


# Minnesota Attorney General: Administrative Rules Proceedings

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SF-00006-05 (4/86)

DEPARTMENT : ATTORNEY GENERAL

STATE OF MINNESOTA

# Office Memorandum

DATE : January 5, 1989

TO : MARTIN B. ENGLISH, Public Finance Officer
MN Dept. of Trade and Economic Development
900 American Center Building

FROM : MARTHA J. CASSERLY
Special Assistant Attorney General
515 Transportation Building

PHONE : 6-6839

SUBJECT : In the Matter of the Adopted Rule Relating to District Heating Loans and Energy Conservation Investment Loans

The above-referenced rule has been approved as to its legality by the Attorney General on January 5, 1989.

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

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

MJC:bbl
Enclosures

File No. 1557 Docket No. 05.0009.0183

mgc

DATE RECEIVED 12/23/88 ADOPTED W/O HEARING 4

REVIEW DATE 1/3/89 EMERGENCY RULE _____

DUE DATE 1/6/89 REVISOR APPROVED ✓

APPROVED January 5, 1989 REVISOR DISAPPROVED _____

DISAPPROVED _____ FILED W/SEC. OF STATE 1/5/89

WITHDRAWN _____ RETURNED TO AGENCY _____

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✓ Rule as adopted (4 copies)

_____ ~~Notice to Solicit Outside Information/Opinion (if applicable)~~

_____ ~~Date published in State Register~~

_____ ~~Comments~~

_____ ~~Petition for Adoption of a Rule (if applicable)~~

✓ Board's Authorizing Resolution

7/27/88 Date adopted

✓ Proposed Rule

yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule

446A.11 & 12 Statutory Authority

no Small Business Statement

no Expenditure of public money statement

no Signature

✓ Statement of Need and Reasonableness (if applicable)

NO Small Business Statement

N/A Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

9/13/88 Date (30)/25 days before adoption

yes Notice attached

_____ ~~Copy of rule or summary attached~~

✓ Publication in State Register

9/26/88 Date (30)/25 days before adoption

_____ 180-day deadline from:

10/26/88 end of comment period (§ 14.26) (rules without hearing)

_____ ~~effective date of statutory authority (§ 14.29) (emergency rules)~~

✓ Resolution Adopting

11/30/88 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting

11/30/88 Date

_____ ~~Written requests, submissions or comments~~

✓ Declaration of attorney

K. Sonneman Name of SAAG representing agency

_____ ~~Notice of Submission to Atty. Gen. (if applicable)~~

_____ ~~Aff. of Mailing Notice to Atty. Gen. (if applicable)~~

AG Copy

Department of Trade and Economic Development

Adopted Permanent Rules Relating to District Heating Loans and Energy Conservation Investment Loans

Rules as Adopted

## DISTRICT HEATING LOANS

7380.0600 DEFINITIONS.

Subpart 1. **Scope.** The terms defined in this part and in Minnesota Statutes, section 116J.36, subdivision 2, apply to parts 7380.0600 to 7380.0650.

Subp. 2. **Construction loan.** "Construction loan" means a loan to fund construction costs.

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

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

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

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

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



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

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

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

7380.0610 CONTENTS OF APPLICATION FOR NEW SYSTEM.

A completed application for a construction loan to a new system must contain:

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

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

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



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provide service and flexibility for future expansion;

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

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

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

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

E. A complete economic analysis, including:

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

(2) cash flow, income, and balance sheets for the time period of the loan;

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

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

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

G. A copy of the standard contract entered into with



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

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

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

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

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

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

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

7380.0620 CONTENTS OF APPLICATION FOR EXISTING SYSTEM.

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

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

B. Background information on the existing system, including: ownership, type and size of heat source, heat source



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capacity, backup heat boilers, and customer base, including information on process loads.

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

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

(2) an analysis of the heat source, including the capacity available and information concerning the backup heat source.

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

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

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

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

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

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

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



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to sponsor the district heating project.

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

7380.0630 APPLICATION PROCEDURE.

Subpart 1. **Submitting.** The applicant shall submit ten copies of a complete application to the chair of the authority on a form provided by the authority.

Subp. 2. **Review by Department of Public Service.** When an application is received by the chair, copies of the application shall be sent to the commissioner of the Department of Public Service for review. The commissioner of public service shall prepare and submit to the authority a technical evaluation and a recommendation on the application.

7380.0640 AUTHORITY REVIEW AND EVALUATION.

The authority will review the application for compliance with Minnesota Statutes, section 116J.36, and the rules of this part in conjunction with the recommendation of the commissioner of public service on the application. The authority shall also review the commissioner of public service priority list for funding district heating loans that must be based on the requirements under Minnesota Statutes, section 116J.36, subdivisions 3, 4, 5, 6, and 7. The authority shall give higher priority to a project as provided in Minnesota Statutes, section 116J.36, subdivision 4.

The commissioner of finance shall sell bonds and the authority shall make loans for district heating projects only upon the recommendation of the commissioner of public service.

If the authority disapproves the application, the chair shall notify the applicant in writing.

7380.0650 REPORTS AND MONITORING.

Subpart 1. **Quarterly project status report.** The



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municipality shall submit to the authority, on forms provided by the authority, a quarterly project status report. This report is due within 30 days of the end of each calendar quarter until the design or construction of the district heating project is completed. Projects begun part way through a quarter must submit a quarterly report for the portion of the quarter during which the project was active. The project status report must indicate the progress of the implementation of the district heating project funded, problems encountered, the effect of the problems on the project, and the corrective action taken. The authority shall, in consultation with the commissioner of public service, declare the entire loan amount due and payable if the authority determines that a project does not substantially conform to the construction schedule or if there has been substantial noncompliance with reporting requirements. The executive director of the authority shall inform the municipality in writing of any noncompliance with the construction schedule or reporting requirements and of the time in which the municipality must correct the deficiencies to the authority's satisfaction. If the deficiencies are not corrected to the authority's satisfaction the authority shall declare the entire amount of the loan due and payable.

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

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



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The final financial report shall give actual expenditures for the costs incurred.

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

## ENERGY CONSERVATION INVESTMENT LOANS

### 7380.0700 DEFINITIONS.

Subpart 1. **Scope.** The terms defined in this part and in Minnesota Statutes, section 116J.37, subdivision 1, apply to parts 7380.0710 to 7380.0780.

Subp. 2. **Applicant.** "Applicant" means an eligible municipality.

Subp. 3. **Municipality.** "Municipality" means any county, statutory or home rule charter city, town, school district, or any combination of those units under an agreement to jointly undertake projects authorized in this section.

Subp. 4. **Authority.** "Authority" means the Minnesota Public Facilities Authority.

Subp. 5. **Project.** "Project" means all proposed work set forth in an application for a loan to a municipality.

Subp. 6. **Maxi-audit.** "Maxi-audit" means a detailed analysis of energy-saving improvements to existing buildings or stationary energy-using systems, including:

A. modifications to building structures;

B. heating, ventilating, and air conditioning systems;

C. operation practice;

D. lighting; and

E. other factors that relate to energy use.

The primary purpose of the engineering analysis is to quantify the economic and engineering feasibility of energy-saving improvements that require capital expenditures of major operational modifications.



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A maxi-audit must be performed by or under the direction of and signed by a professional mechanical or electrical engineer or by an architect registered in Minnesota.

Subp. 7. **Conservation measure.** "Conservation measure" means an energy conservation measure that is an installation to a building on stationary energy-using system, and that is primarily intended to reduce energy consumption or allow the use of an alternate energy source including solar, wind, peat, wood, and agricultural residue.

Subp. 8. **Building.** "Building" means an existing building owned and operated by a municipality.

Subp. 9. **Stationary energy-using system.** A "stationary energy-using system" means any permanent structure or system owned and operated by a municipality that requires energy consumption for its function.

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

7380.0710 **MUNICIPAL ENERGY LOAN ELIGIBILITY CRITERIA.**

**Subpart 1. In general.** The authority shall approve energy loans to municipalities to cover the costs of capital expenditures that are conservation measures that have paybacks of ten years or less as specified in a maxi-audit in compliance with Minnesota Statutes, section 116J.37, and parts 7380.0710 to 7380.0740.

Loans are available to municipalities that have not previously received or been offered loan funds under this program, for new projects in municipalities that previously received or were offered loan funds under this program, and as amendments to loans for conservation measures in progress that are experiencing cost overruns or for previously unidentified but related work necessary to successful implementation of a previously approved conservation measure if the payback remains at ten years or less. With the exception of amendments as



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described above, the authority shall not approve more than one loan for the same conservation measure in the same building or stationary energy-using systems.

Subp. 2. **Prior approval required.** Except for a loan amendment under subpart 1, projects that have been contracted for or begun before the authority notifies the municipality that the loan application is approved are not eligible. This prior approval requirement applies to the acquisition and installation costs as identified in the maxi-audit.

Subp. 3. **New construction.** Only projects for existing buildings and energy-using systems are eligible. New construction is not eligible except if it is a necessary part of successful implementation of a conservation measure for an existing building or energy-using system.

7380.0720 **MAXIMUM LOAN AMOUNT.**

To assure equitable statewide distribution of loan funds, given that loans will be issued on a first-come, first-served basis, the authority shall establish maximum loan amounts for each type of municipality.

A. School districts with fewer than 900 students and four classroom buildings or less are eligible for up to $250,000 per district. School districts with greater than 5,000 students or more than ten classroom buildings are eligible for up to $1,000,000 per district. All other districts are eligible for up to $500,000 per district. Cooperative vocational centers and any other eligible educational facilities that are not included in school districts are limited to $250,000.

B. Cities of the first class, as defined in Minnesota Statutes, section 410.01, are eligible for up to $1,000,000 per city. Cities of the second class, as defined in Minnesota Statutes, section 410.01, are eligible for up to $500,000 per city. All other cities are eligible for up to $250,000 per city.

C. Counties containing a city of the first class, as defined in Minnesota Statutes, section 410.01, are eligible for up to $1,000,000 per county. All other counties are eligible



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for up to $500,000 per county.

D. Towns are eligible for up to $100,000 per town.

7380.0730 MUNICIPAL ENERGY LOAN APPLICATION CONTENTS AND PROCEDURES.

Subpart 1. **In general.** A municipality shall submit an application to the authority on a form provided by the authority. An application must be completed, dated, and signed in ink by a duly authorized official of the applicant and must include the authorized official's title.

Subp. 2. **Contents.** The application must contain:

A. the municipality name or school district or vocational center number;

B. the complete mailing address of the applicant, including the county;

C. the contact person's name, title, and telephone number;

D. the federal employer identification number;

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

F. the name and address of each building or system, including the county;

G. the total floor area in square feet for each building;

H. the original construction date for each system, building, and building additions;

I. the state legislative district;

J. a summary description of each conservation measure, its maxi-audit item number, its estimated cost, the loan amount requested, its estimated annual energy-cost savings, its estimated annual fuel and electric savings, its estimated payback, and the estimated dates the conservation measure will be started and completed; and

K. a certification to assure proper and efficient operation of the building or system once the project is



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completed.

An application must also contain an irrevocable resolution of the governing body of the municipality to annually levy or otherwise collect sufficient funds to guarantee loan repayment and a maxi-audit for each building and energy-using system involved in the project. One copy of the application is required.

7380.0740 MUNICIPAL ENERGY LOAN APPLICATION REVIEW.

Subpart 1. **Administrative review.** The authority shall examine the loan application to verify that the applicant is eligible, that the required forms and reports are included and are correctly completed, that an irrevocable resolution of the governing body of the municipality is included, and that the estimated start and end dates of the conservation measures included in the project are reasonable.

Subp. 2. **Technical review.** The authority shall forward a copy of the application to the commissioner of public service. The commissioner of public service shall prepare and submit to the authority a technical evaluation of the application. The technical evaluation must be on the forms provided by the authority.

Conservation measures with paybacks of ten years or less that are identified and described in maxi-audits are eligible. The minimum requirements for maxi-audits are as provided in Code of Federal Regulations, title 10, section 455.42 (May 21, 1981). Loans may not be awarded to buildings or systems with a remaining useful life less than or equal to the payback of the conservation measures proposed. Loans 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.

The commissioner of public service shall examine a maxi-audit that accompanies a loan application to verify that conservation measures requested are analyzed with adequate details of the existing conditions and proposed changes using



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appropriate calculation procedures, and that the proposed measures are eligible.

Subp. 3. **Review results.** The commissioner of public service shall forward the technical evaluation of an application to the authority. The authority shall accept, reject, or modify a loan application request as necessary based on the administrative and the technical review. The authority shall give to an applicant whose application is rejected a notice of problems encountered in the review process and options available to correct them for resubmission of the application.

7380.0750 LOAN APPROVAL; DISBURSEMENT OF FUNDS.

Subpart 1. **Authority approval; priority.** The authority shall approve loans that comply with Minnesota Statutes, section 116J.37, and with parts 7380.0710 to 7380.0740, on a first-come, first-served basis based on the order in which eligible and complete loan applications are received by the authority. If eligible and complete loan applications received at the same time cannot all be funded due to a lack of available funds, the authority shall first approve loans to school districts. If funds are not available for all eligible applications from school districts, the authority shall approve loans so that each affected district receives an equal percentage of the eligible loan amount request. If the available funds are adequate to fully fund all eligible applications from school districts, but not all other eligible applications, the authority shall approve loans to school districts for the full eligible loan amount request and approve loans to other eligible municipalities so that each affected applicant receives an equal percentage of the eligible loan amount request.

Subp. 2. **Execution of loan contract and disbursement of funds.** Upon approval of a municipal energy loan, the authority shall send a loan contract to the applicant. The authority shall attach to a loan contract a loan repayment schedule based on the approved loan application according to Minnesota Statutes, section 116J.37, subdivision 4, paragraph (b). The



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applicant shall have a duly authorized official execute and return the loan contract to the authority for execution of the loan contract by state officials and for disbursement of the loan funds. Loan funds must be disbursed upon execution of and according to the terms of the loan contract.

7380.0760 REPORTS AND MONITORING FOR MUNICIPAL ENERGY LOAN PROGRAM.

Subpart 1. **In general.** A municipality that receives a loan from the authority shall submit the reports listed in subparts 2 to 5.

Subp. 2. **Annual project status report.** The municipality shall submit to the authority, on forms provided by the authority, an annual project status report covering the period from July 1 to 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 measures funded, problems encountered, the effect of the problems on the project, and the corrective action taken. If at any time the municipality fails to substantially comply with the start and end dates given in the loan application as approved, and if the municipality cannot reasonably justify to the authority its lack of progress, the entire loan amount may become due and payable at the discretion of the authority.

what does this mean? no guidelines

Subp. 3. **Quarterly financial report.** A municipality shall submit to the authority, on forms provided by the authority, a quarterly financial status report that indicates expenditures of loan funds through the last date of each quarter. This report is due within 30 days of the end of each calendar quarter until the project is completed.

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

Subp. 5. **Annual energy report.** The municipality shall



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submit to the commissioner of public service, on forms provided by the authority, an annual energy use and energy expenditure report by fuel type. The report is 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 authority cancels this requirement before the end of the loan contract period.

7380.0770 MUNICIPAL ENERGY LOAN PROGRAM EVALUATION.

The authority shall evaluate the program's effectiveness in reducing the energy costs of participating municipalities. The municipalities shall provide the authority with information that is reasonably needed to conduct an evaluation of the loan program, including the reports required in part 8300.2507.

7380.0780 CLOSURE OF MUNICIPAL ENERGY LOAN ACCOUNT.

If the authority determines that the project that was approved for loan funds has been implemented, it shall authorize closure of the loan account upon full repayment.

**REPEALER.** Minnesota Rules, parts 8300.2500 to 8300.2509 and 8300.4500 to 8300.5100, are repealed.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JAN 5 1988
Secretary of State



Approved
by Revisor _____

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JAN 5 1988

Joan Anderson Growe
Secretary of State

2:45 PM

APPROVED AS TO FORM AND LEGALITY
January 5 19 89
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY MJ Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

DEC 01 1988

#6

PFA RESOLUTION NO. 88- 4
MINNESOTA PUBLIC FACILITIES AUTHORITY
STATE OF MINNESOTA
ST. PAUL, MINNESOTA

In the Matter of the Proposed
Permanent Rules of the Public
Facilities Authority Relating to
the District Heating Loan Program

CERTIFICATE OF AUTHORITY'S
AUTHORIZING RESOLUTION

I, David J. Speer, do hereby certify that I am a member and the Chairman of the Public Facilities Authority, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Public Facilities Authority duly and properly called and held on the 27th day of July, 1988, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

"Resolved, that David J. Speer, Chairman of the Public Facilities Authority be and he is hereby granted the authority and directed to sign an Order of the Board directing that Notice be given of the Board's intent to adopt without a public hearing rules governing the District Heating Loan Program of the Public Facilities Authority, to sign the notice thereof, and to perform any and all acts incidental thereto. In the event a public hearing becomes necessary, he is hereby granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as perform any and all acts incidental thereto, including but without being limited to signing an Order for Hearing and Notice of Hearing as well as acting as the Board's representative at all hearings."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 27th day of July, 1988.

By: _____ Attest: _____
Chair Member of the Authority

PFA.GEN/III37-CP

PFA RESOLUTION NO. 88-5 DEC 01 1988

MINNESOTA PUBLIC FACILITIES AUTHORITY
STATE OF MINNESOTA
ST. PAUL, MINNESOTA

#6

In the Matter of the Proposed Permanent Rules of the Public Facilities Authority Relating to the Energy Conservation Investment Loan Program

CERTIFICATE OF AUTHORITY'S AUTHORIZING RESOLUTION

I, David J. Speer, do hereby certify that I am a member and the Chairman of the Public Facilities Authority, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Public Facilities Authority duly and properly called and held on the 27th day of July, 1988, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

"Resolved, that David J. Speer, Chairman of the Public Facilities Authority be and he is hereby granted the authority and directed to sign an Order of the Board directing that Notice be given of the Board's intent to adopt without a public hearing rules governing the Energy Conservation Investment Loan Program of the Public Facilities Authority, to sign the notice thereof, and to perform any and all acts incidental thereto. In the event a public hearing becomes necessary, he is hereby granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as perform any and all acts incidental thereto, including but without being limited to signing an Order for Hearing and Notice of Hearing as well as acting as the Board's representative at all hearings."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 27th day of July, 1988.

By: David J. Speer
Chair

Attest: Marilyn A. Krueger
Member of the Authority

PFA.GEN/III37-CP

#11

DEC 01 1988

# Office of the Revisor of Statutes

## Administrative Rules

**TITLE:** Proposed Permanent Rules Relating to District Heating Loans and Energy Conservation Investment Loans

**AGENCY:** Department of Trade and Economic Development

**MINNESOTA RULES:** Chapter 7380

The attached rules are approved for publication in the State Register

David S. Niss
Assistant Revisor

Department of Trade and Economic Development

Proposed Permanent Rules Relating to District Heating Loans and Energy Conservation Investment Loans

Rules as Proposed (all new material)

DISTRICT HEATING LOANS

7380.0600 DEFINITIONS.

Subpart 1. **Scope.** The terms defined in this part and in Minnesota Statutes, section 116J.36, subdivision 2, apply to parts 7380.0600 to 7380.0650.

Subp. 2. **Construction loan.** "Construction loan" means a loan to fund construction costs.

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

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

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

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

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



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

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

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

7380.0610 CONTENTS OF APPLICATION FOR NEW SYSTEM.

A completed application for a construction loan to a new system must contain:

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

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

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



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provide service and flexibility for future expansion;

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

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

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

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

E. A complete economic analysis, including:

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

(2) cash flow, income, and balance sheets for the time period of the loan;

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

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

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

G. A copy of the standard contract entered into with



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

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

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

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

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

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

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

7380.0620 CONTENTS OF APPLICATION FOR EXISTING SYSTEM.

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

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

B. Background information on the existing system, including: ownership, type and size of heat source, heat source



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capacity, backup heat boilers, and customer base, including information on process loads.

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

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

(2) an analysis of the heat source, including the capacity available and information concerning the backup heat source.

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

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

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

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

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

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

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



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

7380.0630 APPLICATION PROCEDURE.

Subpart 1. **Submitting.** The applicant shall submit ten copies of a complete application to the chair of the authority on a form provided by the authority.

Subp. 2. **Review by Department of Public Service.** When an application is received by the chair, copies of the application shall be sent to the commissioner of the Department of Public Service for review. The commissioner of public service shall prepare and submit to the authority a technical evaluation and a recommendation on the application.

7380.0640 AUTHORITY REVIEW AND EVALUATION.

The authority will review the application for compliance with Minnesota Statutes, section 116J.36, and the rules of this part in conjunction with the recommendation of the commissioner of public service on the application. The authority shall also review the commissioner of public service priority list for funding district heating loans that must be based on the requirements under Minnesota Statutes, section 116J.36, subdivisions 3, 4, 5, 6, and 7. The authority shall give higher priority to a project as provided in Minnesota Statutes, section 116J.36, subdivision 4.

The commissioner of finance shall sell bonds and the authority shall make loans for district heating projects only upon the recommendation of the commissioner of public service.

If the authority disapproves the application, the chair shall notify the applicant in writing.

7380.0650 REPORTS AND MONITORING.

Subpart 1. **Quarterly project status report.** The municipality shall submit to the authority, on forms provided by



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the authority, a quarterly project status report. This report is due within 30 days of the end of each calendar quarter until the design or construction of the district heating project is completed. Projects begun part way through a quarter must submit a quarterly report for the portion of the quarter during which the project was active. The project status report must indicate the progress of the implementation of the district heating project funded, problems encountered, the effect of the problems on the project, and the corrective action taken. The authority shall, in consultation with the commissioner of public service, declare the entire loan amount due and payable if the authority determines that a project does not substantially conform to the construction schedule or if there has been substantial noncompliance with reporting requirements. The executive director of the authority shall inform the municipality in writing of any noncompliance with the construction schedule or reporting requirements and of the time in which the municipality must correct the deficiencies to the authority's satisfaction. If the deficiencies are not corrected to the authority's satisfaction the authority shall declare the entire amount of the loan due and payable.

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

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



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the costs incurred.

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

ENERGY CONSERVATION INVESTMENT LOANS

7380.0700 DEFINITIONS.

Subpart 1. **Scope.** The terms defined in this part and in Minnesota Statutes, section 116J.37, subdivision 1, apply to parts 7380.0710 to 7380.0780.

Subp. 2. **Applicant.** "Applicant" means an eligible municipality.

Subp. 3. **Municipality.** "Municipality" means any county, statutory or home rule charter city, town, school district, or any combination of those units under an agreement to jointly undertake projects authorized in this section.

Subp. 4. **Authority.** "Authority" means the Minnesota Public Facilities Authority.

Subp. 5. **Project.** "Project" means all proposed work set forth in an application for a loan to a municipality.

Subp. 6. **Maxi-audit.** "Maxi-audit" means a detailed analysis of energy-saving improvements to existing buildings or stationary energy-using systems, including:

A. modifications to building structures;

B. heating, ventilating, and air conditioning systems;

C. operation practice;

D. lighting; and

E. other factors that relate to energy use.

The primary purpose of the engineering analysis is to quantify the economic and engineering feasibility of energy-saving improvements that require capital expenditures of major operational modifications.

A maxi-audit must be performed by or under the direction of



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and signed by a professional mechanical or electrical engineer or by an architect registered in Minnesota.

Subp. 7. **Conservation measure.** "Conservation measure" means an energy conservation measure that is an installation to a building on stationary energy-using system, and that is primarily intended to reduce energy consumption or allow the use of an alternate energy source including solar, wind, peat, wood, and agricultural residue.

Subp. 8. **Building.** "Building" means an existing building owned and operated by a municipality.

Subp. 9. **Stationary energy-using system.** A "stationary energy-using system" means any permanent structure or system owned and operated by a municipality that requires energy consumption for its function.

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

7380.0710 MUNICIPAL ENERGY LOAN ELIGIBILITY CRITERIA.

**Subpart 1. In general.** The authority shall approve energy loans to municipalities to cover the costs of capital expenditures that are conservation measures that have paybacks of ten years or less as specified in a maxi-audit in compliance with Minnesota Statutes, section 116J.37, and parts 7380.0710 to 7380.0740.

Loans are available to municipalities that have not previously received or been offered loan funds under this program, for new projects in municipalities that previously received or were offered loan funds under this program, and as amendments to loans for conservation measures in progress that are experiencing cost overruns or for previously unidentified but related work necessary to successful implementation of a previously approved conservation measure if the payback remains at ten years or less. With the exception of amendments as described above, the authority shall not approve more than one



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loan for the same conservation measure in the same building or stationary energy-using systems.

Subp. 2. **Prior approval required.** Except for a loan amendment under subpart 1, projects that have been contracted for or begun before the authority notifies the municipality that the loan application is approved are not eligible. This prior approval requirement applies to the acquisition and installation costs as identified in the maxi-audit.

Subp. 3. **New construction.** Only projects for existing buildings and energy-using systems are eligible. New construction is not eligible except if it is a necessary part of successful implementation of a conservation measure for an existing building or energy-using system.

7380.0720 MAXIMUM LOAN AMOUNT.

To assure equitable statewide distribution of loan funds, given that loans will be issued on a first-come, first-served basis, the authority shall establish maximum loan amounts for each type of municipality.

A. School districts with fewer than 900 students and four classroom buildings or less are eligible for up to $250,000 per district. School districts with greater than 5,000 students or more than ten classroom buildings are eligible for up to $1,000,000 per district. All other districts are eligible for up to $500,000 per district. Cooperative vocational centers and any other eligible educational facilities that are not included in school districts are limited to $250,000.

B. Cities of the first class, as defined in Minnesota Statutes, section 410.01, are eligible for up to $1,000,000 per city. Cities of the second class, as defined in Minnesota Statutes, section 410.01, are eligible for up to $500,000 per city. All other cities are eligible for up to $250,000 per city.

C. Counties containing a city of the first class, as defined in Minnesota Statutes, section 410.01, are eligible for up to $1,000,000 per county. All other counties are eligible for up to $500,000 per county.



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D. Towns are eligible for up to $100,000 per town.

7380.0730 MUNICIPAL ENERGY LOAN APPLICATION CONTENTS AND PROCEDURES.

Subpart 1. **In general.** A municipality shall submit an application to the authority on a form provided by the authority. An application must be completed, dated, and signed in ink by a duly authorized official of the applicant and must include the authorized official's title.

Subp. 2. **Contents.** The application must contain:

A. the municipality name or school district or vocational center number;

B. the complete mailing address of the applicant, including the county;

C. the contact person's name, title, and telephone number;

D. the federal employer identification number;

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

F. the name and address of each building or system, including the county;

G. the total floor area in square feet for each building;

H. the original construction date for each system, building, and building additions;

I. the state legislative district;

J. a summary description of each conservation measure, its maxi-audit item number, its estimated cost, the loan amount requested, its estimated annual energy-cost savings, its estimated annual fuel and electric savings, its estimated payback, and the estimated dates the conservation measure will be started and completed; and

K. a certification to assure proper and efficient operation of the building or system once the project is completed.



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An application must also contain an irrevocable resolution of the governing body of the municipality to annually levy or otherwise collect sufficient funds to guarantee loan repayment and a maxi-audit for each building and energy-using system involved in the project. One copy of the application is required.

7380.0740 MUNICIPAL ENERGY LOAN APPLICATION REVIEW.

Subpart 1. **Administrative review.** The authority shall examine the loan application to verify that the applicant is eligible, that the required forms and reports are included and are correctly completed, that an irrevocable resolution of the governing body of the municipality is included, and that the estimated start and end dates of the conservation measures included in the project are reasonable.

Subp. 2. **Technical review.** The authority shall forward a copy of the application to the commissioner of public service. The commissioner of public service shall prepare and submit to the authority a technical evaluation of the application. The technical evaluation must be on the forms provided by the authority.

Conservation measures with paybacks of ten years or less that are identified and described in maxi-audits are eligible. The minimum requirements for maxi-audits are as provided in Code of Federal Regulations, title 10, section 455.42 (May 21, 1981). Loans may not be awarded to buildings or systems with a remaining useful life less than or equal to the payback of the conservation measures proposed. Loans 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.

The commissioner of public service shall examine a maxi-audit that accompanies a loan application to verify that conservation measures requested are analyzed with adequate details of the existing conditions and proposed changes using appropriate calculation procedures, and that the proposed



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measures are eligible.

Subp. 3. **Review results.** The commissioner of public service shall forward the technical evaluation of an application to the authority. The authority shall accept, reject, or modify a loan application request as necessary based on the administrative and the technical review. The authority shall give to an applicant whose application is rejected a notice of problems encountered in the review process and options available to correct them for resubmission of the application.

7380.0750 LOAN APPROVAL; DISBURSEMENT OF FUNDS.

Subpart 1. **Authority approval; priority.** The authority shall approve loans that comply with Minnesota Statutes, section 116J.37, and with parts 7380.0710 to 7380.0740, on a first-come, first-served basis based on the order in which eligible and complete loan applications are received by the authority. If eligible and complete loan applications received at the same time cannot all be funded due to a lack of available funds, the authority shall first approve loans to school districts. If funds are not available for all eligible applications from school districts, the authority shall approve loans so that each affected district receives an equal percentage of the eligible loan amount request. If the available funds are adequate to fully fund all eligible applications from school districts, but not all other eligible applications, the authority shall approve loans to school districts for the full eligible loan amount request and approve loans to other eligible municipalities so that each affected applicant receives an equal percentage of the eligible loan amount request.

Subp. 2. **Execution of loan contract and disbursement of funds.** Upon approval of a municipal energy loan, the authority shall send a loan contract to the applicant. The authority shall attach to a loan contract a loan repayment schedule based on the approved loan application according to Minnesota Statutes, section 116J.37, subdivision 4, paragraph (b). The applicant shall have a duly authorized official execute and



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return the loan contract to the authority for execution of the loan contract by state officials and for disbursement of the loan funds. Loan funds must be disbursed upon execution of and according to the terms of the loan contract.

7380.0760 REPORTS AND MONITORING FOR MUNICIPAL ENERGY LOAN PROGRAM.

Subpart 1. **In general.** A municipality that receives a loan from the authority shall submit the reports listed in subparts 2 to 5.

Subp. 2. **Annual project status report.** The municipality shall submit to the authority, on forms provided by the authority, an annual project status report covering the period from July 1 to 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 measures funded, problems encountered, the effect of the problems on the project, and the corrective action taken. If at any time the municipality fails to substantially comply with the start and end dates given in the loan application as approved, and if the municipality cannot reasonably justify to the authority its lack of progress, the entire loan amount may become due and payable at the discretion of the authority.

Subp. 3. **Quarterly financial report.** A municipality shall submit to the authority, on forms provided by the authority, a quarterly financial status report that indicates expenditures of loan funds through the last date of each quarter. This report is due within 30 days of the end of each calendar quarter until the project is completed.

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

Subp. 5. **Annual energy report.** The municipality shall submit to the commissioner of public service, on forms provided



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by the authority, an annual energy use and energy expenditure report by fuel type. The report is 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 authority cancels this requirement before the end of the loan contract period.

7380.0770 MUNICIPAL ENERGY LOAN PROGRAM EVALUATION.

The authority shall evaluate the program's effectiveness in reducing the energy costs of participating municipalities. The municipalities shall provide the authority with information that is reasonably needed to conduct an evaluation of the loan program, including the reports required in part 8300.2507.

7380.0780 CLOSURE OF MUNICIPAL ENERGY LOAN ACCOUNT.

If the authority determines that the project that was approved for loan funds has been implemented, it shall authorize closure of the loan account upon full repayment.

REPEALER. Minnesota Rules, parts 8300.2500 to 8300.2509 and 8300.4500 to 8300.5100, are repealed.



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Public Facilities Authority DEC 01 1988

Proposed Permanent Rules Relating to District Heating and Qualified Energy Improvement Loan Program and Energy Conservation Investment Loan Program.

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Public Facilities Authority proposes to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedures Act for adopted rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. Authority for the adoption of these rules is contained in Minnesota Statutes, section 446A.11, subdivision 2.

All persons have 30 days to submit comments in support of or in opposition to the proposed rule or any part 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. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change.

Any person may make a written request for a public hearing 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 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 department will proceed pursuant to Minnesota Statues, sections 14.13 to 14.20.

Persons who wish to submit comments or a written request for a public hearing should submit them to:

Terry Kuhlman
Acting Executive Director
Public Facilities Authority
800 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101

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 rules has been prepared and is available upon request from Terry Kuhlman.

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 Terry Kuhlman.

David Speer
Commissioner of Trade and Economic Development

PFA.RULES/II26-CP

#12

MINNESOTA PUBLIC FACILITIES AUTHORITY

DEC 01 1988

IN THE MATTER OF THE PROPOSED RULES OF THE PUBLIC FACILITIES AUTHORITY GOVERNING THE ADMINISTRATION OF THE DISTRICT HEATING PERMANENT DESIGN AND CONSTRUCTION LOAN RULES

STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION:

This Statement of Need and Reasonableness describes the rules proposed for the operation of the District Heating Permanent Design and Construction Loan Program. The format used in this statement is as follows: each rule is first stated, followed by a discussion of the necessity of the proposed rule, and its reasonableness.

7380.0600 DEFINITIONS

SUBPART 1. SCOPE. THE TERMS DEFINED IN THIS PART AND IN MINNESOTA STATUTES, SECTION 116J.36, SUBDIVISION 2, APPLY TO PARTS 7380.0600 TO 7380.0650.

To allow for clear understanding of these rules, it is necessary to define frequently used terms which might not be understood by the reader or terms which appear in a shorthand manner. It is reasonable to have words mean the same thing in these rules as they do in the statutes. It would be an unnecessary duplication of statutory language to repeat all the definitions here. It is also reasonable to establish these definitions prior to the actual listing of the rules to alert the reader to such terms and to allow for a quick reference point.

SUBPART 2. CONSTRUCTION LOAN. "CONSTRUCTION LOAN" MEANS A LOAN TO FUND CONSTRUCTION COSTS.

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

SUBPART 3. DESIGN LOAN. "DESIGN LOAN" MEANS A LOAN MADE TO FUND THOSE ACTIVITIES REQUIRED TO BE COMPLETED DURING THE FINAL DESIGN PHASE OF A DISTRICT HEATING SYSTEM IN ORDER TO FINANCE AND CONSTRUCT THE SYSTEM. THESE ACTIVITIES INCLUDE CONDUCTING ECONOMIC FEASIBILITY ANALYSES, OBTAINING HEAT SOURCE COMMITMENTS AND CUSTOMER CONTRACTS, STRUCTURING FINANCING, AND RELATED DISTRICT HEATING PROJECT TASKS.

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

SUBPART 4. DISTRICT HEATING PROJECT OR PROJECT. "DISTRICT HEATING PROJECT" OR PROJECT MEANS A DISTRICT HEATING DESIGN OR CONSTRUCTION PROJECT FOR A NEW OR EXISTING SYSTEM.

This term is needed since it defines the undertaking to develop a district heating system and this undertaking is what the design and construction loans will be used for. It is reasonable as it is consistent with statutes.

SUBPART 5. EXISTING SYSTEM. "EXISTING SYSTEM" MEANS A DISTRICT HEATING SYSTEM THAT HAS AT LEAST ONE CUSTOMER AND HAS BEEN OPERATIONAL FOR MORE THAN ONE YEAR.

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

SUBPART 6. FINANCIAL CONSULTANT. "FINANCIAL CONSULTANT" MEANS A REPUTABLE PERSON OR FIRM EXPERIENCED IN WORKING WITH COMPLEX REVENUE - SUPPORTED FINANCIAL PLANS AND QUALIFIED TO ASSESS THE FINANCIAL CONDITION AND OPERATION OF THE DISTRICT HEATING PROJECT.

This definition is needed to stipulate the qualifications of the preparer of the complete economic analysis of the project. It is reasonable because the decisions of the Authority are based in part on the financial statements. These statements must therefore be prepared by an experienced person or firm.

SUBPART 7. GROSS REVENUES. "GROSS REVENUES" MEANS ALL REVENUES, FEES, USER CHARGES, RENTS, FRANCHISE FEES, SPECIAL ASSESSMENTS, AND OTHER INCOME AND RECEIPTS DERIVED FROM THE OWNERSHIP OR OPERATION OF THE DISTRICT HEATING PROJECT, THE PROCEEDS OF ANY INSURANCE THAT INSURES AGAINST THE LOSS OF GROSS REVENUES, ANY INVESTMENT INCOME FROM MONEY OR SECURITIES DERIVED FROM THE STATE LOAN UNDER MINNESOTA STATUTES, SECTION 116J.36, AND ANY OTHER INCOME AND RECEIPTS ATTRIBUTABLE TO THE OWNERSHIP OR OPERATION OF THE PROJECT FROM WHATEVER SOURCE DERIVED, CALCULATED ON AN ANNUAL BASIS.

This definition is needed to show what annual revenues will be considered in calculating the debt service coverage, and several non-exclusive examples of such revenues are given. It is reasonable for a reader to know what criteria will be used to calculate the debt service coverage.

SUBPART 8. NEW SYSTEM. "NEW SYSTEM" MEANS A DISTRICT HEATING SYSTEM THAT HAS AT LEAST ONE CUSTOMER AND HAS BEEN OPERATIONAL FOR LESS THAN ONE YEAR.

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

SUBPART 9. OPERATING EXPENSES. "OPERATING EXPENSES" MEANS THE EXPENSES DIRECTLY AND PROPERLY ATTRIBUTABLE TO THE OPERATION OF THE PROJECT ON AN ANNUAL BASIS INCLUDING: EXPENSES FOR OPERATION, MAINTENANCE, REPAIRS, ORDINARY REPLACEMENT, ORDINARY ACQUISITION OF EQUIPMENT, FUEL AND HEAT, LABOR AND FRINGE BENEFITS, LEASE RENTAL PAYMENTS, INSURANCE PREMIUMS, ADMINISTRATION, LEGAL SERVICES, ENGINEERING SERVICES, PAYMENTS OF ALL INDEBTEDNESS, AND ANY OTHER CURRENT EXPENSES OR OBLIGATIONS REQUIRED TO BE PAID BY THE MUNICIPALITY OR OWNER OF THE DISTRICT HEATING PROJECT, ALL TO THE EXTENT PROPERLY AND DIRECTLY ATTRIBUTABLE TO THE OPERATION OF THE DISTRICT HEATING PROJECT. OPERATING EXPENSES DO NOT INCLUDE ANY COSTS OF EXPENSES FOR NEW CONSTRUCTION OR ANY ALLOWANCE FOR DEPRECIATION.

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

7380.0610 CONTENTS OF APPLICATION FOR A NEW SYSTEM

A. A COMPLETED APPLICATION FOR A CONSTRUCTION LOAN TO A NEW SYSTEM MUST CONTAIN THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE RESPONSIBLE OFFICIAL OF THE MUNICIPALITY.

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

B. COMPLETE ENGINEERING DESIGN OF THE DISTRICT HEATING PROJECT INCLUDING:

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

(1) AN ANALYSIS OF THE PROPOSED PIPING LAYOUT WHICH MUST ADDRESS OPTIMUM SERVICE TO THE TOTAL DESIGNATED AREA, RELIABILITY OF SERVICE, SYSTEM TEMPERATURES AND PRESSURE REQUIREMENTS, THERMAL AND HYDRAULIC OPERABILITY FOR NORMAL AND EMERGENCY CONDITIONS, OPTIMUM PIPING CONFIGURATION TO PROVIDE SERVICE, AND FLEXIBILITY FOR FUTURE EXPANSION.

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

The piping layout of a project will have a significant effect on the capital costs, reliability, operating costs and the overall feasibility of a project. Because the expansion potential of a project is used by the Authority to determine project priority, it is necessary for information for future expansion to be included in the application. It is reasonable to require applicants to furnish detailed

information about piping layout since this information will affect the feasibility of the project, and also the project's priority as determined by the Authority.

(2) AN ANALYSIS OF THE PROPOSED PIPING DESIGN THAT MUST ADDRESS RELIABILITY OF SERVICE, EASE OF CONSTRUCTION, EASE OF MAINTENANCE, INSTALLATION METHODS, AND SPECIFICATIONS AND STANDARDS, AND

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

(3) AN ANALYSIS OF THE HEAT SOURCE DESIGN THAT MUST DEFINE THE PROPOSED RULES OF THE FOLLOWING HEAT SOURCES IN THE DEVELOPMENT AND THE FUTURE OPERATION OF THE SYSTEM: BASE LOAD HEATING PLANT, PEAKING PLANTS, LARGE BOILER PLANTS IN EXISTING BUILDINGS, MOBILE BOILERS, ACCUMULATORS, AND FUTURE HEAT SOURCES SUCH AS SOLID WASTE, SOLAR, AND INDUSTRIAL WASTE HEAT.

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

C. A MARKET STUDY OF CUSTOMERS WHO REPRESENT 90 PERCENT OF THE PROPOSED THERMAL LOAD OF THE DISTRICT HEATING SYSTEM. THIS STUDY MUST SHOW DETAILED INFORMATION ON PRESENT FUEL CONSUMPTION OR HEATING DEMAND AND THE PRESENT HEATING SYSTEM IN EACH BUILDING.

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

D. A PRELIMINARY EXPANSION PLAN SHOWING HOW THE SYSTEM COULD BE EXPANDED TO SERVE OTHER PARTS OF THE COMMUNITY.

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

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

E. A COMPLETE ECONOMIC ANALYSIS, INCLUDING:

(1) A PRELIMINARY FINANCING AND DEVELOPMENT PLAN FOR THE DISTRICT HEATING SYSTEM PREPARED BY A FINANCIAL CONSULTANT;
(2) CASH FLOW, INCOME, AND BALANCE SHEETS FOR THE TIME PERIOD OF THE LOAN;
(3) A COST ESTIMATE AND EXPENDITURE SCHEDULE FOR ALL TRANSMISSION AND DISTRIBUTION PIPING, HEAT SOURCE CONVERSION, PURCHASE OR RENTAL; OPERATING AND MAINTENANCE COSTS EXCLUDING FUEL COSTS, AND BUILDING CONVERSION COSTS; AND
(4) A STATEMENT SHOWING THE SOURCE OF ALL OF THE FUNDS TO BE USED BY THE APPLICANT FOR THE DESIGN OR CONSTRUCTION OF A SYSTEM, AND THE AMOUNT OF FUNDS FROM EACH SOURCE.

This is needed because a comprehensive economic analysis with detailed cost figures is vitally important to any financial analysis. This information is needed to evaluate the reasonableness of the cost of the project; it is necessary to know the costs of the system's component parts. Cash flow

information is necessary in order to verify if the loan for the district heating project can be repaid on an annual basis, while still maintaining reserve and repair accounts.

F. A CERTIFICATION BY THE MUNICIPALITY THAT A BID PACKAGE FOR THE CONSTRUCTION OF THE PROJECT HAS BEEN COMPLETED AND IS AVAILABLE TO THE DEPARTMENT OF PUBLIC SERVICE IF REQUESTED.

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

G. A COPY OF THE STANDARD CONTRACT ENTERED INTO WITH CUSTOMERS OF THE PROJECT AND A LIST OF CUSTOMERS ALREADY UNDER CONTRACT, LISTING THE THERMAL LOAD OF EACH CUSTOMER PRESENTLY UNDER CONTRACT AND COMPARING THE TOTAL OF THE THERMAL LOAD ALREADY CONTRACTED WITH THE TOTAL LOAD OF THE DISTRICT HEATING PROJECT.

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

H. WHERE APPLICABLE, A COPY OF ANY CONTRACT FOR THE FURNISHING OF HEAT AND FUEL FOR THE DISTRICT HEATING PROJECT.

This is needed since the contract terms for heat or fuel that a district heating system must comply with and can have a major effect on operating costs. It is reasonable for the

commissioner to have this information available when evaluating the financial stability of the project. This is especially true for solid waste and fiber fuels district heating projects. Contracts for the delivery of solid waste or fiber fuels are essential to guarantee that the project will have an adequate fuel supply to operate.

I. A RESOLUTION IN SUPPORT OF THE PROJECT FROM THE GOVERNING BODY OF THE MUNICIPALITY THAT MUST INCLUDE THE PLEDGES THE MUNICIPALITY PROPOSES TO MAKE TO GUARANTEE REPAYMENT OF THE LOAN AND EVIDENCE OF THE MUNICIPALITY'S CAPABILITY TO SPONSOR THE DISTRICT HEATING PROJECT.

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

J. IDENTIFICATION OF ALL LICENSES, PERMITS, ZONING REGULATIONS, AND ANY OTHER REQUIREMENTS OF FEDERAL, STATE, OR LOCAL GOVERNMENTS WITH WHICH THE PROJECT WOULD BE EXPECTED TO COMPLY AND THE PRESENT STATUS OF COMPLIANCE WITH EACH.

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

K. A LIST OF KEY PERSONNEL AND THEIR QUALIFICATIONS AS THEY RELATE TO THE DISTRICT HEATING PROJECT.

This is needed because the participation of qualified people is of vital importance to the success of district heating

development. If district heating project personnel are not qualified, the system may not be designed properly. State funds would be in jeopardy because of inadequate system design.

L. AN ESTIMATE OF THE TYPE AND AMOUNT OF FUEL TO BE SAVED PER YEAR FROM THE FULL OPERATION OF THE DISTRICT HEATING SYSTEM COMPARED TO THE TYPE AND AMOUNT OF FUEL USED BY THE EXISTING SYSTEM.

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

M. A COPY OF A COMPLETED ENVIRONMENTAL IMPACT STATEMENT, OR A NEGATIVE DECLARATION OF THE NEED FOR AN ENVIRONMENTAL IMPACT STATEMENT FROM A COMPLETED ENVIRONMENTAL ASSESSMENT WORKSHEET, OR IN THOSE CASES WHERE NO ENVIRONMENTAL ASSESSMENT WORKSHEET IS REQUIRED, A STATEMENT AS TO THE ENVIRONMENTAL EFFECTS OF THE PROJECT.

Minnesota Statutes, Section 116J.36, subd. 4 gives priority to environmentally benign projects, so this information is needed by the Authority to assign a higher priority to a project. In most cases, district heating projects will have minimal environmental effects. It is expected that few, if any will require an Environmental Impact Statement (EIS). It is reasonable to require a negative declaration with a waiver provision. In those cases where an EIS is needed or if no environmental regulations apply, then the municipality must present environmental information to the Authority because under Minnesota Statute Ch. 116E and Section 116P.04 Subdivision 4 any state agency must consider impact upon the

environment. In all cases, environmental information is submitted to the Authority. This becomes part of the application and is therefore considered in the evaluation.

7380.0620 CONTENTS OF APPLICATION FOR AN EXISTING SYSTEM

This part describes the contents of each loan application for applicants with an existing district heating system. It includes a complete description of the required contents of an application. The majority of the information required is needed to identify the applicant and contact individuals, and to describe in detail the preliminary work necessary before a district heating project is eligible for a loan. It is necessary and reasonable for the Authority to adopt application content requirements.

A. A COMPLETED APPLICATION FOR A CONSTRUCTION LOAN TO AN EXISTING SYSTEM MUST CONTAIN THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE RESPONSIBLE OFFICIAL OF THE MUNICIPALITY.

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

B. BACKGROUND INFORMATION ON THE EXISTING SYSTEM INCLUDING: OWNERSHIP, TYPE AND SIZE OF HEAT SOURCE, HEAT SOURCE CAPACITY, BACK-UP BOILERS, CUSTOMERS BASE, INCLUDING INFORMATION ON PROCESS LOADS.

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

readily available to the applicant, this is a reasonable request.

C. COMPLETE ENGINEERING DESIGN OF THE EXPANSION PROJECT, INCLUDING:

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

(1) AN ANALYSIS OF THE PROPOSED PIPING LAYOUT, SYSTEM TEMPERATURES AND PRESSURE REQUIREMENTS, AND FLEXIBILITY FOR FUTURE EXPANSION; AND

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

(2) AN ANALYSIS OF THE HEAT SOURCE, INCLUDING THE CAPACITY AVAILABLE AND INFORMATION CONCERNING THE BACK-UP HEAT SOURCE.

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

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

D. A DISCUSSION OF PROPOSED CUSTOMER LOAD INCLUDING INFORMATION ON PRESENT FUEL CONSUMPTION OR HEATING DEMAND AND THE PRESENT HEATING SYSTEM IN EACH BUILDING FOR NEW CUSTOMERS.

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

E. A COMPLETE DISCUSSION OF HOW THE LOAN IS TO BE SECURED, THE CURRENT OUTSTANDING DEBT OF THE APPLICANT, AND THE CASH FLOW FOR THE TERM OF THE LOAN. THIS DISCUSSION MUST ALSO CONTAIN A COST ESTIMATE AND EXPENDITURE SCHEDULE FOR ALL TRANSMISSION AND DISTRIBUTION PIPING, HEAT SOURCE CONVERSION, PURCHASE OR RENTAL, OPERATING AND MAINTENANCE COSTS EXCLUDING FUEL COSTS, AND BUILDING HEATING CONVERSION COSTS.

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

F. A CERTIFICATION BY THE MUNICIPALITY THAT A BID PACKAGE FOR THE CONSTRUCTION OF THE PROJECT HAS BEEN COMPLETED AND IS

AVAILABLE TO THE DEPARTMENT OF PUBLIC SERVICE IF REQUESTED.

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

G. A COPY OF THE STANDARD CONTRACT ENTERED INTO WITH THE CUSTOMERS OF THE PROJECT AND A LIST OF CUSTOMERS ALREADY UNDER CONTRACT AND THE TOTAL LOAD IT REPRESENTS.

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

H. A COPY OF ANY CONTRACT FOR THE FURNISHING OF HEAT.

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

I. A COPY OF ANY CONTRACT FOR THE FURNISHING OF FUEL FOR THE DISTRICT HEATING PROJECT IF THIS IS A WASTE-TO-ENERGY DISTRICT HEATING PROJECT.

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

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

J. A RESOLUTION IN SUPPORT OF THE PROJECT FROM THE GOVERNING BODY OF THE MUNICIPALITY THAT MUST INCLUDE THE PLEDGES THE MUNICIPALITY PROPOSES TO MAKE TO GUARANTEE REPAYMENT OF THE CONSTRUCTION LOAN AND EVIDENCE OF THE MUNICIPALITY'S CAPABILITY TO SPONSOR THE DISTRICT HEATING PROJECT.

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

K. IDENTIFICATION OF ALL LICENSES, PERMITS, ZONING REGULATIONS, AND OTHER REQUIREMENTS OF FEDERAL, STATE OR LOCAL GOVERNMENTS WITH WHICH THE PROJECT WOULD BE EXPECTED TO COMPLY AND THE PRESENT STATUS OF EACH.

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

7380.0630 APPLICATION PROCEDURE

This section is needed to inform applicants about the submitting process: the number of copies required, the review and evaluation process, the criteria utilized, and the manner in which approval of an application is achieved.

SUBPART 1. SUBMITTING. THE APPLICANT SHALL SUBMIT TEN COPIES OF A COMPLETED APPLICATION TO THE CHAIR OF THE AUTHORITY ON A FORM PROVIDED BY THE AUTHORITY.

Informs applicants that ten copies are required. Because of the number of people who help evaluate an application, it is necessary for an adequate number of copies to be available. Ten is a reasonable number since this will ensure that each evaluator will have their own copy, in addition to the original copy for the master file.

The applicant is also informed that application forms will be provided to the applicant by the Authority and that the completed application should be submitted to the Chair of the Authority. This requirement is necessary to insure that applicants are informed as to how application forms are obtained, and to whom the application is submitted.

SUBPART 2. REVIEW BY DEPARTMENT OF PUBLIC SERVICE. WHEN AN APPLICATION IS RECEIVED BY THE CHAIR, COPIES OF THE APPLICATION SHALL BE SENT TO THE COMMISSIONER OF THE DEPARTMENT OF PUBLIC SERVICE FOR REVIEW. THE COMMISSIONER OF PUBLIC SERVICE SHALL PREPARE AND SUBMIT TO THE AUTHORITY A TECHNICAL EVALUATION AND A RECOMMENDATION ON THE APPLICATION.

This subpart is necessary to inform the applicant that the Authority provides copies of the application to the Commissioner of Public Service for review and evaluation, and that the Commissioner of Public Service prepares and submits a technical evaluation and recommendation to the Authority. It is reasonable as it is consistent with statute.

7380.0640 AUTHORITY REVIEW AND EVALUATION

SUBPART 1. THE AUTHORITY WILL REVIEW THE APPLICATION FOR COMPLIANCE WITH MINNESOTA STATUTES, SECTION 116J.36, AND THE RULES OF THIS PART IN CONJUNCTION WITH THE RECOMMENDATION OF THE COMMISSIONER OF PUBLIC SERVICE ON THE APPLICATION. THE AUTHORITY SHALL ALSO REVIEW THE COMMISSIONER OF PUBLIC SERVICE PRIORITY LIST FOR FUNDING DISTRICT HEATING LOANS THAT MUST BE BASED ON THE REQUIREMENTS UNDER MINNESOTA STATUTES, SECTION 116J.36, SUBDIVISIONS 3, 4, 5, 6, AND 7. THE AUTHORITY SHALL GIVE HIGHER PRIORITY TO A PROJECT AS PROVIDED IN MINNESOTA STATUTES, SECTION 116J.36, SUBDIVISION 4.

THE COMMISSIONER OF FINANCE SHALL SELL BONDS AND THE AUTHORITY SHALL MAKE LOANS FOR DISTRICT HEATING PROJECTS ONLY UPON THE RECOMMENDATION OF THE COMMISSIONER OF PUBLIC SERVICE.

IF THE AUTHORITY DISAPPROVES THE APPLICATION, THE CHAIR SHALL NOTIFY THE APPLICANT IN WRITING.

This subpart is needed to review and clarify the procedure the Authority will follow with each application it receives. It is necessary and reasonable to inform the applicant of those involved in applying the criteria to the application, what the criteria is, and that the Authority can only approve applications that have been recommended by the Commissioner of Public Service.

It is also reasonable to, inform, in writing, an applicant whose application has been rejected.

7380.0650 REPORTS AND MONITORING

SUBPART 1. QUARTERLY PROJECT STATUS REPORT. THE MUNICIPALITY SHALL SUBMIT TO THE AUTHORITY, ON FORMS PROVIDED BY THE AUTHORITY, A QUARTERLY PROJECT STATUS REPORT. THIS REPORT IS DUE WITHIN 30 DAYS OF THE END OF EACH CALENDAR QUARTER UNTIL THE DESIGN OR CONSTRUCTION OF THE DISTRICT HEATING PROJECT IS COMPLETED. PROJECTS BEGUN PART WAY THROUGH A QUARTER MUST SUBMIT A QUARTERLY REPORT FOR THE PORTION OF THE QUARTER DURING WHICH THE PROJECT WAS ACTIVE. THE PROJECT STATUS REPORT MUST INDICATE THE PROGRESS OF THE IMPLEMENTATION OF THE DISTRICT HEATING PROJECT FUNDED, PROBLEMS ENCOUNTERED, THE EFFECT OF THE PROBLEMS ON THE PROJECT, AND THE CORRECTIVE ACTION TAKEN. THE AUTHORITY SHALL, IN CONSULTATION WITH THE COMMISSIONER OF PUBLIC SERVICE, DECLARE THE ENTIRE LOAN AMOUNT DUE AND PAYABLE IF THE AUTHORITY DETERMINES THAT A PROJECT DOES NOT SUBSTANTIALLY CONFORM TO THE CONSTRUCTION SCHEDULE OR IF THERE HAS BEEN SUBSTANTIAL NONCOMPLIANCE WITH REPORTING REQUIREMENTS. THE EXECUTIVE DIRECTOR OF THE AUTHORITY SHALL INFORM THE MUNICIPALIITY IN WRITING OF ANY NONCOMPLIANCE WITH THE CONSTRUCTION SCHEDULE OR REPORTING REQUIREMENTS AND OF THE TIME IN WHICH THE MUNICIPALITY MUST CORRECT THE DEFICIENCIES TO THE AUTHORITY'S SATISFACTION. IF THE DEFICIENCIES ARE NOT CORRECTED TO THE AUTHORITY'S SATISFACTION, THE AUTHORITY SHALL DECLARE THE ENTIRE AMOUNT OF THE LOAN DUE AND PAYABLE.

The subpart describes the contents of the status report, stating that it must indicate the progress of the implementation of the measures funded, problems encountered, the effect of the problems on the project, and the corrective action taken. This section is needed for two reasons: for the Authority to determine that the project is actually in

progress and the loan funds are being properly used; and also for the Authority to have early notification of any municipalities 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 Authority must have some method of carrying out its duty to see that funds are correctly used and because, if informed, the Authority may be able to offer assistance not only to the municipality 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 municipality fails to substantially comply with the start and end dates given in the approved loan application, and if the district cannot reasonably justify its lack of progress, the entire loan amount may become due and payable at the discretion of the Authority. 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 past allows leeway for municipalities that fail to comply with start and end dates for good reason. It is also reasonable not to require the Authority to call in all loans which cannot meet their estimated timelines, since there can exist justifiable reasons for deviation from timelines.

SUBPART 2. QUARTERLY FINANCIAL REPORT. THE MUNICIPALITY SHALL SUBMIT TO THE AUTHORITY, ON FORMS PROVIDED BY THE AUTHORITY, A QUARTERLY FINANCIAL STATUS REPORT THAT INDICATES EXPENDITURES OF LOAN FUNDS THROUGH THE LAST DATE OF EACH QUARTER. THIS REPORT IS DUE WITHIN 30 DAYS OF THE END OF EACH CALENDAR QUARTER UNTIL THE DESIGN OR CONSTRUCTION OF THE DISTRICT HEATING PROJECT IS COMPLETED AND ALL EXPENSES APPLICABLE TO THE LOAN ARE PAID. PROJECTS BEGUN PART WAY THROUGH A QUARTER MUST SUBMIT A QUARTERLY REPORT FOR THE PORTION OF THE QUARTER DURING WHICH THE PROJECT WAS ACTIVE.

Subpart 2 describes the quarterly financial report. This report, which describes expenditures of loan funds through the last date of each quarter, must be submitted to the Authority within 30 days of the end of each quarter. These reports must be submitted until the project is completed. These reports are needed to assure the Authority that funds are, in fact, being disbursed as work proceeds on the project. This is reasonable because it keeps the Authority informed of expenditures on a timely basis, and is an element of monitoring to ensure fiscal responsibility.

SUBPART 3. FINAL REPORT. WITHIN 60 DAYS OF THE COMPLETION OF THE PROJECT, THE MUNICIPALITY SHALL SUBMIT TO THE AUTHORITY, ON FORMS PROVIDED BY THE AUTHORITY, A FINAL FINANCIAL STATUS REPORT THAT GIVES EXPENDITURES OF THE DISTRICT HEATING PROJECT. THE FINAL FINANCIAL REPORT SHALL GIVE ACTUAL EXPENDITURES FOR THE COSTS INCURRED.

Subpart 3 describes the final report that must be submitted to the Authority within 60 days of project completion on forms supplied by the Authority. Final reports are needed stating that the work is completed and provides data necessary to evaluate the program's effectiveness. It is reasonable for the Authority to have written information which assures project completion and which can provide a means with which to evaluate the program's effectiveness.

SUBPART 4. FAILURE TO COMPLY WITH PROVISIONS OF PART. IF THE MUNICIPALITY FAILS TO COMPLY WITH ANY OF THIS PART, THE MUNICIPALITY MAY, WITH THE ADVICE AND CONSENT OF THE AUTHORITY, BE DECLARED INELIGIBLE FOR FURTHER CONTRACTS WITH THE STATE UNDER THE DISTRICT HEATING LOAN PROGRAM.

This subpart states that if a municipality is unwilling to fully comply with the provision of the loan agreement, that

the municipality may be declared ineligible for further district heating contracts. It is reasonable to require that a loan recipient adhere to the loan agreement with the Authority, and to inform the loan recipient of the penalty if they fail to do so.

PFA I/21-(1-12)

#12

COMMISSIONER OF TRADE AND ECONOMIC DEVELOPMENT

DEC 01 1988

IN THE MATTER OF THE PROPOSED PERMANENT RULES OF THE PUBLIC FACILITIES AUTHORITY GOVERNING THE ADMINISTRATION OF THE MUNICIPAL ENERGY CONSERVATION INVESTMENT LOAN PROGRAM

STATEMENT OF NEED AND REASONABLENESS

## I. Introduction

The 1983 legislature established a school energy loan program for Minnesota public schools and authorized issuance of bonds by the Commissioner of Finance in Laws of Minnesota 1983, chapter 323, sections 1 through 7, codified as Minnesota Statutes 116J.37 (1983 Supplement). (Hereafter in this statement, the phrase "the statute" refers to Laws of Minnesota 1983, chapter 323, sections 1 through 7.) The Statute established a lending program in the Department of Energy & Economic Development empowering the Commissioner to approve loans to school districts for energy conservation investments identified in school building maxi-audits. The statute designated re-assignment of the power to approve these loans to the Minnesota Energy Authority upon passage of legislation creating the Authority. Legislation creating the Minnesota Energy & Economic Development Authority was passed in 1983. Laws of Minnesota 1983, chapter 289, sections 70 to 95 (re-codified as Minnesota Statutes Chapter 116M by Laws of Minnesota 1984, chapter 583, section 36).

The 1987 legislature amended the statutes dealing with the program. These amendments resulted in a redefinition of eligible applicants from school district to municipalities; assigned the duties of the Commissioner of Energy and Economic Development to the newly created Minnesota Public Facilities Authority; and required that the Commissioner of the Department of Public Service prepare and submit to the Authority a technical evaluation of all applicants to the program.

Section 29, subdivision 2 of the enabling legislation empowers the Authority to adopt rules necessary to implement the Municipal Energy Conservation Investment Loan Program.

This statement of Need and Reasonableness describes the permanent rules proposed for the operation of the program and the manner in which the Authority will provide loans to eligible municipalities.

A. Definitions

Proposed part 7380.0700 defines terms which have distinct meaning when used within the context of these rules.

Subpart 2. defines "Applicant" as an eligible municipality in Minnesota as defined by Laws of Minnesota, 1987, chapter 386. This is defined in order to designate a shorthand terminology for the participants in the program. It is needed to clarify that the program is limited by statute to eligible municipalities in Minnesota which have the power to levy taxes to provide funds to repay the loan. It is reasonable because only municipalities have the ability to levy for this purpose.

Subpart 3. Municipality. "Municipality" is further defined, in addition to the statutory reference given in Subpart 1., to further acquaint possible applicants as to what constitutes an eligible applicant.

Subpart 4. defines "Authority" as the Minnesota Public Facilities Authority, and is defined for the purpose of designating a short hand terminology to afford greater readability to the rules.

Subpart 5. defined "Project" as all proposed work in an application for a loan to a municipality. This term is defined for purposes of designating a shorthand terminology to afford greater readability to the rules.

Subpart 6. defined "Maxi-Audit" to mean a detailed engineering analysis of energy-saving building improvements, including modifications to building structure; heating, ventilating, and air conditioning systems;

operation practices; lighting; and other factors that relate to energy use. This definition is needed to establish a specific meaning for a term that is not in common usage. This definition is reasonable because it is consistent with the definition in the statute which cross references to the definition in Minnesota Statutes section 116J.06. The definition is repeated here to make the rules stand alone. It is reasonable because it is more convenient for the applicants.

Subpart 7. defines "Conservation measure" as an energy conservation measure that is an installation or modification of an installation to a building, and 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. The definition is needed to specify in detail the statutorily permissible use of these loan funds and to provide a shorthand terminology to afford greater readability to the rules. The definition is reasonable because it is used and understood in the energy auditing field and defines, within limitations imposed by statute, what kinds of projects are eligible.

Proposed part 7380.0700. Subpart 8. defined "Building" as an existing building owned and operated by a municipality. This definition is needed to identify those buildings for which loan application may be made. It is reasonable because it is in accord with limitations imposed by the statute. The definition specifies existing buildings because a building not yet constructed, or a building under construction, could not have all auditing activity completed as required by statute (116J.37, Section 1, Subdivision 4). The need and reasonableness of the municipality provision is described above in the explanation of Subpart 1.

Subpart 9. defines "Stationary Energy Using System" as a permanent structure or system which is owned and operated by a municipality which requires energy consumption for its function. This definition is necessary to establish a meaning of a term that is not widely known. It is reasonable because it identifies and defines what, in part, may constitute an eligible project cost.

Subpart 10. defines "Payback" as the simple payback that is equal to the design, acquisition, and installation costs of an energy cost saving building improvement divided by the estimated first-year energy cost savings attributable to that measure. This definition is necessary to establish a specific meaning for an indefinite term that is used in the statute. 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.

7380.0710 Municipal Energy Loan Eligibility Criteria

Proposed part 7380.0710, Subpart 1., establishes the criteria for eligible uses of loan funds. This section first provides information on what types of projects are eligible. This is needed to set guidelines for projects so that they conform to the statute (116J.37, Section 1., Subd. 1(c) and Subd. 2) and to clarify that the end result of the project must be reduced energy costs for the municipality. This section is reasonable because the purpose of the legislation is to assist municipalities in saving money through energy conservation investments. A payback period of ten years or less is also established and is necessary to conform with the statute. It is reasonable because it provides a test for an energy conservation measure's economic feasibility. The statute requires that the economic feasibility be demonstrated as a condition of loan approval.

Subpart 1. continues with identification of eligibility, that municipalities are eligible if they have not previously received or been offered loans in this program, for new projects if they have previously received loans through this program, or as amendments for cost overruns or for previously unidentified related work necessary to complete a previously approved project. This part is necessary to identify conditions with respect to previous loan activity under which an applicant is eligible to receive a loan. It is reasonable because it allows applicants the least restricted access to loan funds consistent with the statute.

Subpart 2. describes the prior approval condition of the program. A loan may not be awarded for a project already contracted for or begun. This condition is needed to discourage municipalities from entering into contractual obligations prior to securing a means of repayment, and to avoid supplanting local resources. It is reasonable because municipalities cannot enter into contract obligations prior to securing a means of payment.

Subpart 3. addresses the ineligibility of new construction except as a necessary part of a conservation measure for an existing building. This subpart is needed to clearly inform potential applicants of this prohibition and its exception. It is reasonable to include this subpart because this criteria might not be otherwise apparent. The prohibition is reasonable because, as discussed in the definition section of this statement (7380.0700, Subpart 6), the statute requires as a condition of loan approval that all auditing activity be completed, which can be done only on an existing building. The exception is reasonable because it is consistent with the above mentioned requirement and is based on the premise that new construction that is a necessary part of a conservation measure in an existing building is a component part of that measure and is analyzed as such in the maxi-audit for the existing building.

7380.0720 Maximum Loan Amount

Proposed part 7380.0720 sets forth the criteria for determining maximum loan amount per municipality. The criteria are necessary to assure equitable statewide distribution of loan funds available to the Authority.

Section A. School Districts of part 7380.0720 provides the criteria for determining the maximum amount available for various size school districts which are divided into the three groups delineated in Section A. This is a reasonable determination because the groups each have approximately the same number of buildings. These size definitions

serve well since by any other method besides the number of buildings, disproportionate weight is given to one or another group.

Section A. concludes with an allocation to cooperative vacation centers and other eligible educational facilities that are not included in school district limited to $250,000. The limit set is reasonable because such facilities have relatively few buildings.

Section B. Statutory and home rule charter cities. Section B. assigns three group classifications with fixed maximum amounts based on the

classification of the cities. As with Section A., the criteria applied seeks to assure equitable statewide utilization of available funds utilizing a commonly accepted criteria.

This is reasonable because it makes available to cities with a higher concentration of municipal buildings, a higher maximum amount which is likely to be utilized in an efficient manner. The corresponding lower maximum amounts for second class cities, and for other cities is arrived at in the same manner as that for first class cities.

Section C. Counties. The reasoning given in Section B. for the maximum loan amounts based on the classification of cities is applied to counties. The category of counties with the applied criteria of counties containing a first class city, and other counties following through with the criteria applied in Sections A. and B.

It is reasonable as it assures equitable statewide utilization of the Authority's available funds.

Section D. Towns. This final section dealing with towns is provide to insure that smaller-size governmental units, which could be unable to effectively compete against the larger municipalities for any of the allocated funds in the other sections, have available designated funds to participate in the program.

This section is necessary and reasonable as it, as with Section A, B, and C assures an equitable statewide utilization of program funds.

7380.0730 Municipal Energy Loan Application Contents and Procedures

Proposed part 7380.0730. 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 Authority on a form provided by the Authority. This subpart is needed to provide a consistent format for all applications. It is reasonable because, in providing application forms rather than describing a list of required information, proposed subpart establishes a structure and format to assist the applicant in identifying, organizing and presenting the necessary information. It is also reasonable for the entity charged with review and approval of applications to develop the required forms. It is necessary and reasonable to indicate the recipient of the application, the Authority, because applicants must be informed of the proper recipient of applications. The subpart also states that each application must have an original ink signature by an authorized official of the municipality and must have the authorized official's title and 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 authorized official, approved of the loan application.

Subpart 2. describes the contents of each loan application. It includes a complete description of the required contents of an application. The majority of the information required is needed to identify the applicant and contact individuals and to describe in detail the proposed project or projects and assure proper and efficient building operation. It is reasonable to require this information to determine eligibility and because the Authority must have a method of identifying each applicant and contacting responsible individuals in the event a question must be asked to clarify any issue prior to approval. The assurance of proper and efficient use of the building is reasonable because this provision is required by the statute (116J.37, section 1., subdivision 2.). The proposed project information required is used by the Authority to assess the application for technical review (7380.0740, subp. 2) and is needed in order to complete that review.

It is reasonable to require this because the Authority must have means of determining eligibility and cost-effectiveness of a proposed project in order to meet its statutory obligation to provide loans for energy investments as defined in the statute (116J.37, section 1., subd. 1(c).

The subpart continues with the additional requirement in the case of an application for an amendment, that cost overruns must be substantiated by the bid selected. This section is necessary to describe the needed documentation for a loan amendment and the basis of loan amendment review. It is reasonable because a municipality would apply for an amendment as a result of bids being higher than anticipated.

The subpart continues with submissions required with the application. These are: (1) an irrevocable resolution of the governing body of the applicant to annually levy or otherwise collect sufficient funds to guarantee loan repayment, and (2) a maxi-audit for each building involved in the application. The irrevocable resolution is necessary in order to comply with the statute (116J.37, section 1., subd. 5.) and because the Authority, acting as a lender of state funds, should assure itself that the bodies to whom it proposes lending money have an irrevocable commitment to repay that money using whatever legal and proper means chosen, so that those repaid funds may be placed into the state building fund as directed by the statute (116J.37, section 1., subd. 6.). The irrevocable provision is needed to ensure that future elected members to governing body of the applicant do not, if of different mind than the borrowing members, revoke the resolution and refuse to repay the remainder of the loan. This is a reasonable provision, since the resolution indicates that the governing body, as the elected governing body of the municipality, is aware of the commitment is has undertaken for itself and future governing bodies, and that the decision to undertake this commitment has not been made by any one official without consultation with or approval by the rest of the governing body.

The required maxi-audit is necessary in order to conform with the statute in two areas. The first area is 116J.37, section 1., subd. 4. (a), which states that a district must demonstrate that all audit activities for a given building or project have been completed, and

inclusion of the maxi-audit is the clearest and simplest demonstration of completion. The second is 116J.37, section 1., subd. 1. (c) which states that loans shall be given for energy conservation investments, which are defined as capital investments associated with conservation measures identified in a maxi-audit that have a ten-year or less payback period. This is a reasonable provision because it permits the Authority to ensure by actually examining the maxi-audit that those statutory requirements have been met.

The subpart also states that one copy of the application is required. This is needed to inform the applicants of the minimum necessary to review their applications. It is reasonable because, while other state and federal programs frequently require more than one copy of an application, the Authority feels that one copy is sufficient for its review purposes and may be shared among reviewers, and does not wish applicants to be put to added expense and labor for no real purpose.

7380.0740 Municipal Energy Loan Application Review

Proposed part 7380.0740, Subpart 1., describes the review by the Authority for administrative criteria. The subpart states that the Authority shall examine the application to verify that required items described in 7380.0730 are included and complete. This is needed to confirm that those items required will be checked to see if they are correct, and it is reasonable because the Authority is responsible to see that these requirements are carried out. The subpart requires that the irrevocable resolution of the governing body is to be included, and that a dedicated source of revenue is available to repay the loan.

The subpart also states that the estimated start and end dates of the conservation measures included in the project will be verified by the Authority as reasonable. This information, required as part of 7380.0740, subpart 1, is needed to determine when the loan funds will be put to use for the proposed project. It is reasonable to require the start and end dates of the project in order to allow the Authority to have a timeline of anticipated project progress.

Subpart 2. describes the technical review of each loan application. It sets forth the contents of technical support materials. These informational statements and requirements for materials are needed for technical review because the Authority can only make judgements of a project's eligibility upon receiving a recommendation from the Commissioner of Public Service examining the maxi-audit that includes a description and calculations on that project. As mentioned in the discussion of 7380.0740, subpart 1., the inclusion of a maxi-audit is also required by statute, and the need for the forms is discussed in 7380.0740, subpart 1., of this statement also. It is reasonable to base technical review upon the maxi-audit because that audit contains the engineering and mathematical calculations used to determine feasibility and savings and is the only source of that information that municipalities can reasonably be expected to have available. The subpart states where minimum maxi-audit requirements can be found and who must perform and sign the maxi-audit. It is necessary to clearly state minimum standards for maxi-audits submitted as part of a loan application and certification requirements for those performing the audits. It is reasonable to set minimum standards to ensure that the information needed to determine technical and economic feasibility is provided and that the individual providing the information be knowledgeable. The provisions are also reasonable because they provide for the use of maxi-audit which meets minimum requirements which are consistent with minimum requirements for similar state and federal financial assistance programs (116J.24, 1982, and Code of Federal Regulations, title 10, section 455.42, May 21, 1981).

Subpart 2. continues with project eligibility limitations. The first limitation, energy conservation investments with paybacks of ten years or less that are identified in the maxi-audit, is needed to conform with 116J.37, section 1., subd. 1., (c). This is a reasonable limitation for reasons described in this statement's explanation of proposed part 7380.0710, subpart 1. The subpart continues by stating that loans may not be awarded for buildings with a remaining useful life less than or equal to the payback of the measure proposed or for measures with a payback which is greater than or equal to the useful

life of the measure. This is needed to prevent funding of measures that are not economically feasible. This is a reasonable provision because it ensures that the measure is economically feasible as required by 116J.37, section 1., subd. 4 (a).

The subpart continues that the Authority shall examine the recommendation of the Commissioner of Public Service on the maxi-audit that accompanies a loan application to verify that energy conservation investments requested are analyzed with adequate details of the existing conditions and proposed changes using appropriate calculation procedures, and that the proposed changes using appropriate calculation procedures, and that the proposed measures are eligible. This is needed to inform applicants that the maxi-audit included with the application forms will be examined to ensure that proposed projects conform to guidelines described earlier. This is reasonable because examination ensures that all applicants are operating under the same assumptions and are using the same or equivalent calculation procedures, which will lead to fair assessment of all applications.

Subpart 3. states that the Authority shall accept, reject, or modify a loan application request as necessary based upon the recommendation of the Commissioner of Public Service. This is necessary to clarify for applicants that the Authority, relying upon the recommendation of the Commissioner of Public Service, makes the decision on whether the applications meet guidelines and therefore may be funded. This is reasonable because the Authority is ultimately responsible for reviewing applications which must be either accepted, rejected or modified. Modification is reasonable because it allows the Authority to present a possible means of implementing the project, rather than simply rejecting it for not meeting guidelines.

Subpart 3. explains that, for applications found to be deficient, the Authority will provide the applicant with written notice of the deficiencies. This is necessary to assure that the applicant understands the basis for rejection, and is given every opportunity to correct any deficiencies. This is reasonable because decisions made by

a public body, and the basis for those decisions, should be clearly communicated to the affected parties. Also, it is reasonable to provide the applicant with help in correcting any deficiencies found. The subpart continues to explain that, if only some measures in an application are rejected, the applicant may chose to accept a loan on the remaining measures in the application. This is needed to provide the applicant with as wide a range of options as possible, and is reasonable because the intent of the statute is best met by allowing the broadest possible access to loan funds.

7380.0750 Loan Approval; Priority

7380.0750, subpart 1., states that the applicant must comply with the requirements of 7380.0710 to 7380.0720 in order to have an application approved. This is needed to identify the conditions under which Authority approval occurs so that all applicants are aware that loans will be approved based upon these criteria. This is reasonable because applicants should know before applying that applications will be examined and approved in the light of these criteria.

The subpart described the issuing of loan funds on a first-come-first-served basis according to the order the Authority receives an eligible and complete loan application, and describes the funding consideration in the event that all applications received at any given time cannot be funded. This subpart is necessary to establish a method for distribution of loan funds and is reasonable because it affords all school districts an equal opportunity to receive loan funds.

Subpart 2. describes the technical review process. It informs the applicant that the Commissioner of Public Service will perform a technical evaluation of the application submitted to the Authority as required by statute.

Subpart 2. proceeds to inform the applicant that the Commissioner of Public Service will be basing the review and evaluation of applications on the maxi-audit information submitted by the applicant. The

applicant is then provided with the minimum requirements for a maxi-audit as required by federal regulations.

The Authority is required by statute to first fund and approve applications received by school districts. Further, that if funds are not available at any given time to fully fund all the approved applications from school districts that each shall receive an equal percentage of the eligible amount request. The subdivision goes on to explain that if available funds are insufficient to fund in full all the approved school district applications that will be done, and that any remaining amount of available funds will be applied to approved loan requests from municipalities so that each received an equal percentage of the eligible loan amount request.

This subpart is necessary to establish and inform applicants of the statutory guidelines that apply to the funding of applications if and when aggregate amount of approved eligible loan applications exceeds the fund's available to the Authority to fund approved loan requests.

Subpart 2. explains that the Authority shall send a loan contract with repayment schedule to approved applicants, and the applicant shall sign and return the contract for signature by state officials and issuance of the loan. This is needed to explain the process for execution of the loan agreement following loan approval. It is reasonable because it provides for the execution of the agreement following loan approval. It is also reasonable because it provides for the execution of the agreement prior to the release of funds, and allows the Authority to assure itself that the person empowered by the applicant has signed the agreement prior to the release of funds. The subpart states that a loan repayment schedule based on the approved loan application and the schedule established in the statute shall be attached to the loan contract that is sent to the school district for signature. This part is needed so that the municipality is fully aware of repayment obligations before signing acceptance of the loan. This part is reasonable because a borrower should not be expected to approve and accept a financial obligation without knowing the details of the obligation. The subpart also states that funds must be issued upon

execution of, and according to, the terms of the loan contract. This is needed to clarify the conditions in which these funds are disbursed and is reasonable because the appropriate occasion for disbursement is upon contract execution.

7380.0760 Reports and Monitoring for Municipal Energy Loan Program

Proposed part 7380.0760 describes the various reports required of loan recipients by the state. Subpart 1. is simply an introduction to the proposed part, generally stating that loan recipients shall submit reports subsequently described. 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 must be submitted by the municipality to the Authority on forms provided by the Authority and must cover the period July 1 through June 30.

The report is due each July 31 until the project is completed. This report is needed for the Authority to assure itself that the loan funds are indeed being used for the purpose described in the application. It is easiest for the municipality 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 Authority's duty to inform itself of the project's progress, which is an element of monitoring required by 116J.37, section 1., subd. 7. (c)., against the desirability of having a minimum number of reports for the municipalities 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 districts 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, stating that it must indicate the progress of the implementation of the measures funded, problems encountered, the effect of the problems on the

project, and the corrective action taken. This section is needed for two reasons: for the Authority to determine that the project is actually in progress and the loan funds are being properly used; and also for the Authority to have early notification of any districts 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 Authority must have some method of carrying out its duty to see that funds are correctly used and because, if informed, the Authority may be able to offer assistance not only to the municipality 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 municipality fails to substantially comply with the start and end dates given in the approved loan application, and if the district cannot reasonably justify its lack of progress, the entire loan amount may become due and payable at the discretion of the Authority. 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 municipalities that fail to comply with start and end dates for good reason. It is also reasonable not to require the Authority 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 quarterly financial report. This report, which describes expenditures of loan funds through the last date of each quarter, must be submitted to the Authority within 30 days of the end of each quarter. These reports must be submitted until the project is completed. These reports are needed to assure the Authority that funds are, in fact, being disbursed as work proceeds on the project. This is reasonable because it keeps the Authority informed of expenditures on a timely basis, and is an element of monitoring which is required by 116J.37, section 1., subd. 7. (c).

Subpart 4. describes the final report that must be submitted to the Authority within 60 days of project completion on forms supplied by the Authority. This report is necessary and reasonable for the reasons described for the two preceding reports. In addition, final reports are needed stating that the work is completed and provide data necessary to evaluate the program's effectiveness. It is reasonable for the Authority to have written information which assures project completion and which can provide a means with which to evaluate the program's effectiveness, which are provisions required by 116J.37, section 1., subd. 7. (c).

Subpart 5. covers the annual energy report. Each loan recipient must submit to the Authority on forms provided by the Authority an annual energy use and energy expenditure report by fuel type for the duration of the loan contract period or a minimum of three years after the completion if the loan is prepaid in less than three years. This report is needed to provide to the Authority actual energy data on which the Authority can evaluate the effectiveness of the program. It is a reasonable requirement because the goal of the program is to reduce energy costs for municipalities and annual energy reports provide data to assess whether that goal has been met and continues to be met. It is also reasonable because it is essential in program evaluation which is required by 116J.37, section 1., subd. 7. (c). A minimum of three years of these reports is needed to give a minimum amount of information with which to assess the impact of the project.

7380.0770 Municipal Energy Loan Program Evaluation

Proposed part 7380.0770 describes the evaluation the Authority will establish to assess the effectiveness of the program. Evaluation will measure the effectiveness of the program in reducing energy costs. The evaluation is needed in order to judge the program's effectiveness. This evaluation is reasonable because it is required by 116J.37, section 1., subd. 7. (c). This part continues by stating that an evaluation will take place 18 months after permanent rules are in effect and annually thereafter. This is needed to establish a reasonable timeline by which the Authority will initiate evaluation.

The timeline is reasonable because energy-saving data will be available from municipalities only after projects have been implemented and are operating. The part continues by stating that the municipalities will provide the Authority with the information that is needed for these evaluations. The proposed part is necessary to obtain such information from the municipalities in order to conduct the evaluation. The information required to conduct an evaluation will primarily include the information contained in the reports required in proposed part 7380.0760. On a case by case basis, technical information will be necessary to evaluate the particular project. The proposed part is reasonable because the municipalities are the best and most accurate source of the information and because such information is readily available to the municipalities and is not expensive for the municipalities to provide. The additional case by case information is not specified here because the great variety of projects funded would create an exhaustive listing.

7380.0780 Closure of Municipal Energy Loan Account

Proposed part 7380.0780 describes the conditions under which the municipality's account is closed. It states that if the Authority has determined that the project was implemented and the loan fully repaid it shall authorize closure of the loan account. This part is necessary to set a clear end to active involvement in the program. It is reasonable to require that the project has been implemented and full repayment has been made, since that is what the municipality agreed to in the loan application and contract.

PFA I/19-CP

#10

DEC 01 1988

STATE OF MINNESOTA

In the Matter of the Proposed
Adoption of the Rule of the
Commissioner of the Department of
Trade and Economic Development
for the Public Facilities Authority
Governing:
Administrative Rules
Independent Wastewater Treatment Grants Program
Water Pollution Control Revolving Fund Program
District Heating Loan Program
Energy Conservation Investment Loan Program

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

STATE OF MINNESOTA )
) §
COUNTY OF RAMSEY )

Mary Andersen, being duly sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minn. Stat. §14.14, Subd. 1a and 14.22 (1986) that their names be placed on the Minnesota Department of Trade and Economic Development rulemaking mailing list is accurate, complete, and current as of this 13th day of September, 1988.

Mary Andersen
Name

Data Processing Coordinator
Title

Subscribed and sworn to before me

this 1st day of November, 1988.

Richard B. Nadeau
Notary Public

RICHARD B. NADEAU
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Comm Expires Apr. 12, 1993

Terry Kuhlman, being duly sworn says:

That on the 16th day of September, 1988, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States Mail or in the United States mail a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Terry Kuhlman
Name

Director, Public Facilities Authority
Title

Subscribed and sworn to before me

this 1st day of November, 1988.

Richard B. Nadeau
Notary Public

RICHARD B. NADEAU
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Comm Expires Apr. 12, 1993

DEC 01 1988 #7



identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the Department will proceed pursuant to *Minnesota Statutes,* sections 14.131 to 14.20.

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

Terry Kuhlman
Acting Executive Director
Public Facilities Authority
800 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101

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 rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Terry Kuhlman 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 Terry Kuhlman.

David Speer
Commissioner of Trade and Economic Development

### Rules as Proposed (all new material)

**7380.0100 DEFINITIONS.**

Subpart 1. **Scope.** The terms defined in this part apply to parts 7380.0100 to 7380.0130.

Subp. 2. **Meetings.** Regular meetings and special meetings of the authority, and notice of such meetings, shall be as provided in the Minnesota Open Meeting Law, Minnesota Statutes, section 471.705.

Subp. 3. **Statute.** "Statute" means Minnesota Statutes, section 471.705, cited as the Minnesota Open Meeting Law.

**7380.0110 REGULAR MEETINGS.**

Regular meetings of the authority are held as provided in the notice of meeting schedule issued by the authority and on file at the office of the authority at 900 American Center Building, 150 Kellogg Boulevard, Saint Paul, Minnesota. If the authority decides to hold a regular meeting at a time or place different from the time or place stated in its schedule of regular meetings, it shall do so as provided by Minnesota Statutes, section 471.705, subdivision 1c.

**7380.0120 SPECIAL MEETINGS.**

Special meetings of the authority may be called by the chair or by a majority of the members of the authority, provided the notice is given as required by statute. The purpose of the meeting shall be only as provided in the notice, and shall be held at the office of the authority in Saint Paul, Minnesota, unless another place of meeting is designated by resolution.

**7380.0130 AGENDA.**

A proposed agenda of business to be conducted at any regular or special meeting of the authority must be included with the notice of meeting to all members of the authority. Any citizen, group, or organization that has requested to be included on the Public Facilities Authority mailing list shall receive an agenda. The mailing list will be updated every two years. Any member of the authority who wishes to add an item on the agenda of a regular meeting may do so with the concurrence of the majority of the members.

# Department of Trade and Economic Development

## Proposed Permanent Rules Relating to District Heating Loans and Energy Conservation Investment Loans

### Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Public Facilities Authority proposes to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedures Act for adopted rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. Authority for the adoption of these rules is contained in *Minnesota Statutes*, section 446A.11, subdivision 2.

All persons have 30 days to submit comments in support of or in opposition to the proposed rule or any part 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. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change.

Any person may make a written request for a public hearing 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 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 department will proceed pursuant to *Minnesota Statutes*, sections 14.13 to 14.20.

Persons who wish to submit comments or a written request for a public hearing should submit them to:

Terry Kuhlman
Acting Executive Director
Public Facilities Authority
800 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101

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

David Speer
Commissioner of Trade and Economic Development

## Rules as Proposed (all new material)

### DISTRICT HEATING LOANS

**7380.0600 DEFINITIONS.**

Subpart 1. **Scope.** The terms defined in this part and in Minnesota Statutes, section 116J.36, subdivision 2, apply to parts 7380.0600 to 7380.0650.

Subp. 2. **Construction loan.** "Construction loan" means a loan to fund construction costs.

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

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

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

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

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

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

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

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

**7380.0610 CONTENTS OF APPLICATION FOR NEW SYSTEM.**

A completed application for a construction loan to a new system must contain:

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

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

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

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

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

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

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

E. A complete economic analysis, including:

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

(2) cash flow, income, and balance sheets for the time period of the loan;

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

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

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

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

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

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

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

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

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

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

**7380.0620 CONTENTS OF APPLICATION FOR EXISTING SYSTEM.**

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

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

B. Background information on the existing system, including: ownership, type and size of heat source, heat source capacity, backup heat boilers, and customer base, including information on process loads.

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

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

(2) an analysis of the heat source, including the capacity available and information concerning the backup heat source.

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

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

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

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

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

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

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

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

**7380.0630 APPLICATION PROCEDURE.**

Subpart 1. **Submitting.** The applicant shall submit ten copies of a complete application to the chair of the authority on a form provided by the authority.

Subp. 2. **Review by Department of Public Service.** When an application is received by the chair, copies of the application shall be sent to the commissioner of the Department of Public Service for review. The commissioner of public service shall prepare and submit to the authority a technical evaluation and a recommendation on the application.

**7380.0640 AUTHORITY REVIEW AND EVALUATION.**

The authority will review the application for compliance with Minnesota Statutes, section 116J.36, and the rules of this part in conjunction with the recommendation of the commissioner of public service on the application. The authority shall also review the commissioner of public service priority list for funding district heating loans that must be based on the requirements under Minnesota Statutes, section 116J.36, subdivisions 3, 4, 5, 6, and 7. The authority shall give higher priority to a project as provided in Minnesota Statutes, section 116J.36, subdivision 4.

The commissioner of finance shall sell bonds and the authority shall make loans for district heating projects only upon the recommendation of the commissioner of public service.

If the authority disapproves the application, the chair shall notify the applicant in writing.

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.

**7380.0650 REPORTS AND MONITORING.**

Subpart 1. **Quarterly project status report.** The municipality shall submit to the authority, on forms provided by the authority, a quarterly project status report. This report is due within 30 days of the end of each calendar quarter until the design or construction of the district heating project is completed. Projects begun part way through a quarter must submit a quarterly report for the portion of the quarter during which the project was active. The project status report must indicate the progress of the implementation of the district heating project funded, problems encountered, the effect of the problems on the project, and the corrective action taken. The authority shall, in consultation with the commissioner of public service, declare the entire loan amount due and payable if the authority determines that a project does not substantially conform to the construction schedule or if there has been substantial noncompliance with reporting requirements. The executive director of the authority shall inform the municipality in writing of any noncompliance with the construction schedule or reporting requirements and of the time in which the municipality must correct the deficiencies to the authority's satisfaction. If the deficiencies are not corrected to the authority's satisfaction the authority shall declare the entire amount of the loan due and payable.

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

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

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

**ENERGY CONSERVATION INVESTMENT LOANS**

**7380.0700 DEFINITIONS.**

Subpart 1. **Scope.** The terms defined in this part and in Minnesota Statutes, section 116J.37, subdivision 1, apply to parts 7380.0710 to 7380.0780.

Subp. 2. **Applicant.** "Applicant" means an eligible municipality.

Subp. 3. **Municipality.** "Municipality" means any county, statutory or home rule charter city, town, school district, or any combination of those units under an agreement to jointly undertake projects authorized in this section.

Subp. 4. **Authority.** "Authority" means the Minnesota Public Facilities Authority.

Subp. 5. **Project.** "Project" means all proposed work set forth in an application for a loan to a municipality.

Subp. 6. **Maxi-audit.** "Maxi-audit" means a detailed analysis of energy-saving improvements to existing buildings or stationary energy-using systems, including:

A. modifications to building structures;

B. heating, ventilating, and air conditioning systems;

C. operation practice;

D. lighting; and

E. other factors that relate to energy use.

The primary purpose of the engineering analysis is to quantify the economic and engineering feasibility of energy-saving improvements that require capital expenditures or major operational modifications.

A maxi-audit must be performed by or under the direction of and signed by a professional mechanical or electrical engineer or by an architect registered in Minnesota.

Subp. 7. **Conservation measure.** "Conservation measure" means an energy conservation measure that is an installation to a building or stationary energy-using system, and that is primarily intended to reduce energy consumption or allow the use of an alternate energy source including solar, wind, peat, wood, and agricultural residue.

Subp. 8. **Building.** "Building" means an existing building owned and operated by a municipality.

Subp. 9. **Stationary energy-using system.** A "stationary energy-using system" means any permanent structure or system owned and operated by a municipality that requires energy consumption for its function.

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

**7380.0710 MUNICIPAL ENERGY LOAN ELIGIBILITY CRITERIA.**

Subpart 1. **In general.** The authority shall approve energy loans to municipalities to cover the costs of capital expenditures that are conservation measures that have paybacks of ten years or less as specified in a maxi-audit in compliance with Minnesota Statutes, section 116J.37, and parts 7380.0710 to 7380.0740.

Loans are available to municipalities that have not previously received or been offered loan funds under this program, for new projects in municipalities that previously received or were offered loan funds under this program, and as amendments to loans for conservation measures in progress that are experiencing cost overruns or for previously unidentified but related work necessary to successful implementation of a previously approved conservation measure if the payback remains at ten years or less. With the exception of amendments as described above, the authority shall not approve more than one loan for the same conservation measure in the same building or stationary energy-using systems.

Subp. 2. **Prior approval required.** Except for a loan amendment under subpart 1, projects that have been contracted for or begun before the authority notifies the municipality that the loan application is approved are not eligible. This prior approval requirement applies to the acquisition and installation costs as identified in the maxi-audit.

Subp. 3. **New construction.** Only projects for existing buildings and energy-using systems are eligible. New construction is not eligible except if it is a necessary part of successful implementation of a conservation measure for an existing building or energy-using system.

**7380.0720 MAXIMUM LOAN AMOUNT.**

To assure equitable statewide distribution of loan funds, given that loans will be issued on a first-come, first-served basis, the authority shall establish maximum loan amounts for each type of municipality.

A. School districts with fewer than 900 students and four classroom buildings or less are eligible for up to $250,000 per district. School districts with greater than 5,000 students or more than ten classroom buildings are eligible for up to $1,000,000 per district. All other districts are eligible for up to $500,000 per district. Cooperative vocational centers and any other eligible educational facilities that are not included in school districts are limited to $250,000.

B. Cities of the first class, as defined in Minnesota Statutes, section 410.01, are eligible for up to $1,000,000 per city. Cities of the second class, as defined in Minnesota Statutes, section 410.01, are eligible for up to $500,000 per city. All other cities are eligible for up to $250,000 per city.

C. Counties containing a city of the first class, as defined in Minnesota Statutes, section 410.01, are eligible for up to $1,000,000 per county. All other counties are eligible for up to $500,000 per county.

D. Towns are eligible for up to $100,000 per town.

**7380.0730 MUNICIPAL ENERGY LOAN APPLICATION CONTENTS AND PROCEDURES.**

Subpart 1. **In general.** A municipality shall submit an application to the authority on a form provided by the authority. An application must be completed, dated, and signed in ink by a duly authorized official of the applicant and must include the authorized official's title.

Subp. 2. **Contents.** The application must contain:

A. the municipality name or school district or vocational center number;

B. the complete mailing address of the applicant, including the county;

C. the contact person's name, title, and telephone number;

D. the federal employer identification number;

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

F. the name and address of each building or system, including the county;

G. the total floor area in square feet for each building;

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H. the original construction date for each system, building, and building additions;

I. the state legislative district;

J. a summary description of each conservation measure, its maxi-audit item number, its estimated cost, the loan amount requested, its estimated annual energy-cost savings, its estimated annual fuel and electric savings, its estimated payback, and the estimated dates the conservation measure will be started and completed; and

K. a certification to assure proper and efficient operation of the building or system once the project is completed.

An application must also contain an irrevocable resolution of the governing body of the municipality to annually levy or otherwise collect sufficient funds to guarantee loan repayment and a maxi-audit for each building and energy-using system involved in the project. One copy of the application is required.

**7380.0740 MUNICIPAL ENERGY LOAN APPLICATION REVIEW.**

Subpart 1. **Administrative review.** The authority shall examine the loan application to verify that the applicant is eligible, that the required forms and reports are included and are correctly completed, that an irrevocable resolution of the governing body of the municipality is included, and that the estimated start and end dates of the conservation measures included in the project are reasonable.

Subp. 2. **Technical review.** The authority shall forward a copy of the application to the commissioner of public service. The commissioner of public service shall prepare and submit to the authority a technical evaluation of the application. The technical evaluation must be on the forms provided by the authority.

Conservation measures with paybacks of ten years or less that are identified and described in maxi-audits are eligible. The minimum requirements for maxi-audits are as provided in Code of Federal Regulations, title 10, section 455.42 (May 21, 1981). Loans may not be awarded to buildings or systems with a remaining useful life less than or equal to the payback of the conservation measures proposed. Loans 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.

The commissioner of public service shall examine a maxi-audit that accompanies a loan application to verify that conservation measures requested are analyzed with adequate details of the existing conditions and proposed changes using appropriate calculation procedures, and that the proposed measures are eligible.

Subp. 3. **Review results.** The commissioner of public service shall forward the technical evaluation of an application to the authority. The authority shall accept, reject, or modify a loan application request as necessary based on the administrative and the technical review. The authority shall give to an applicant whose application is rejected a notice of problems encountered in the review process and options available to correct them for resubmission of the application.

**7380.0750 LOAN APPROVAL; DISBURSEMENT OF FUNDS.**

Subpart 1. **Authority approval; priority.** The authority shall approve loans that comply with Minnesota Statutes, section 116J.37, and with parts 7380.0710 to 7380.0740, on a first-come, first-served basis based on the order in which eligible and complete loan applications are received by the authority. If eligible and complete loan applications received at the same time cannot all be funded due to a lack of available funds, the authority shall first approve loans to school districts. If funds are not available for all eligible applications from school districts, the authority shall approve loans so that each affected district receives an equal percentage of the eligible loan amount request. If the available funds are adequate to fully fund all eligible applications from school districts, but not all other eligible applications, the authority shall approve loans to school districts for the full eligible loan amount request and approve loans to other eligible municipalities so that each affected applicant receives an equal percentage of the eligible loan amount request.

Subp. 2. **Execution of loan contract and disbursement of funds.** Upon approval of a municipal energy loan, the authority shall send a loan contract to the applicant. The authority shall attach to a loan contract a loan repayment schedule based on the approved loan application according to Minnesota Statutes, section 116J.37, subdivision 4, paragraph (b). The applicant shall have a duly authorized official execute and return the loan contract to the authority for execution of the loan contract by state officials and for disbursement of the loan funds. Loan funds must be disbursed upon execution of and according to the terms of the loan contract.

**7380.0760 REPORTS AND MONITORING FOR MUNICIPAL ENERGY LOAN PROGRAM.**

Subpart 1. **In general.** A municipality that receives a loan from the authority shall submit the reports listed in subparts 2 to 5.

Subp. 2. **Annual project status report.** The municipality shall submit to the authority, on forms provided by the authority, an annual project status report covering the period from July 1 to 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 measures funded, problems encountered, the effect of the problems on the project, and the corrective action taken. If at any time the municipality fails to substantially comply with the start and end dates given in the loan application as approved, and if the municipality cannot reasonably justify to the authority its lack of progress, the entire loan amount may become due and payable at the discretion of the authority.

Subp. 3. **Quarterly financial report.** A municipality shall submit to the authority, on forms provided by the authority, a quarterly financial status report that indicates expenditures of loan funds through the last date of each quarter. This report is due within 30 days of the end of each calendar quarter until the project is completed.

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

Subp. 5. **Annual energy report.** The municipality shall submit to the commissioner of public service, on forms provided by the authority, an annual energy use and energy expenditure report by fuel type. The report is 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 authority cancels this requirement before the end of the loan contract period.

**7380.0770 MUNICIPAL ENERGY LOAN PROGRAM EVALUATION.**

The authority shall evaluate the program's effectiveness in reducing the energy costs of participating municipalities. The municipalities shall provide the authority with information that is reasonably needed to conduct an evaluation of the loan program, including the reports required in part 8300.2507.

**7380.0780 CLOSURE OF MUNICIPAL ENERGY LOAN ACCOUNT.**

If the authority determines that the project that was approved for loan funds has been implemented, it shall authorize closure of the loan account upon full repayment.

**REPEALER.** Minnesota Rules, parts 8300.2500 to 8300.2509 and 8300.4500 to 8300.5100, are repealed.

# Adopted Rules

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

# Board of Teaching

## Adopted Permanent Rules Relating to Teachers of American Indian Language and American Indian History and Culture

The rule proposed and published at *State Register*, Volume 12, Number 48, pages 2620-2621, May 30, 1988 (12 S.R. 2620) is adopted as proposed.

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PFA RESOLUTION NO. 88 13

#3

CERTIFICATE OF THE
MINNESOTA PUBLIC FACILITIES AUTHORITY

RESOLUTION ADOPTING THE RULE

I, David J. Speer, do hereby certify that I am a member and the CHAIR of the Minnesota Public Facilities Authority, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Minnesota Public Facilities Authority duly and properly called and held on the 30th day of November, 1988, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

"RESOLVED, that the rule relating to the District Heating Loans and Energy Conservation Investment Loans are approved and adopted, pursuant to authority vested in the Minnesota Public Facilities Authority by Minnesota Statutes 446A.11 Subdivision 2. David J. Speer, the Chair of the Minnesota Public Facilities Authority, is authorized to sign the findings of fact, conclusions, and order adopting the rule and to perform the necessary acts to provide that the rule shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 30th day of November, 1988.

ATTEST: _____
Member of the Authority

_____
Chair, Minnesota Public Facilities Authority

PFA.RUL/II5-1

STATE OF MINNESOTA

PUBLIC FACILITIES AUTHORITY

In the Matter of the Proposed Adoption of the Rules Governing the Administration of the District Heating Loan and Energy Conservation Investment Loan Programs

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES WITHOUT PUBLIC HEARING

Notice of the Authority's intent to adopt the above-entitled rules was published in the State Register on September 26, 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 September 16, 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 rules for 30 days after notice of proposed rulemaking. No requests for a public hearing on the rules were received by the agency.

No submissions or comments on the rules were received by the agency. No requests for notice of submission to the attorney general were received by the Authority.

It was, however, noted by the Authority that rules as published in the State Register were not verbatim as proposed by the Authority. Specifically, page 5, line 11 and line 28 (of the Revisor's copy of the rules); the word "load" was printed as "loan." The Authority, therefore, finds and orders that the rule be amended to read as originally proposed by the Authority. This is not a substantial change as it corrects a typographical error.

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

The above-captioned rules are needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rules identified as District Heating Loan and Energy Conservation Investment are adopted this 30 day of November, 1988, pursuant to authority vested in the Authority by Minnesota Statutes, section 446A.11.

David J. Speer
Chair, Public Facilities Authority

PFA II/17-1

STATE OF MINNESOTA
PUBLIC FINANCE AUTHORITY

In the Matter of the Adoption of the
Rules Governing the District Heating
Loan and Energy Conservation
Investment Loan Programs
Minn. Rules Parts 7380.0600 to 7380.0770

**DECLARATION OF COUNSEL**

I, KARL W. SONNEMAN, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule 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 0183.

Karl W. Sonneman

KARL W. SONNEMAN
Special Assistant
Attorney general

Dated: December ~~21~~ 23, 1988.

Minnesota Department of
Trade and Economic Development

Community Development Division

900 American Center
150 East Kellogg Boulevard
St. Paul, MN 55101-1421

612/296-5005
Fax: 612/296-1290

December 8, 1988

RECEIVED
DEC 23 88
ATTORNEY GENERAL'S OFFICE
515 TRANSPORTATION BLDG.
ST PAUL, MN 55155

Ms. Martha Casserly
Assistant Attorney General
Office of the Attorney General
204 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155

RE: In the Matter of Proposed Rules Governing the District Heating Loan and Energy Conservation Investment Loan Programs
Minn. Rules Parts 7380.0600 to 7380.0650 and 7380.0700 to 7380.0770

Dear Ms. Casserly:

On November 30, 1988, the Minnesota Public Facilities Authority adopted the above-captioned rules governing the District Heating Loan and the Energy Conservation Investment Loan Programs. Enclosed for your review are the following:

1. Rules as adopted (original and three copies).

2. Findings of Fact, Conclusions, and Order Adopting Rules (two copies).

3. Certificate of Resolution Adopting Rules.

N/A 4. Notice of Intent to Solicit Outside Opinion S. R. _____.

N/A 5. Copies of written comments received pursuant to Notice of Intent to Solicit Outside Opinion.

6. Certificate of Authorizing Resolution.

7. Notice of Intent to Adopt Rules Without a Public Hearing and rules as proposed 13 S. R. 13, September 26, 1988.

N/A 8. Comments received during the comment period.

9. Notice of Intent to Adopt Rules Without a Public Hearing, as mailed.

10. Affidavit of Mailing the Notice of Intent to Adopt Rules Without a Public Hearing and Certificate of Mailing List.

11. Rules as proposed.

12. Statement of Need and Reasonableness.

13. Declaration of Counsel.

N/A 14. Notice of Submission of Rule Adopted Without Public Hearing to the Attorney General.

N/A 15. Affidavit of Mailing of Notice of Submission of Rule Adopted Without Public Hearing to the Attorney General.

N/A 16. [Petition for Rulemaking].

Sincerely,

Martin B. English
Public Finance Officer

MBE:cd

PFA II/26-5

Enclosures