. 3. **Prior approval required.** Except for the amendments in subpart 2, projects for which acquisition or installation have been contracted for or begun before approval by the commissioner are ineligible. This prior approval requirement does not apply to design activities.

Subp. 4. **Useful life.** Funds may not be awarded to buildings or energy using systems with a remaining useful life less than or equal to the payback of the conservation measure proposed. Funds may not be awarded for a conservation measure if the payback of the conservation measure proposed is greater than or equal to the useful life of the measure.

Subp. 5. **New construction.** Only projects for existing buildings and energy using systems are eligible. New construction is only eligible if it is necessary for successful implementation of a conservation measure for an existing building or stationary energy using system.

7605.0040 LOAN LIMITS.

Funds issued under this program will be used to participate in loans originating from a lender up to a maximum of 50 percent of the loan principal or $200,000, whichever is less. While more than one loan may be issued to an applicant, the sum of funds issued from this program may not exceed $200,000.

7605.0050 APPLICATION CONTENTS.

Subpart 1. **In general.** An applicant shall submit a complete application to the commissioner on forms provided by the commissioner. An application must be signed in ink by an authorized official of the applicant, must include the authorized official's title, and must be dated.

Subp. 2. **Contents.** An application must contain, at a

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minimum:

A. the name and complete mailing address, including county, of the applicant;

B. a contact person's name, title, and telephone number;

C. a list of buildings or stationary energy using systems included in the application and the dollar amount requested per building or stationary energy using system;

D. the name and address, total floor area in square footage, or number of units in a stationary energy using system;

E. the original construction date and addition construction dates of the building;

F. the age of a stationary energy using system; and

G. the state legislative district affected by the application.

An application must also contain a summary description of each proposed conservation measure, including its estimated cost, loan amount requested, estimated annual energy cost savings, estimated annual fuel and electric savings, estimated payback, and the estimated dates the conservation measure will be started and completed.

Subp. 3. **Technical support materials.** All applications for IELP funds must contain fuel and electric consumption data for the most recent completed period July 1 to June 30, for each building or stationary energy using system in the application. Applications must also contain a description of the current condition of the building, the building component, equipment or stationary energy using system to be improved, and the proposed conservation measure. Sufficient engineering analysis to determine technical feasibility and project payback must be included. All conservation measures must be analyzed using the energy conservation development sheet format available from the commissioner.

Applications for matching loans of $25,000 or more shall have the analysis for projects conducted by a Minnesota registered mechanical engineer, electrical engineer, or

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architect. Applications must include an Engineering Analysis Report Summary or a Maxi-Audit Report Form available from the commissioner.

Subp. 4. **Assurances.** An applicant must also submit assurances that:

A. it has provided for the proper and efficient operation and maintenance of the proposed conservation measures;

B. the work performed with loan funds will meet all Minnesota building code requirements;

C. it has provided funds to pay any portion of the project cost not eligible for program funds specifically identifying the source of those funds;

D. it has met requirements for voter approval, if applicable; and

E. it is able to accept and repay the proposed program funds without exceeding applicable debt and levy limits.

Subp. 5. **Incomplete applications.** If an incomplete application is received, the commissioner shall notify the applicant of specific deficiencies in the application. The applicant has 30 days from the date of the commissioner's notification to complete the application. If the application is not completed and received by the commissioner within 30 days, the application is considered withdrawn. To be further considered, the applicant must reapply.

7605.0060 LENDER.

In order to be eligible to receive funds under this program, a participating lender's agreement provided by the commissioner must be signed by an authorized officer of the lender. The agreement shall set the terms and conditions under which a loan is to be made and specify procedures to be followed in the event of default by the applicant. The agreement must require the lender and the commissioner to conform to the following conditions:

A. The lender will enter into a loan agreement with the applicant. The loan agreement will include the following:

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(1) an agreement that the commissioner may review upon request all financial data of the applicant and may inspect any and all buildings, equipment, and stationary energy using systems associated with a loan; and

(2) an irrevocable resolution of the applicant's governing body guaranteeing that it will use all loan funds solely for the eligible costs of the proposed project; it will repay the loan according to the terms of the loan; and it will annually levy or otherwise collect funds to meet the annual repayment costs of the loan.

B. The lender shall make no provision to subordinate any loan collateral to other liens against such property without prior written approval from the commissioner.

C. The lender shall not acquire any preferential collateral, surety, or insurance to protect its interest in a loan.

D. All collateral must be prorated between the lender and the commissioner.

E. The lender shall require the applicant to adequately insure, maintain, and repair all collateral.

F. The lender shall review and approve qualified energy projects in accordance with generally accepted commercial lending practices.

G. The lender is responsible for servicing all loans it makes for conservation measures either directly or by contracting with a servicing agent.

H. The lender shall not sell or transfer any loan without prior written approval from the commissioner.

I. The lender, for the term of the entire loan, shall promptly notify the commissioner of any loan payments that are two weeks overdue. The lender shall provide the commissioner with any and all past due notices at the same time they are sent to the applicant. In addition, the lender must submit an annual loan performance report to the commissioner on a form provided by the commissioner.

J. The commissioner shall not participate in any loan

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by Revisor _____

that either carries an interest rate in excess of three points above the lender's prime rate or base rate for variable or rate loans.

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

L. The lender agrees to make no waivers of default without prior written approval from the commissioner.

M. The department shall not participate in loans made by a lender before the execution of the participating lender's agreement.

N. The commissioner may review upon request all financial data associated with the execution and servicing of a loan made by the lender.

O. Any and all payments received by the lender shall first be credited to interest due on a pro rata basis and then be credited to the principal balance due, on a pro rata basis.

7605.0070 APPLICATION REVIEW.

Subpart 1. **Administrative review.** The commissioner shall examine the loan application to verify that the applicant is eligible, that the required forms are included and correctly completed, that the required assurances and irrevocable resolution are included, and that the application is properly signed and dated.

Subp. 2. **Technical review.** The commissioner shall examine the technical support materials included in the application to verify that the proposed conservation measures are analyzed with adequate details of existing conditions and proposed modifications or additions, that appropriate calculation procedures are used, that the proposed conservation measures are eligible, and that the proposed conservation measures are technically feasible and meet requirements of this chapter.

Subp. 3. **Rejection and resubmission.** The commissioner may accept, reject, or modify a loan application as necessary based on the application review. The commissioner shall notify an

Approved
by Revisor _____

applicant of cause for modification or rejection of an application and the options available to correct those problems for resubmission of the application. If some of the conservation measures in an application are accepted as submitted, the applicant may choose to accept a loan for those measures.

7605.0080 REPORTS AND MONITORING.

Subpart 1. **In general.** An applicant that receives IELP funds shall submit the reports listed in subparts 2 to 5.

Subp. 2. **Annual project status report.** The applicant shall submit to the commissioner on forms provided by the commissioner an annual project status report covering the period July 1 through June 30. This report is due each July 31 until the project is completed.

The project status report must indicate the progress of the implementation of the project, problems encountered, the effect of the problems on the project, and the corrective action taken. If at any time the applicant fails to substantially comply with the start and end dates given in the loan application as approved, and if the applicant cannot reasonably justify to the commissioner its lack of progress, the entire loan amount may become due and payable at the discretion of the commissioner.

Subp. 3. **Semiannual financial report.** The applicant shall submit to the commissioner on forms provided by the commissioner, a semiannual financial status report that indicates expenditures of loan funds through the last date of each report period. This report is due on July 31 for the period January 1 to June 30, and January 31 for the period July 1 to December 31 until the project is completed.

Subp. 4. **Final report.** Within 60 days of the completion of the project, the applicant shall submit to the commissioner, on forms provided by the commissioner, a final project status report and a financial status report that gives actual expenditures of the conservation measures implemented.

Approved
by Revisor _____

Subp. 5. **Annual energy report.** The applicant shall submit to the commissioner, on forms provided by the commissioner, an annual fuel and electric consumption report due each October 31 for the duration of the loan contract period, or for a minimum of three years after project completion if the loan is paid in less than three years, unless the commissioner cancels this requirement before the end of the loan contract period.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Institutional Energy Loan Program (IELP)

AGENCY: Department of Public Service

MINNESOTA RULES: Chapter 7605

The attached rules are approved for publication in the State Register

David S. Niss
Assistant Revisor

hospital whose fiscal year starts during a given calendar quarter shall be notified of the HCI to be used 30 days prior to the start of the quarter. It has been determined that the HCI is 5.0 percent according to an independent source, Data Resources, Inc., for Health Care Costs for hospitals whose fiscal years begin during the calendar quarter beginning July 1, 1987.

Sandra S. Gardebring, Commissioner
Department of Human Services

Department of Labor and Industry
Labor Standards Division

Notice of Certified Prevailing Wage Rates

On June 1, 1987 the commissioner will certify prevailing wage rates for commercial and highway heavy construction projects in the following Minnesota counties: Anoka, Benton, Big Stone, Carver, Chippewa, Chisago, Dakota, Douglas, Grant, Hennepin, Isanti, Kanabec, Kandiyohi, McLeod, Meeker, Mille Lacs, Morrison, Pine, Pope, Ramsey, Scott, Sherburne, Stearns, Stevens, Swift, Todd, Traverse, Washington and Wright.

A copy of the determined wage rates for Minnesota counties may be obtained by contacting the Minnesota Documents Division, 117 University Avenue, St. Paul, Minnesota 55155. The charges for the cost of copying and mailing are $.50 for the first county and $.30 for any subsequent copies of the same or other counties. For all 87 counties the charge is $25.00. A sales tax of 6% must be added to all orders.

A check or money order payable to the State of Minnesota must accompany each request.

Ray Bohn, Commissioner
Department of Labor and Industry

Pollution Control Agency

Proposed Rules Governing the Management of Waste Tires and the Permitting of Waste Tire Facilities, Minn. Rules pts. 7001.0020, 7001.0040, 7001.0050, 7001.0190, 7001.4000 to 7001.4150, and 7035.8200 to 7035.8710.

Notice of Intent to Cancel Hearing

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) has cancelled the public hearing on the above-entitled matter which was to be conducted at the Agency's Board Room, 520 Lafayette Road, St. Paul, commencing at 10:30 a.m. on Monday, June 8, 1987, and continuing in an evening session at the same location starting at 7:00 p.m. Pursuant to Minn. Stat. § 14.25 (1986) if 25 or more persons request a hearing in response to the notice of intent to adopt the proposed rules, the Agency must conduct a public hearing. The hearing was cancelled since the Agency did not receive any requests for a hearing in response to the notice of intent to adopt these same rules without a public hearing published at *State Register*, Volume 11, Number 42, pages 1918-1950, April 20, 1987 (11 S.R. 1918) and mailed to persons registered with the Agency on April 16, 1987.

Any questions on the cancellation of the hearing or the proposed rules should be directed to Shelly Sporer, Minnesota Pollution Control Agency, Solid and Hazardous Waste Division, 520 Lafayette Road North, St. Paul, Minnesota 55155, (612) 296-7712.

Dated: 22 May 1987

Thomas J. Kalitowski
Executive Director

Department of Public Service
Energy Division

Outside Opinion Sought Concerning a Proposed Rule Administering Loans to Schools, Hospitals, Nursing Homes and Public Buildings to Implement Energy Conservation Improvements

Notice is hereby given that the Director of the Minnesota Department of Public Service is seeking information or opinions from interested or affected persons or groups in preparing to promulgate permanent rules governing administration of the Energy Con-

servation Finance Program for Schools, Hospitals, Nursing Homes and Public Buildings funded with petroleum pricing violation settlement funds. The adoption of the rule is authorized by Minnesota Statutes, Section 116J.035 Subd. 2; Minnesota Statutes, Section 116J.10 (a); Minnesota Statutes, Section 116J.37 Subd. 7; and Reorganization Order Number 140 dated December 29, 1986. These statutes provide general authority to promulgate rules to administer energy programs including the Energy Conservation Finance Program. The cited Reorganization Order transfers such authority to the Department of Public Service. Additional authority is anticipated for such financing programs in the future.

The Director of the Minnesota Department of Public Service requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing.

Written statements should be addressed to:

Claudia Anderson
Minnesota Department of Public Service
900 American Center
150 E. Kellogg Boulevard
St. Paul, MN 55101

Oral statements will be received during regular business hours over the telephone at (612) 297-1220 and in person at the above address.

All statements of information and comments shall be accepted until August 31, 1987. Any written material received by the Director shall become part of the record in the event the rules are promulgated.

Tony Perpich, Director
Department of Public Service

Office of the Secretary of State

Notice of Vacancies in Multi-Member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-2805. Application deadline is June 23, 1987.

ADVISORY COMMITTEE ON NONPUBLIC SCHOOLS has 1 vacancy open for a member. Members shall be representatives of the various areas of the state and knowledgeable about nonpublic schools. The committee shall advise the Commissioner and State Board of Education on issues related to nonpublic schools. Members are appointed by the Commissioner of Education. Members receive $35 per day plus expenses. For specific information contact the Advisory Committee on Nonpublic Schools, 726 Capital Square Bldg., St. Paul 55101, (612) 296-3116.

MINNESOTA EDUCATIONAL COMPUTING CORPORATION has 3 vacancies open for members who are knowledgeable about the use of computing in elementary, secondary, vocational education and public and private higher education or the business community. The corporation shall provide cost-effective computing and technology related products and services to the educational programs of educational institutions and agencies in Minnesota and elsewhere. Members are appointed by the Governor for four years; terms are staggered. Members must file with the Ethical Practices Board. For specific information contact the Minnesota Educational Computing Corporation, 3490 Lexington Ave., Shoreview 55126; (612) 481-3510.

STATE CURRICULUM ADVISORY COMMITTEE has 3 vacancies open for 3 members, one from each of the three Educational Cooperative Service Units (ECSU) of the State: Region 6 8 (Southwest/West Central), Region 4 (Fergus Falls area), and Region 5 (Staples area). Members shall be parents, administrators, teachers or school board members and must be serving or have served on a local school district curriculum advisory committee. The committee shall advise the State Board and Dept. of Education on the planning, evaluation and reporting process. Members are appointed by the Commissioner of Education. For specific information contact the State Curriculum Advisory Committee, Dwight Lindbloom, Assistant Commissioner for Instructional Effectiveness, 657 Capital Square Bldg., St. Paul 55101; (612) 297-4806.

INTERGOVERNMENTAL INFORMATION SYSTEMS ADVISORY COUNCIL has 1 vacancy open for a member from the Regional Development Commission. The council assists local governments in developing automated information systems by awarding grants. Members are appointed by the Commissioner of Administration. For specific information contact the Intergovernmental Information Systems Advisory Council, Centennial Office Bldg. 5th Floor, 658 Cedar St., St. Paul 55155; (612) 297-2172.

METROPOLITAN AIRPORTS COMMISSION has 2 vacancies open for members. Members must be a resident of the appropriate Metropolitan Airports Commission precinct. The commission promotes air transportation locally, nationally and internationally, by developing the Twin Cities as an aviation center; coordinates with all other governmental agencies to provide economical and effective

In the Matter of the Proposed Adoption of the Rule of the State Department of Public Service Governing the Institutional Energy Loan Program

CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
)
COUNTY OF RAMSEY)

Dennis Devereaux, being sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the state Department of Public Service rulemaking list is accurate, complete, and current as of the 8th day of February 1988.

Dennis M. Devereaux
Special Assistant to
the Commissioner

Subscribed and sworn to before me
this 28th day of March, 1988

Madeline Harris, Notary Public

MADELINE HARRIS
NOTARY PUBLIC — MINNESOTA
CHISAGO COUNTY
My commission expires 8-17-91

In the Matter of the Proposed Adoption of the Rule of the State Department of Public Service Governing the Institutional Energy Loan Program

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

STATE OF MINNESOTA)
)
COUNTY OF RAMSEY)

Norma Riley, being sworn says:

That on the 8th day of February, 1988 at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt a Rule without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the Department of Public Service rulemaking list kept by the Department pursuant to Minnesota Statutes, section 14.14, subdivision 1a and 14.22 or 14.30.

Norma Riley
Secretary, Office of
Municipal Energy Finance

Subscribed and sworn to before me
this 28th day of March, 1988

Madeline Harris, Notary Public

MADELINE HARRIS
NOTARY PUBLIC — MINNESOTA
CHISAGO COUNTY
My commission expires 8-17-91

Building Size in Square Feet	Formula	Funding Limits
100,001 - 150,000	(Area)($.016/sq. ft.) + $1600	$3200 - $4000
150,001 - 200,000	(Area)($.012/sq. ft.) + $2200	$4000 - $4600
200,001 - 250,000	(Area)($.008/sq. ft.) + $3000	$4600 - $5000
250,001 - and up	—	$5000

Subp. 3. **Restrictions.** Institutions awarded cost-share maxi-audit grants with money from the state's cost-share maxi-audit program cannot use funding from this program for the applicant's share of the cost of their cost-share maxi-audit.

Department of Public Service

Proposed Permanent Rules Relating to Institutional Energy Loan Program (IELP)

Notice of Intent to Adopt a Rule Without a Public Hearing

Notice is hereby given that the State Department of Public Service intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is contained in *Minnesota Statutes* section 216C.02, Subdivision 3.

All persons 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. Comment is encouraged. Each comment should identify the portion of the proposed rule 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 in writing. 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.

Comments or written requests for a public hearing must be submitted to:

Claudia Anderson
Department of Public Service
Energy Division
900 American Center
150 E. Kellogg Boulevard
St. Paul, MN 55101
Telephone: (612) 297-1220

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Ms. Anderson upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted 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. Pesons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Ms. Anderson at the address given above.

Dated: 21 January 1988

Tony Perpich, Commissioner
Department of Public Service

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.

Rules as Proposed (all new material)

7605.0010 PURPOSE OF INSTITUTIONAL ENERGY LOAN PROGRAM.

The purpose of this chapter is to establish the application procedures by institutions and set criteria for review and recommendation of loan applications.

7605.0020 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of this chapter, the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a public or private nonprofit institution, as defined in this part that is making application for funds under this program.

Subp. 3. **Building.** "Building" means any existing, separate structure owned and operated by a public or private nonprofit institution as defined in this part.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Department of Public Service.

Subp. 5. **Conservation measure.** "Conservation measure" means an installation or modification of an installation to a building or stationary energy using system outside of a building, that is primarily intended to reduce energy consumption or allow the use of an alternative energy source including solar, wind, peat, wood, and agricultural residue.

Subp. 6. **Financial institution.** "Financial institution" means a bank, bank or trust company, trust company, mortgage company, credit union, mortgage banker, national banking association, savings bank, savings association, savings and loan association, building and loan association, insurance company, securities broker-dealer, financial organizations relating to commercial credit or venture capital, or a lender certified by the secretary of housing and urban development or by the administrator of veterans affairs, or approved or certified by the administrator of the Farmers Home Administration or any other financial or lending institution, whether organized under federal law or the laws of any state of the United States, and whether located within or without this state.

Subp. 7. **Hospital.** "Hospital" means a public or private nonprofit facility licensed under Minnesota Statutes, section 144.50, subdivision 2, which is primarily engaged in providing to inpatients by or under the supervision of physicians:

A. diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons; or

B. rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

Subp. 8. **Lender.** "Lender" means the Minnesota Department of Finance, a private or community foundation, or a financial institution as defined in this part which issues a loan to an applicant to implement energy conservation measures.

Subp. 9. **Nursing home.** "Nursing home" means a public or private nonprofit facility or that part of a facility licensed under Minnesota Statutes, section 144A.01, subdivision 5, which provides nursing care to five or more persons.

Subp. 10. **Payback.** "Payback" means the simple payback that is equal to the sum of the design, acquisition, and installation costs of a conservation measure divided by the estimated first year energy cost savings attributable to that measure.

Subp. 11. **Private nonprofit institution.** "Private nonprofit institution" means an institution owned and operated by a school, hospital, or nursing home or joint power of these as defined in this part which is also exempt from income tax under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1986.

Subp. 12. **Project.** "Project" means all proposed work in a loan application.

Subp. 13. **Public institution.** "Public institution" means any public school district or hospital, statutory or home rule charter city, county, or town in Minnesota, or a joint power entity consisting of these units.

Subp. 14. **School.** "School" means a public or private nonprofit institution:

A. that provides, and is legally authorized to provide, elementary education or secondary education or both on a day or residential basis;

B. that:

(1) provides, and is legally authorized to provide, a program of education beyond secondary education on a day or residential basis;

(2) admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;

(3) is accredited by a nationally recognized accrediting agency or association; and

(4) provides an educational program for which it awards a bachelor's degree or higher degree or provides not less than a

two-year program which is acceptable for full credit toward such a degree at any institution which meets the preceding requirements and which provides such a program; or

C. that provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions in item B, subitems (1) to (3).

7605.0030 LOAN ELIGIBILITY CRITERIA.

Subpart 1. **In general.** The commissioner shall approve IELP applications from applicants in compliance with this chapter for conservation measures that have a payback of ten years of less.

Subp. 2. **Eligibility.** Funds are available to applicants to finance:

A. projects which have not previously received funds under this program;

B. an amendment to an existing loan, to fund cost overruns for projects in progress, or previously unidentified but related work which is necessary for successful implementation of the previously approved project, provided the projects as amended continue to meet the requirements of this chapter.

Subp. 3. **Prior approval required.** Except for the amendments in subpart 2, projects for which acquisition or installation have been contracted for or begun before approval by the commissioner are ineligible. This prior approval requirement does not apply to design activities.

Subp. 4. **Useful life.** Funds may not be awarded to buildings or energy using systems with a remaining useful life less than or equal to the payback of the conservation measure proposed. Funds may not be awarded for a conservation measure if the payback of the conservation measure proposed is greater than or equal to the useful life of the measure.

Subp. 5. **New construction.** Only projects for existing buildings and energy using systems are eligible. New construction is only eligible if it is necessary for successful implementation of a conservation measure for an existing building or stationary energy using system.

7605.0040 LOAN LIMITS.

Funds issued under this program will be used to participate in loans originating from a lender up to a maximum of 50 percent of the loan principal or $200,000, whichever is less. While more than one loan may be issued to an applicant, the sum of funds issued from this program may not exceed $200,000.

7605.0050 APPLICATION CONTENTS.

Subpart 1. **In general.** An applicant shall submit a complete application to the commissioner on forms provided by the commissioner. An application must be signed in ink by an authorized official of the applicant, must include the authorized official's title, and must be dated.

Subp. 2. **Contents.** An application must contain, at a minimum:

A. the name and complete mailing address, including county, of the applicant;

B. a contact person's name, title, and telephone number;

C. a list of buildings or stationary energy using systems included in the application and the dollar amount requested per building or stationary energy using system;

D. the name and address, total floor area in square footage, or number of units in a stationary energy using system;

E. the original construction date and addition construction dates of the building;

F. the age of a stationary energy using system; and

G. the state legislative district affected by the application.

An application must also contain a summary description of each proposed conservation measure, including its estimated cost, loan amount requested, estimated annual energy cost savings, estimated annual fuel and electric savings, estimated payback, and the estimated dates the conservation measure will be started and completed.

Subp. 3. **Technical support materials.** All applications for IELP funds must contain fuel and electric consumption data for the most recent completed period July 1 to June 30, for each building or stationary energy using system in the application. Applications

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must also contain a description of the current condition of the building, the building component, equipment or stationary energy using system to be improved, and the proposed conservation measure. Sufficient engineering analysis to determine technical feasibility and project payback must be included. All conservation measures must be analyzed using the energy conservation development sheet format available from the commissioner.

Applications for matching loans of $25,000 or more shall have the analysis for projects conducted by a Minnesota registered mechanical engineer, electrical engineer, or architect. Applications must include an Engineering Analysis Report Summary or a Maxi-Audit Report Form available from the commissioner.

Subp. 4. **Assurances.** An applicant must also submit assurances that:

A. it has provided for the proper and efficient operation and maintenance of the proposed conservation measures;

B. the work performed with loan funds will meet all Minnesota building code requirements;

C. it has provided funds to pay any portion of the project cost not eligible for program funds specifically identifying the source of those funds;

D. it has met requirements for voter approval, if applicable; and

E. it is able to accept and repay the proposed program funds without exceeding applicable debt and levy limits.

Subp. 5. **Incomplete applications.** If an incomplete application is received, the commissioner shall notify the applicant of specific deficiencies in the application. The applicant has 30 days from the date of the commissioner's notification to complete the application. If the application is not completed and received by the commissioner within 30 days, the application is considered withdrawn. To be further considered, the applicant must reapply.

7605.0060 LENDER.

In order to be eligible to receive funds under this program, a participating lender's agreement provided by the commissioner must be signed by an authorized officer of the lender. The agreement shall set the terms and conditions under which a loan is to be made and specify procedures to be followed in the event of default by the applicant. The agreement must require the lender and the commissioner to conform to the following conditions:

A. The lender will enter into a loan agreement with the applicant. The loan agreement will include the following:

(1) an agreement that the commissioner may review upon request all financial data of the applicant and may inspect any and all buildings, equipment, and stationary energy using systems associated with a loan; and

(2) an irrevocable resolution of the applicant's governing body guaranteeing that it will use all loan funds solely for the eligible costs of the proposed project; it will repay the loan according to the terms of the loan; and it will annually levy or otherwise collect funds to meet the annual repayment costs of the loan.

B. The lender shall make no provision to subordinate any loan collateral to other liens against such property without prior written approval from the commissioner.

C. The lender shall not acquire any preferential collateral, surety, or insurance to protect its interest in a loan.

D. All collateral must be prorated between the lender and the commissioner.

E. The lender shall require the applicant to adequately insure, maintain, and repair all collateral.

F. The lender shall review and approve qualified energy projects in accordance with generally accepted commercial lending practices.

G. The lender is responsible for servicing all loans it makes for conservation measures either directly or by contracting with a servicing agent.

H. The lender shall not sell or transfer any loan without prior written approval from the commissioner.

I. The lender, for the term of the entire loan, shall promptly notify the commissioner of any loan payments that are two weeks overdue. The lender shall provide the commissioner with any and all past due notices at the same time they are sent to the applicant. In addition, the lender must submit an annual loan performance report to the commissioner on a form provided by the commissioner.

J. The commissioner shall not participate in any loan that either carries an interest rate in excess of three points above the lender's prime rate or base rate for variable or rate loans.

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

L. The lender agrees to make no waivers of default without prior written approval from the commissioner.

M. The department shall not participate in loans made by a lender before the execution of the participating lender's agreement.

N. The commissioner may review upon request all financial data associated with the execution and servicing of a loan made by the lender.

O. Any and all payments received by the lender shall first be credited to interest due on a pro rata basis and then be credited to the principal balance due, on a pro rata basis.

7605.0070 APPLICATION REVIEW.

Subpart 1. **Administrative review.** The commissioner shall examine the loan application to verify that the applicant is eligible, that the required forms are included and correctly completed, that the required assurances and irrevocable resolution are included, and that the application is properly signed and dated.

Subp. 2. **Technical review.** The commissioner shall examine the technical support materials included in the application to verify that the proposed conservation measures are analyzed with adequate details of existing conditions and proposed modifications or additions, that appropriate calculation procedures are used, that the proposed conservation measures are eligible, and that the proposed conservation measures are technically feasible and meet requirements of this chapter.

Subp. 3. **Rejection and resubmission.** The commissioner may accept, reject, or modify a loan application as necessary based on the application review. The commissioner shall notify an applicant of cause for modification or rejection of an application and the options available to correct those problems for resubmission of the application. If some of the conservation measures in an application are accepted as submitted, the applicant may choose to accept a loan for those measures.

7605.0080 REPORTS AND MONITORING.

Subpart 1. **In general.** An applicant that receives IELP funds shall submit the reports listed in subparts 2 to 5.

Subp. 2. **Annual project status report.** The applicant shall submit to the commissioner on forms provided by the commissioner an annual project status report covering the period July 1 through June 30. This report is due each July 31 until the project is completed.

The project status report must indicate the progress of the implementation of the project, problems encountered, the effect of the problems on the project, and the corrective action taken. If at any time the applicant fails to substantially comply with the start and end dates given in the loan application as approved, and if the applicant cannot reasonably justify to the commissioner its lack of progress, the entire loan amount may become due and payable at the discretion of the commissioner.

Subp. 3. **Semiannual financial report.** The applicant shall submit to the commissioner on forms provided by the commissioner, a semiannual financial status report that indicates expenditures of loan funds through the last date of each report period. This report is due on July 31 for the period January 1 to June 30, and January 31 for the period July 1 to December 31 until the project is completed.

Subp. 4. **Final report.** Within 60 days of the completion of the project, the applicant shall submit to the commissioner, on forms provided by the commissioner, a final project status report and a financial status report that gives actual expenditures of the conservation measures implemented.

Subp. 5. **Annual energy report.** The applicant shall submit to the commissioner, on forms provided by the commissioner, an annual fuel and electric consumption report due each October 31 for the duration of the loan contract period, or for a minimum of three years after project completion if the loan is paid in less than three years, unless the commissioner cancels this requirement before the end of the loan contract period.

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STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SERVICE

In the Matter of the Proposed Adoption of the Rule of the State Department of Public Service Governing the Institutional Energy Loan Program	FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on February 8, 1988 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on February 8, 1988. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. No requests for a public hearing on the rule were received by the agency.

Two comments on the rule were received by the agency. No requests for notice of submission to the attorney general were received by the agency.

Based on the evidence in the record before the agency, I find the following:

1. As discussed in the statement of need and reasonableness for this proposed rule, the definition at 7605.0020, subdivision 7 was broadened to mirror the definition of licensed hospitals as found at Minnesota Statutes Chapter 114.50. This does not constitute a substantive change under Minnesota Rules 2010.1000, Item D. Therefore, the department modifies the proposed rule as follows:

   7605.0010 DEFINITIONS.

   Subp. 7. **Hospital.** "Hospital" means a public or private nonprofit facility licensed under Minnesota Statutes, section 144.50, subdivision 2.~~,-which-is-primarily-engaged-in-providing-to inpatients-by-or-under-the-supervision-of-physicians:~~

   ~~A.~~ ~~diagnostic-services-and-therapeutic-services-for-medical diagnosis,-treatment,-and-care-of-injured,-disabled,-or-sick persons;-or~~

   ~~B.~~ ~~rehabilitation-services-for-the-rehabilitation-of-injured, disabled,-or-sick-persons.~~

2. The agency received a comment from Dan Puzak, Senior Account Representative from Honeywell regarding the definition of "payback." He suggested that the definition be changed in two ways. The payback is currently defined as "the simple payback that is equal to

the sum of the design, acquisition, and installation costs of a conservation measure divided by the estimated first year energy cost savings attributable to that measure." Mr. Puzak recommended replacement of the words "first year" with "annual" to reflect a truer life cycle savings calculation. The agency believes this change to "annual" would necessitate making assumptions about fuel cost escalation rates, useful life of equipment and possibly discount factors which could introduce substantial inconsistency and confusion for the client, the analyst and the reviewer. The agency does not agree with this change and believes that the current wording of "first year" allows a simpler and consistent basis for establishing cost-effectiveness. Mr. Puzak also recommended that the savings calculation include "agreed upon operational cost savings attributable to that measure." The agency believes that there are capital improvement projects that save energy and reduce operations and maintenance expenses that are wise investments for institutions. However, the agency believes the main purpose of our program is to fund improvements intended primarily to reduce energy costs rather than fund improvements which save operations and maintenance costs and save some energy. In addition, operation and maintenance costs savings are difficult to evaluate and would lend an additional degree of variability into the determination of cost effectiveness.

The agency therefore believes that the current wording should be retained.

3. David Christiansen, Marketing Officer from Citicorp North America submitted a comment regarding the use of the term "loan" in the rule. Mr. Christiansen was concerned that use of the term "loan" precluded alternative financing arrangements such as municipal lease agreements and equipment lease agreements. Mr. Christiansen suggested adding a definition of "loan" to the rule that would specifically include these financing alternatives to clarify the allowable financing arrangements. After consulting with our Attorney General, the Department determined that the rule in its current form would allow IELP participants to enter into these types of financing arrangements, so long as the purpose of the arrangement is to provide the qualified institution with low cost financing for an approved energy conservation project.

   Therefore no change to the definition of loan is necessary.

NOW, THEREFORE, IT IS ORDERED that the rule identified as 7605.0010 to 7605.0080 is adopted this thirtieth day of March, 1988, pursuant to the authority vested in me by Minnesota Statutes, section 216C.02, subdivision 3.

Tony Perpich, Commissioner
of Public Service

Citicorp North America, Inc.
A subsidiary of Citicorp

1900 E. Golf Road - 11th Floor
Schaumburg, IL 60173
312/843-0777

Ms. Claudia Anderson
Minnesota Department of Public Service
Energy Division
900 American Center
150 East Kellogg Boulevard
St. Paul, MN 55701

Dear Ms. Anderson:

Thank you for the opportunity to present Citicorp North America Inc.s financial package. The package is intended to complement the states existing Energy Investment Loan program, as well as, provide a viable alternative source of financing. I feel this is true for both the municiple and private non-profit markets. Also, please extend my thanks to Mike, Brian and Audrea for their time and consideration.

The intent of this letter is to express Citicorps position on Minnesota Statues, section 14.22 to 14.28. Citicorp would appreciate that these comments and the sample contracts presented March 1st be included or accepted within the statues.

As discussed, one possible way of including Citicorps finance structure would be to define the term "loan". The statue presently dos'nt define the term. Citicorp proposses that the term "loan" encompass any institutional loan, as well as, any financial agreement structured as a full payout conditional sales/purchase/lease contract. This contract structure implies that the "applicant" will be the ultimate owner of the equipment. Ownership is the intent of the program.

There are a number of reasons why this form of financing should be considered. A loan in this form can provide both economic and marketing benifits.

Economically, both the Equipment Lease used with private non-profits and the State Municiple Lease/Purchase Agreement used with municipalities have competative finance rates. Municiple rates are nearly equivalant to bond rates and lease rates remain competative. In either case, the rates are a function equipment composition, credit strength and the contract terms. Citicorp is an expert in evaluating these factors and providing a competative economic product. An example would be

Citicorps ability to provide 100% fixed rate financing, while varying the length of the lease term and the frequency of the payments. This would be useful in matching the organizations cashflow requirements and constraints while offering a competative rate. A straight loan may not have this flexability.

The relationship between Honeywell and Citicorp is a structured national agreement. The two companies have specifically developed a program targeting the schools and hospitals market. The intent is to provide a complete package to these institutions offering energy and cashflow savings. Under this program Honeywell also guarntees the energy savings. This guarntee reduces Citicorps risk in the transaction. The State and the customer are also insulated by this guarntee.

Citicorp is currently negociating a simular national agreement with another equipment vendor. Once these negociations are complete another possible marketing outlet will be available to increase the energy investment loan volume.

The questions that came up in the meeting have been addressed. It's felt that all the lenders criteria can be met. Once the documents have been approved I'd like to develop the Lenders Participation Agreement.

Claudia, I feel this is a great opportunity to do a lot of good business, I look forward to a long association. Please let me know what I can do to help the acceptence process.

Sincerely;

Dave

David M. Christiansen

Honeywell

March 8, 1988

Ms. Claudia Anderson
Department of Public Schools
Energy Division
900 American Center
150 E. Kellogg Boulevard
St. Paul, MN 55101

Dear Ms. Anderson:

I would like to submit the following rule change for your review. The change is to page 2, Supp. 10, Line #26 of the proposed permanent rules relating to Institutional Energy Loan Program (IELP) Document DSN/MN RD1262. I propose the rule be changed to read as follows:

Payback. "Payback" means the simple payback that is equal to the sum of the design, acquisition, and installation costs of a conservation measure divided by the estimated annual energy cost and agreed upon operational cost savings attributable to that measure.

To support this change, I reason that the word annual as opposed to first year allows the engineering analysis manager to challange the first year savings obtained by reset schedules on hot water boilers below 160 degrees that show a quick payback but rust out the boiler breach because of stack gas condensation adding greatly to the life cycle operating costs. To support the change, I further reason that energy and agreed upon operational costs savings allow for more and better balanced energy management programs. As we move our payback periods out longer as the trend has shown, you begin to purchase equipment and technology that must last longer. A 10 year payback on a 5 year device helps no one. Longer life, lower maintenance costs and reduced repair must be part of the payback formula.

By including operational savings, we improve the quality of the project and expand the numbers of projects that can be justified.

Sincerely,

Dan Puzak
Senior Account Representative

DP/kj

In the Matter of the Adoption of the Rules of the Department of Public Service Governing the Institutional Energy Loan Program (IELP) Minn. Rules pt. 7605.0010 - 7605.0080

DECLARATION OF COUNSEL

I. Audrey A. Zibelman, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rules and the supporting rulemaking record, and that based on my examination, the Administrative Procedure Act and Minnesota Rules Chapter 2010, have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0731.

Dated: April 11, 1988

AUDREY ZIBELMAN
Special Assistant
Attorney General

MINNESOTA
Department of Public Service

Energy Division
(612) 296-5120

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

RECEIVED
APR 13 1988
ATTORNEY GENERAL'S OFFICE
515 TRANSPORTATION BLDG.
ST. PAUL, MN 55155

DATE: April 13, 1988

TO : Martha Casserly
515 Transportation Building

FROM: Claudia Anderson/Grant and Loan Specialist
7-1220

Claudia Anderson

I would appreciate a call when you finish your review and send the record to the Secretary of State.

Thank you.