

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

DEPARTMENT: Office of the Attorney General

STATE OF MINNESOTA

OFFICE MEMORANDUM

DATE: October 22, 1990

TO: DAN LIPSCHULTZ
Minnesota Public Utilities Commission

FROM: MARTHA J. CASSERLY
Special Assistant
Attorney General

PHONE: 296-6839

SUBJECT: In the Matter of the Adopted Rule Relating to
Conservation Improvement Program Appeals

The above-referenced rule has been approved as to its legality by the Attorney General on October 18, 1990.

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:sc

cc: Jon Kingstad
William Brown, Chief Judge
MaryAnn Hruby

MJC

RULE REVIEW CHECKLIST

File No. 1747 Docket No. 05 0009 0729
DATE RECEIVED 10-8-90 ADOPTED W/O HEARING _____
REVIEW DATE 10-17-90 EMERGENCY RULE _____
DUE DATE 10-22-90 TO REVISOR ON 10-12-90
(DIS)APPROVED 10-18-90 MJC REVISOR (DIS)APPROVED _____
WITHDRAWN _____ FILED W/SEC. OF STATE 10-19-90
RETURNED TO AGENCY _____

✓ Rule as adopted (4 copies)

April 9, 1990 Keep ~~Notice to Solicit Outside Information/Opinion (if applicable)~~
_____ Date published in State Register
_____ Comments

_____ ~~Petition for Adoption of a Rule~~

✓ Board's Authorizing Resolution
July 12, 1990 Date adopted

✓ Proposed Rule
_____ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
216B.241 Sub 2(9th) Statutory Authority
✓ Small Business Statement
✓ Expenditure of public money statement
undated Signature

✓ Statement of Need and Reasonableness (if applicable)
✓ Small Business Statement
_____ Fees - § 16A.128

_____ Affidavit of Mailing Notice of Intent to Adopt Rule
August 1, 1990 Dated 30/25 days before adoption
_____ Notice attached indicates it is attached
_____ Copy of rule or summary attached

✓ Publication in State Register
August 6, 1990 Date 30/25 days before adoption

✓ 180-day deadline from:
NA Effective date of law requiring rule (14.12) (both rules) ~~amendments don't apply~~ not mandatory
✓ end of comment period (§ 14.26) (rules without hearing)
_____ effective date of statutory authority (§ 14.29) (emergency rules)

✓ Resolution Adopting
Sept 26, 1990 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
Sept 26, 1990 Date

✓ Written Requests, Submissions or Comments

✓ Declaration of Attorney
Jon Ringstad Name of SAAG representing agency

_____ Notice of Submission to Attorney General (if applicable)

_____ Affidavit of Mailing Notice to Attorney General (if applicable)

Public Utilities Commission

Adopted Permanent Rules Relating to Conservation Improvement Program Appeals

Rules as Adopted

CONSERVATION IMPROVEMENT PROGRAM APPEALS

7840.1500 RIGHT OF APPEAL.

A utility, a political subdivision, or a nonprofit or community organization that has proposed, or filed comments on, a conservation improvement program under part 7690.0500 or 7690.0900, or the attorney general acting on behalf of consumers and small business interests, may petition the Public Utilities Commission to modify or reject a Department of Public Service decision under part 7690.1300 or 7690.1400 regarding a conservation improvement program.

7840.1600 TIMELINESS OF APPEAL.

A petition challenging a department decision under part 7690.1300 or 7690.1400 must be filed with the Public Utilities Commission within 20 days after the department's decision. A petition is considered filed when received at the commission offices during normal business hours.

7840.1700 CONTENTS OF PETITION AND SUPPORTING DOCUMENTATION.

A petition filed under part 7840.1500 must comply with part 7830.2100, except that the petitioner shall provide the Public Utilities Commission with 15 copies of the petition. The petition must include as attachments a copy of the Department of Public Service's written decision being challenged and the relevant written materials not already provided to the commission. The petition may incorporate by reference the relevant documents that have already been provided to the commission.

7840.1800 SERVICE OF PETITION.

The petition and accompanying documents must be served on

the Department of Public Service and the persons who were served with the department's proposed decision under part 7690.1000, subpart 2. Service may be in person or by mail and must be simultaneous with the filing of the petition.

7840.1900 COMMENTS IN RESPONSE TO PETITION.

A person may submit written comments replying to the petition filed under part 7840.1500. These comments must be filed with the Public Utilities Commission within 15 days after the deadline for filing under part 7840.1600.

7840.2000 COMMISSION DECISION.

Subpart 1. **Burden of proof and decision criteria.** The petitioner has the burden of proving that the decision of the Department of Public Service will result in a conservation improvement program that is ineffective, does not adequately address the needs of renters and low-income persons, or is otherwise not in the public interest. The Public Utilities Commission shall sustain the department's decision if the petitioner fails to meet this burden.

Subp. 2. **Insufficient information.** On determining that more information is needed before issuing a decision on the merits of the petition, the commission shall issue an order requiring supplemental filings. The supplemental information must be filed with the commission and served on the department, the utility, and other parties who filed comments replying to the petition. The supplemental information must be filed and served within 15 days after the commission issues its order under this subpart unless otherwise ordered by the commission. The responses, if any, to the supplemental filings must be filed with the commission and served on the department, the utility, and the persons who filed supplemental information within 15 days after the deadline for supplemental filings.

Subp. 3. **Final disposition.** After review of the petition and comments, the commission shall issue an order that accepts, rejects, or modifies the department's decision, or that orders a contested case under Minnesota Statutes, chapter 14.

APPROVED AS TO FORM AND LEGALITY

October 18 1990

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY M J Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

OCT 19 1990

Joan Anderson Growe
Secretary of State

2:52 pm

Stat. Auth 216 B. 241 subd 2 (1989)
The Department may by rule require public utilities to make investments and expenditures in energy conservation improvements explicitly setting forth the interest rates, prices and terms...

216 B. 08
... The commission is authorized to make rules in furtherance of the purposes of Laws 1974, Chapter 27

end of comment period stated Sept 5, 1990

Stated in findings that they sent SOLAR to [redacted] LCRAR

30 days

August 6, 1990 — Sept 5, 1990 } 30 days

MINNESOTA PUBLIC UTILITIES COMMISSION

September 26, 1990

Ms. Patricia Nolte, Legal Assistant
Office of the Attorney General, Public Finance Division
404 Capitol Office Building
525 Park Ave.
St. Paul, MN 55155

Re: In the Matter of Proposed Rules Governing Conservation Improvement Program Appeals, Minn. Rules, parts 7840.1500 to 7840.2000, Docket No. G,E-999/R-90-132.

Dear Ms. Nolte:

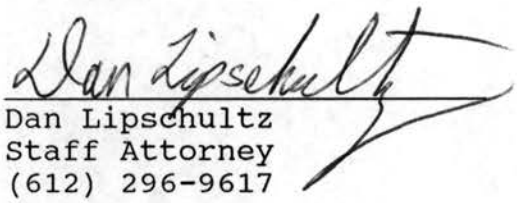
On September 25, 1990, the Minnesota Public Utilities Commission adopted the above-captioned rules governing conservation improvement program appeals. Enclosed for your review are the following:

1. Rules as adopted (original and three copies).
2. Findings of Fact, Conclusions, and Order Adopting Rules.
3. Resolution Adopting Rules and Certificate of Resolution Adopting Rules.
4. Notice of Intent to Solicit Outside Opinion (14 S.R. 2434).
5. Copies of written comments received pursuant to Notice of Intent to Solicit Outside Opinion.
6. Authorization to Proceed with Adoption of Rules Without Public Hearing and Certificate of Authorizing Resolution.
7. Notice of Intent to Adopt Rules Without a Public Hearing and rules as published (15 S.R. 334, 1990).
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 with the Revisor of Statutes Certificate of Approval for publication.
12. Statement of Need and Reasonableness.

AMERICAN CENTER BUILDING • KELLOGG AND ROBERT STS • SAINT PAUL, MN 55101

13. Declaration of Counsel.

Very truly yours,



Dan Lipschultz
Staff Attorney
(612) 296-9617

CERTIFICATE OF AUTHORIZING RESOLUTION
Docket No. G,E-999/R-90-132

I, Richard R. Lancaster, do hereby certify that I am the Executive Secretary of the Minnesota Public Utilities Commission (Commission), an agency 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 Commission duly and properly called and held on the 12th day of July, 1990, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified:

> BE IT RESOLVED, that the Executive Secretary of the Minnesota Public Utilities Commission (Commission) is hereby granted the authority to sign and to give notice of the Commission's intent to adopt, without a public hearing, the attached rules governing conservation improvement program appeals, Minn. Rules, parts 7840.1500 to 7840.2000 to all persons who have registered their names with the Commission for that purpose, to publish the notice and the rules in the State Register, and to perform any acts incidental thereto, including making any form changes in the rules that the Revisor of Statutes requires the Commission to make in order to obtain the Revisor's certification under Minn. Stat. § 14.07, subd. 2.
>
> BE IT FURTHER RESOLVED, that in the event a public hearing becomes necessary, the Executive Secretary is hereby granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as to perform any and all acts incidental thereto, including but not limited to signing an Order for and Notice of Hearing, as well as acting as the Commission's representative at all hearings.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 12th day of July 1990.



Richard R. Lancaster
Executive Secretary

STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

In the Matter of the Proposed Rules Governing Conservation Improvement Program Appeals, Minn. Rules, parts 7840.1500 to 7840.2000.	ISSUE DATE: July 23, 1990 DOCKET NO. G,E-999/R-90-132 STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

In 1983 the Minnesota Legislature enacted Minn. Stat. § 216B.241 governing energy conservation improvement programs (CIPs). Among other things, this legislation authorized the Public Utilities Commission (Commission) to compel public utilities to invest in energy conservation improvements. More specifically, it authorized the Commission to insure that "every public utility with operating revenues in excess of $50,000,000 operate one or more programs, . . . which make significant investments in and expenditures for energy conservation improvements."

In 1989, the legislature amended section 216B.241, transferring responsibility for ordering and reviewing conservation improvement programs from the Commission to the Department of Public Service (Department). As amended, Minn. Stat. § 216B.241 permits parties to appeal to the Commission when dissatisfied with the decision of the Department. The proposed rules set forth the procedures and standards governing these appeals.

The Commission initiated this rulemaking by publishing a notice soliciting outside opinion in the State Register. This notice was published on April 9 along with a preliminary draft of the proposed rules. The notice and preliminary draft were also mailed to persons on the Commission's mailing list for gas and electric matters. The notice requested comment on the subject matter of the rules by May 14, 1990.

The Commission received written comments by the May 14 deadline from Nothern States Power (NSP), Minnegasco and Otter Tail Power Company. The Commission also received oral comment from the Department. These comments were reviewed by Commission staff and the Commission. The proposed rules reflect many of the suggestions offered in these comments.

II. STATEMENT OF COMMISSION'S STATUTORY AUTHORITY

The Commission's statutory authority to adopt the rules is set forth in Minn. Stat. §§ 216B.241, subd. 2 (Supp. 1989) and 216B.08 (1988). Section 216B.241, as amended in 1989, permits parties to petition the Commission for modification or rejection of a Department decision to require a conservation improvement program. This section does not, however, set forth procedures and timelines for these appeals. Nevertheless, section 216B.08 gives the Commission broad authority to adopt rules that further the purposes of chapter 216B. This necessarily includes the authority to prescribe the procedures needed to implement a statutorily mandated responsibility under chapter 216B. Section 216B.08, therefore, provides authority to adopt procedural rules needed to implement the Commission's responsibility over CIP appeals under section 216B.241, subd. 2.

III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1988) requires the Commission to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the Commission must set forth the reasons for its proposal, and the reasons must not be arbitrary or capricious.

However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reasonableness means that the solution proposed by the Commission is appropriate. The need for the rules is discussed below.

Minn. Stat. § 216B.241 provides for appeals to the Commission when a party is dissatisfied with a Department CIP decision. The statute does not, however, set forth procedures to govern these appeals. The statute provides no deadlines for filing appeal petitions or comments responding to petitions. Moreover, the statute does not specify who must be served with the petition and subsequent comments. The Commission cannot implement its appeal authority efficiently and fairly without established filing deadlines and service requirements. The proposed rules establish necessary filing and service requirements. As such, the rules provide the specificity needed to enable the Commission to carry out its statutory responsibility to hear and decide CIP appeals.

IV. STATEMENT OF REASONABLENESS

The Commission is required by Minn. Stat. ch. 14 (1988) to make an affirmative presentation of facts establishing the reasonableness of its proposed rules. Reasonableness is the

opposite of arbitrariness or capriciousness. It means that there is a rational basis for the Commission's proposed action. However, the proposed rules need not be the most reasonable solution to the situation which created the need for a rules. The proposed rules are not unreasonable simply because a more reasonable alternative exist or a better job of drafting might have been done.

Nevertheless, for the reasons given below, the Commission believes that its proposed rules are the most reasonable approach to the issues presented based on its own experience and expertise and comments from interested persons.

7840.1500 RIGHT OF APPEAL.

This rule part identifies the parties entitled to appeal a Department CIP decision and specifies that an appellant may ask the Commisson to modify or reject that decision. The rule implements and clarifies Minn. Stat. § 216B.241, subd. 2, which specifically permits a utility, a political subdivision, or a nonprofit or community organization that has suggested a conservation improvement program, or the attorney general acting on behalf of consumers and small business interests, to petition the Commission to "modify or revoke a department decision . . . ." The language in this rule part differs slightly from the statute in two respects. First, it clarifies the phrase "suggested a program" to include both the proposal of a program and the filing of comments on a proposed program under the Department's CIP rules. Second, the rule part uses the term "reject" instead of the word "revoke" when referring to the specific actions the Commission can take as final disposition of a CIP appeal.

Who may appeal.

NSP recommended in its May 14, 1990 comments that the rules interpret the phrase "suggested a program" to mean the formal proposal of a program under the Department's CIP rules. This would limit the right of appeal to the following: (1) the attorney general acting on behalf of consumers and small business interests; (2) a utility that has proposed a conservation improvement program under part 7690.0500; and (3) a political subdivision or nonprofit or community organization that proposed an alternative program under part 7690.0900. The plain language of the statute is not so limiting.

The legislature could have used the term "proposed" in defining the right of appeal on CIP matters. Its use of the term "suggested" indicates an intent to allow broader access to the appellate process than NSP's recommended language would permit. This broader access is particularly important to nonprofit and community organizations which may lack the time and resources needed to comply with all of the detailed requirements involved

in filing formal CIP proposals. See Minn. Rules, part 7690.0500, subp. 2. Many of these organization may, nonetheless, have substantial interests in the final outcome of the CIP process and may participate in the process short of proposing alternative programs in the manner required by Department rules. These organizations may file extensive comments on a CIP proposal and may consult directly with the utilities or other parties that file program proposals.

The language in the proposed rule part allows any party listed in the statute to appeal if it has proposed a program or submitted comments under the Department's CIP rules. This is consistent with the legislature's intent to permit appeals by the entities named in the statute. The legislature is presumed to intend a statute that is effective and certain in its entirety. Minn. Stat. § 645.17. It is also presumed to intend reasonable results that can be executed. Id. The legislature must, therefore, have intended that all the entities named in the statute as eligible to appeal a Department CIP decision would have a reasonable opportunity to do so. The rule ensures this opportunity by conditioning the right of appeal on a level of involvement that is practical for nonprofit and community organizations.

The Commission considered incorporating the statute's phrase "suggested a program" into the rule to define the right of appeal. This phrase, however, is too vague to implement. Granting the right of appeal to those who have commented in accordance with the Department's rules is a reasonable interpretation of the phrase used in the statute. A party that comments on a CIP proposal is, essentially, "suggesting" an alternative program. A comment critical of a proposed program is really suggesting a program minus the features being criticized. A comment that supports a proposed program is, in effect, suggesting the very program it is commenting upon.

Given the Commission's authority to remake the Department's CIP decision, it would make little sense to give parties the opportunity to comment during the CIP process but deny the opportunity to appeal the results of that process. There is no reason to assume that a party's interest in a CIP proceeding will disappear when the Department's final CIP decision is issued. Requiring parties to file extensive formal proposals to obtain standing to appeal would direct scarce resources unwisely into needless formality and detail. It would place the method of a party's involvement in the process above the interests the party has at stake in the process. Nonprofit and community organizations have historically participated in the CIP process by commenting upon the formal proposals of utilities. This rule part is consistent with that reality.

Use of term "reject" in place of "revoke."

The term "revoke" generally refers to the withdrawal of a license or some other form of permission. The CIP process is not a licensing or permit process. Therefore, a Commission action to overturn a Department decision is more appropriately characterized as a rejection of the decision.

7840.1600 TIMELINESS OF APPEAL.

This rule part requires the filing of an appeal petition within 20 days after the Department issues the decision being appealed. This rule part also provides that a petition is considered filed when received at the Commission offices during normal business hours.

A time limit is needed to prevent any undue delay in the CIP process. The 20 day period allows sufficient time for a party to decide whether to appeal and assemble supporting documentation. The 20 day period is the same period allowed to file a petition for rehearing with the Commission under Minn. Stat. § 216B.27, subd. 1 (1988). A petition for rehearing is analogous to the petition appealing a CIP decision. In both instances, the petition is challenging a decision which has already been made on a well-developed. In the case of a CIP appeal, most of the information a party may wish to provide to the Commission will already have been developed in the CIP process. The 20 day time frame has worked well in the rehearing context. Parties should be accustomed to and have little difficulty complying with this time limit in the context of a CIP appeal.

Considering the petition filed when received at the Commission offices during normal business hours is consistent with standards of administrative law and with both current and past Commission practice.

7840.1700 CONTENTS OF PETITION AND SUPPORTING DOCUMENTATION.

This rule part requires that a petition appealing a CIP decision comply with the Commission's rule of practice and procedure governing petitions (part 7830.2100) and that the petitioner provide the Commission with 15 copies of the petition. This rule part also requires that the petition include a copy of the Department's written decision being appealed and all relevant written materials not already provided to the Commission. The rule part permits the petitioner to incorporate by reference any relevant documents already provided to the Commission.

Requiring compliance with part 7830.2100 of the rules of practice and procedure ensures that a petition filed under these proposed rules will provide the necessary information consistent with petitions filed on other matters. Requiring 15 copies of

petition is consistent with the regular practice of the Commission. The 15 copies are needed to ensure that each Commissioner and appropriate staff have copies.

Requiring attachment of the Department's written decision and all relevant written materials not already provided to the Commission enables the Commission to determine whether the petition, on its face, makes a reasonable argument that the program being appealed is not in the public interest. This is the threshold determination that the Commission must make under Minn. Stat. § 216B.241, subd. 2 (Supp. 1989). Section 216B.241, subd. 2 requires the Commission to reject a petition that fails to make this showing.

7840.1800 SERVICE OF PETITION.

This rule part requires the petitioner to serve the petition and accompanying documents, simultaneous with filing, on persons who were served with the Department's proposed decision under part 7690.1000, subp. 2. The Department's proposed decision is served on the utility, any person who submitted a comment under part 7690.0900, and other persons the Department believes are interested in the public utility's conservation improvement program.

Requiring service of the appeal petition on the parties served with the Department's written decision helps ensure that all those who have shown an interest in the outcome of a CIP proceeding have the opportunity to participate in the appeal. The Commission is authorized to reject or modify a conservation improvement program ordered by the Department. Given the Commission's authority to modify or reject the Department's CIP decision, it would make little sense to give parties the opportunity to comment during the CIP process but deny that same opportunity on appeal. There is no reason to assume that a party's interest in a CIP proceeding will disappear when an appeal is filed. This rule part helps parties protect their interests throughout the CIP process.

Requiring service of the petition to be simultaneous with its filing provides a date certain for service. This helps ensure that no party is substantially disadvantaged in the appeal by being served later than other parties. The simultaneous service requirement also helps ensure that parties have sufficient time to formulate and submit comments on the petition, allowing parties the benefit of the entire 15 day period which runs from the date of filing.

7840.1900 COMMENTS IN RESPONSE TO PETITION.

This rule part permits any person to submit written comments replying to the appeal petition, but requires that the comments

be filed with the Commission within 15 days after the deadline for filing the petition. Allowing any person to submit comments ensures that all interested persons have the opportunity to provide input that may help the Commission decide an appeal.

The 15 day deadline provides adequate time for comment without unduly delaying resolution of the appeal. The Department's CIP rules give parties 45 days to submit written comments on a public utility's program and to submit alternative projects. The Department's rules then provide 30 days for responses to any written comments or alternative projects submitted. Parties, therefore, have a substantial amount of time to develop detailed positions on the issues involved in the CIP process. The material and issues relevant on appeal should be identical or very similar to the material and issues addressed in the CIP process before appeal. Therefore, parties should be able to prepare and submit comments on appeal in less than the time allotted for comment during the initial CIP process. The 15 day period was contained in draft rules published and mailed along with the notice soliciting public comment. None of the commentators objected to the 15 day time frame for comment identified in this rule part.

7840.2000 COMMISSION DECISION.

This rule part (1) identifies the burden of proof and decision criteria governing CIP appeals, (2) provides a process for filing supplemental information with the Commission when the petition and comments are insufficient to support a decision, and (3) specifies what the Commission may order in its final disposition of the appeal.

Subpart 1. Burden of proof and decision criteria.

This subpart provides that the petitioner has the burden of proof on appeal. To obtain a decision in its favor, the petitioner must establish that the Department's decision (1) will result in a conservation improvement program that is ineffective, (2) does not adequately address the needs of renters and low-income persons, or (3) is otherwise not in the public interest. This subpart merely incorporates the relevant language in Minn. Stat. § 216B.241, subd. 2 (Supp. 1989). Incorporating this language in this subpart helps ensure that the burden of proof and decision criteria mandated by statute are applied. It eliminates the need to refer directly to statute when implementing the rules.

Subpart 2. Insufficient information.

This subpart requires the Commission to issue an order requiring supplemental filings when the Commission determines that the information provided in the petition and comments

responding to the petition are insufficient to support a final decision. The supplemental information must be filed and served on the Department, the utility and other parties who filed comments replying to the petition within 15 days after the Commission issues its order requiring supplemental filings.

This subpart also permits comments responding to the supplemental filings. These comments must be filed with the Commission and served on the Department, the utility and the persons who filed supplemental information within 15 days after the deadline for supplemental filings.

The supplemental filing requirement is needed to provide the Commission with a mechanism to ensure that its decision is fully informed and just. Providing an opportunity for responsive comments under this subpart is consistent with the rest of the CIP process. For example, the Department's CIP rules allow responsive comments and part 7840.1900 of these proposed rules allow the same. The 15 day period for supplemental filings and comments responding to these filings is identical to the period allowed for comments responding to the petition. An earlier draft of this rule part allowed 14 days for the supplemental filing and 10 days for responsive comments. These time frames were changed to 15 days in response to public comment which urged uniformity in the various time frames prescribed in the rule. Changing both of the time periods in this subpart to 15 days is consistent with proposed part 7840.1900 which allows 15 days for comments responding to the appeal petition. Public comment did not object to the 15 day time period for responsive comments under part 7840.1900. Fifteen days should, therefore, be acceptable to affected members of the public in the context of supplemental filings as well.

Subpart 3. Final disposition.

This subpart requires the Commission to issue an order which accepts, rejects or modifies the Department's decision, or which orders a contested case under Minn. Stat. ch. 14. This is consistent with Minn. Stat. § 216B.241, subd. 2 (Supp. 1989) which provides that the Commission may "modify or revoke a department decision to require a program." It is also consistent with Minn. Stat. ch. 14 which provides for a contested case where genuine issues of material fact are present requiring a full evidentiary hearing.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1988) requires the Commission, when proposing rules which may affect small business, to consider the following methods for reducing the impact on small businesses:

(a) the establishment of less stringent compliance or reporting requirements for small businesses;

(b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(c) the consolidation or simplification of compliance or reporting requirements for small businesses;

(d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and

(e) the exemption of small businesses from any or all requirements of the rule.

Minn. Stat. § 14.115, subd. 1 (Supp. 1989) defines small business as:

> For purposes of this section, "small business" means a business entity, including farming and other agricultural operations and its affiliates that (a) is independently owned and operated; (b) is not dominant in its field; and (c) employs fewer than 50 full-time employees or has gross annual sales of less than $4,000,000. For purposes of a specific rule, an agency may define small business to include more employees if necessary to adapt the rule to the needs and problems of small businesses.

The proposed rules may affect small businesses as defined in Minn. Stat. § 14.115 (Supp. 1989). The small businesses that may be affected are the small electric and gas utilities. As a result, the Commission has considered the above-listed methods for reducing the impact of the rules on small businesses.

Methods (a), (b), and (c) address compliance and reporting requirements. The proposed rules do not contain any compliance and reporting requirements. The rules do require parties who wish to appeal a Department CIP decision to file a petition with the Commission and to serve the petition on parties involved CIP process. The rules also establish certain time frames for the filing and service of an appeal petition and responsive comments. These requirements are basic essentials of any appeal process and cannot be applied selectively to some parties and not others without rendering the process unfair or unworkable. The rules do permit service by mail. This will benefit small utilities that do not have the resources to execute personal service throughout the state. The other requirements and time frames are reasonable and will not impose any undue hardship on small utilities. If an

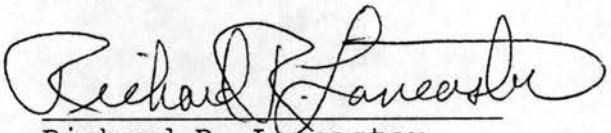
undue hardship would result in any particular case, a party can always seek a variance under Minn. Rules, part 7830.4400.

Method (d) does not apply to the proposed rules because the rules do not contain design or operational standards.

Method (e) addresses the exemption of small businesses from any or all rule requirements. Since the requirements in these rules are not overly burdensome, there is no need to exempt small businesses from them. Moreover, as indicated above, the requirements are essential components of a reasonable appeal process. Exempting small utilities from the procedures established in these rules would leave them without a process through which they could exercise their appeal rights under Minn. Stat. § 216B.241, subd. 2 (Supp. 1989).

VI. CONCLUSION

Based on the foregoing, the proposed Minn. Rules, parts 7840.1500 to 7840.2000 are both needed and reasonable.



Richard R. Lancaster
Executive Secretary

Proposed Rules

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

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

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

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

Public Utilities Commission

Proposed Permanent Rules Relating to Conservation Improvement Program Appeals

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Public Utilities Commission (Commission) intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing, *Minnesota Statutes* §§ 14.22 to 14.28 (1988). The Commission's authority to adopt the rules is set forth in *Minnesota Statutes* §§ 216B.241, subd. 2 (Supp. 1989) and 216B.08 (1988).

All persons have until 4:30 p.m. on September 5, 1990, to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. **PLEASE USE DOCKET NO. G,E-999/R-90-132 ON ALL CORRESPONDENCE.**

Any person may make a written request for a public hearing on the rules within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed.

If a public hearing is required, the Commission will proceed pursuant to *Minnesota Statutes* §§ 14.131 to 14.20 (1988).

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

Dan Lipschultz
Minnesota Public Utilities Commission
780 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 296-9617

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

The proposed rules, if adopted, will establish procedures and standards governing appeals to the Commission seeking the rejection or modification of a Department of Public Service decision regarding a conservation improvement program. The proposed rules are published below. One free copy of the rules is available upon request from the Commission by contacting the Commission's receptionist, Kris Kline, at the above address or by calling (612) 296-7124.

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 the Commission by contacting the Commission's receptionist, Kris Kline, at the above address or by calling (612) 296-7124.

YOU ARE HEREBY ADVISED, pursuant to *Minnesota Statutes* § 14.115 (Supp. 1989), "small business considerations in rulemaking," that the proposed rules may affect small businesses. The small businesses potentially affected by these rules are small electric and gas utilities. These smaller utilities will be governed by the same appeal procedures as larger utilities.

The adoption of these rules by the Commission will not require the expenditure of public money by local public bodies or have a direct impact on agricultural land. Therefore, *Minnesota Statutes* § 14.11 (1988) is not applicable to this rulemaking proceeding.

If no hearing is required, upon adoption of the rules, the rules and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent 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 rules submitted to the Attorney General, must submit a written request to Dan Lipschultz at the above address.

Dated: 23 July 1990

Richard R. Lancaster
Executive Secretary

Rules as Proposed (all new material)

CONSERVATION IMPROVEMENT PROGRAM APPEALS

7840.1500 RIGHT OF APPEAL.

A utility, a political subdivision, or a nonprofit or community organization that has proposed, or filed comments on, a conservation improvement program under part 7690.0500 or 7690.0900, or the attorney general acting on behalf of consumers and small business interests, may petition the Public Utilities Commission to modify or reject a Department of Public Service decision under part 7690.1300 or 7690.1400 regarding a conservation improvement program.

7840.1600 TIMELINESS OF APPEAL.

A petition challenging a department decision under part 7690.1300 or 7690.1400 must be filed with the Public Utilities Commission within 20 days after the department's decision. A petition is considered filed when received at the commission offices during normal business hours.

7840.1700 CONTENTS OF PETITION AND SUPPORTING DOCUMENTATION.

A petition filed under part 7840.1500 must comply with part 7830.2100, except that the petitioner shall provide the Public Utilities Commission with 15 copies of the petition. The petition must include as attachments a copy of the Department of Public Service's written decision being challenged and the relevant written materials not already provided to the commission. The petition may incorporate by reference the relevant documents that have already been provided to the commission.

7840.1800 SERVICE OF PETITION.

The petition and accompanying documents must be served on the Department of Public Service and the persons who were served with the department's proposed decision under part 7690.1000, subpart 2. Service may be in person or by mail and must be simultaneous with the filing of the petition.

7840.1900 COMMENTS IN RESPONSE TO PETITION.

A person may submit written comments replying to the petition filed under part 7840.1500. These comments must be filed with the Public Utilities Commission within 15 days after the deadline for filing under part 7840.1600.

7840.2000 COMMISSION DECISION.

Subpart 1. **Burden of proof and decision criteria.** The petitioner has the burden of proving that the decision of the Department of Public Service will result in a conservation improvement program that is ineffective, does not adequately address the needs of renters and low-income persons, or is otherwise not in the public interest. The Public Utilities Commission shall sustain the department's decision if the petitioner fails to meet this burden.

Subp. 2. **Insufficient information.** On determining that more information is needed before issuing a decision on the merits of the petition, the commission shall issue an order requiring supplemental filings. The supplemental information must be filed with the commission and served on the department, the utility, and other parties who filed comments replying to the petition. The supplemental information must be filed and served within 15 days after the commission issues its order under this subpart unless otherwise ordered by the commission. The responses, if any, to the supplemental filings must be filed with the commission and served on the department, the utility, and the persons who filed supplemental information within 15 days after the deadline for supplemental filings.

Subp. 3. **Final disposition.** After review of the petition and comments, the commission shall issue an order that accepts, rejects, or modifies the department's decision, or that orders a contested case under *Minnesota Statutes*, chapter 14.

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.

ROSELLEN
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Northern States Power Company
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RECEIVED
SEP 05 1990
MINNESOTA PUBLIC UTILITIES COMMISSION

September 5, 1990

Mr. Dan Lipschultz
Minnesota Public Utilities Commission
780 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

RE: Proposed Permanent Rules Relating to Conservation Improvement Program Appeals, Docket No. G,E-999/R-90-132

Dear Mr. Lipschultz:

Northern States Power Company ("NSP") appreciates the opportunity to comment on the Proposed Permanent Rules Relating to Conservation Improvement Program Appeals ("Proposed Rules"). NSP previously submitted written comments in response to the Commission's "Notice of Intent to Solicit Outside Information." Many of NSP's editorial suggestions were incorporated in the Proposed Rules. NSP believes the processing of this rule-making is an excellent example of how the rule-making process can work effectively through the efforts of the administrative agency (in this case the Commission) and interested parties.

General Comments

NSP supports (with the one minor editorial suggestion described below) the proposed rules and their expeditious adoption. The Rules are timely because gas and electric utilities recently submitted their first CIP filings since jurisdiction over CIP programs transferred from the Commission to the Department of Public Service. Although NSP expects few appeals will occur, it is appropriate that the ground rules be set forth before any appeals might be filed. NSP commends the Commission for its effort on this matter.

Specific Comments

Upon further review of the proposed rules, NSP would suggest one more editorial change as follows:

7840.2000 COMMISSION DECISION.

Subpart 1. Burden of Proof and decision criteria. The petitioner has the burden of proving that the decision of the Department of Public Service will result in a conservation improvement program that is ~~ineffective~~ not cost-effective, does not adequately address the needs of renters and low-income persons, or is otherwise not in the public interest. The Public Utilities Commission shall sustain the department's decision if the petitioner fails to meet this burden.

NSP suggests this change as a clarification of the Proposed Rule so it more closely incorporates the cost-effectiveness objective of Minn. Stat. 216B.241, Subd. 2. The use of the word "ineffective" in the Proposed Rule a proposed is vague because "ineffective" is not defined; the proposed change would remove that ambiguity because "cost effective" is defined in Minn. Stat. 216B.241 (Subd. 2). The proposed change is not a substantial change since it is a clarification of the proposed standard rather than a change of standards.

Conclusion

NSP strongly supports expeditious adoption of the Proposed Rules with the clarification described above. NSP appreciates this opportunity to comment.

Please contact me (330-7945) with any questions about these written comments.

Respectfully submitted,

Michael J. Hanson

Michael J. Hanson

cc: Tony Perpich, DPS

Commrs.
Diane S
Dan
Carol
Energy Supv.
Kevellen

Northern States Power Company
Law Department

Gary R. Johnson
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RECEIVED

MAY 14 1990

MINNESOTA PUBLIC UTILITIES COMMISSION

May 14, 1990

Ms. Diane Sorrells
Minnesota Public Utilities Commission
780 American Center Building
150 E. Kellogg Boulevard
St. Paul, Minnesota 55101

RE: Draft Rules Governing Conservation Improvement Program Appeals, Parts 7840.1500 to 7840.200
Docket No. G,E-999/R-90-132

Dear Ms. Sorrells:

The Minnesota Public Utilities Commission ("Commission") recently issued a "Notice of Intent to Solicit Outside Information in Preparing to Propose Rules Governing Conservation Improvement Program Appeals." The Commission requested comments to assist its preparation of the rules to govern CIP appeals. Northern States Power Company ("NSP") offers the following comments in response to the Commission's notice.

General Comments

NSP appreciates the Commission's effort to timely begin this rulemaking. The CIP process is important, and the transfer of CIP oversight authority to the Department of Public Service ("DPS") by 1989 Minnesota Laws, Chap. 338, Section 3, also mandates the need for these appeal rules under revised MSA Chapter 216B.241. Gas utilities recently submitted the first CIP programs subject to DPS jurisdiction. Although NSP expects few appeals for Commission review, it is appropriate to begin the rulemaking now so that rules are in place if there are appeals of DPS decisions issued later this year.

As part of its comments, NSP is attaching a "mark-up" draft of suggested changes to the draft rules. These proposed changes are submitted in the spirit of the notice request. NSP offers them as editorial suggestions that can make the final appeal rules more consistent with the language of 216B.241 and the DPS CIP rules. NSP believes these changes will also clarify some procedural ambiguities under the draft rules. NSP is willing to meet with Commission Staff to discuss any of the proposed changes at the Staff's convenience.

Specific Comments

The following discussion explains NSP's "mark-up" copy of the proposed rules, which is attached.

1. Rule 7840.1500

NSP proposes some minor editorial changes to this rule. The changes will clarify who is authorized to file an appeal: the utility that filed the CIP program, a proponent of an alternative CIP proposal, or the Office of Attorney General. NSP also suggests that "revoke" be changed to "reject" to be consistent with proposed part 7840.2000, subpart 3.

2. Rule 7840.1600

NSP suggests that this rule be modified so that the 20 day filing deadline begins to run with the issuance of the DPS decision. A mailing date deadline could be confusing because the mailing date would be on the mailing envelope, not the DPS decision document. The modification would also make the rule more consistent with standard administrative law practices.

3. Rule 7840.1700

NSP suggests modifications to shorten the rule without changing it substantively. The suggested change also allows (rather than mandates) that appeal petitioners incorporate certain information by reference.

4. Rule 7840.1800

NSP suggests that "must" be changed to "shall" to clarify the mandatory nature of service.

5. Rule 7840.1900

NSP suggests certain editorial changes to clarify the content of reply comments and clarify that the reply comments are due 15 days after the petition is filed rather than 15 days after the party receives a copy of the petition.

6. Rule 7840.2000, Subpart 2

NSP suggests a few editorial changes to clarify the procedures for the filing of supplemental information. Under the rule as presently drafted, it is not obvious that the CIP utility and DPS would be served a copy of the supplemental data.

7. Rule 7840.2000, Subpart 3

The most signficant substantive changed proposed by NSP is in Rule 7840.2000, Subp. 3. NSP suggests that the Commission impose upon itself a 75 day deadline for acting on appeals. NSP believes such a deadline is good policy because of the nature of the CIP process, which involves program proposals and approvals. Programs generally will not be implemented until final approval by the DPS. An appeal may place that approval in question, so delays in Commission decisions could mean delays in program implementation. Timeliness is important for all concerned.

NSP proposes a 75 day decision period, to take into account the possibility of reply comments and supplemental filings. NSP believes in most cases the Commission will be able to issue a decision in less than 75 days. However, the proposed 75 day period allows 15 days for filing reply comments, 30 days for filing supplemental filings and responses, and another 30 days for the Commission to review the petition and accompanying materials and issue a decision. NSP expects that appeals will involve specific aspects of individual CIP projects, rather than overall utility CIP programs. The scope of the decision is thus likely to be fairly narrow, and 75 days should be sufficient.

In the case where a decision is not possible within 75 days, the proposed change allows the Commission to extend the decision period for good cause.

Conclusion

NSP appreciates the Commission's timely effort to begin the process of issuing appeal rules. NSP also appreciates the opportunity to comment on the draft rules. Like the Commission, NSP wants the final rules to avoid procedural ambiguities and make the appeal process as simple and timely as possible. NSP is willing to discuss any of the proposed changes with the Commission Staff at Staff's convenience.

Please call me (330-7945) with any questions about NSP's proposed changes or NSP's written comments. Thank you.

Sincerely,

/s/ Michael J. Hanson

Michael J. Hanson
Attorney
414 Nicollet Mall
Minneapolis, MN 55401

PROPOSED NSP AMENDMENTS TO CIP APPEAL RULES

CONSERVATION IMPROVEMENT PROGRAM APPEALS

7840.1500 RIGHT OF APPEAL

Any interested person, including the ~~a~~ utility that proposed a conservation improvement program under Part 7690.0500, a political subdivision or ~~a~~ nonprofit or community organization that ~~has suggested~~ proposed an alternative proposal under part 7690.0900, or the attorney general acting on behalf of consumers and small business interests, may petition the commission to modify or reject ~~revoke~~ a department decision under part 7690.1300 or part 7690.1400 regarding a conservation improvement program.

7840.1600 TIMELINESS OF APPEAL

A petition challenging a department decision under part 7690.1300 or part 7690.1400 must be filed with the commission within 20 days after the department's decision. ~~is mailed.~~ A petition is considered filed when received at ~~in~~ the commission offices during normal business hours.

7840.1700 CONTENTS OF PETITION AND SUPPORTING DOCUMENTATION

A petition filed under part 7840.1500 must comply with part 7830.2100, except that the petitioner shall provide the commission with 15 copies of the petition. The petition must include as attachments a copy of the department's written decision being challenged and all relevant written materials not already provided to the commission. ~~that the petitioner believes are relevant to the dispute.~~ The petition may must incorporate by reference any relevant documents ~~it believes are relevant to the dispute but~~ which have already been provided to the commission.

7840.1900 SERVICE OF PETITION

The petition and accompanying documents shall ~~must~~ be served on the department and all persons who were served with the department's proposed decision as provided under 7690.1000, subpart 2. Service may be in person or by mail and shall ~~must~~ be contemporaneous with the filing of the petition with the commission.

7840.1900 COMMENTS IN RESPONSE TO PETITION

Any interested person may submit written comments replying to the petition filed under part 7840.1500. These comments must be filed within 15 days after the petition is filed ~~received~~.

7840.2000 COMMISSION DECISION

Subpart 1. [No changes.]

Subp. 2. Insufficient Information. If the Commission determines that more information is needed before issuing a decision on the merits of the petition, the commission shall issue an order requiring supplemental filings. The additional filings must be served on the commission, the department, the utility, and other ~~the~~ parties ~~on~~ who~~m~~ filed comments replying to the petition. The additional filings must be served within 14 day after the commission issues its order under this subpart unless otherwise ordered by the commission. Any responses by interested persons to the supplemental filings must be served on the commission, the department, the utility, and the person(s) who filed supplemental filings within 10 days after filing ~~receipt~~ of the supplemental filings.

Subp. 3. Final disposition. After review of the petition, reply ~~and~~ comments, and any supplemental filings, the commission shall issue an order which accepts, rejects or modifies the department's decision, or which orders a contested case under Minnesota Statutes, chapter 14. The commission shall issue its order within 75 days of the petition unless the commission for good cause extends the decision period. If the commission does not issue an order within 75 days, the petition is deemed denied.

Otter Tail
POWER COMPANY

215 SOUTH CASCADE STREET
P.O. BOX 496
FERGUS FALLS, MN 56538-0496
218-739-8200

May 15, 1990

RECEIVED
MAY 16 1990
MINNESOTA PUBLIC
UTILITIES COMMISSION

Diane Sorrells
Minnesota Public Utilities Commission
780 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101

Dear Ms. Sorrells:

Otter Tail Power has reviewed the Proposed Rules Governing Conservation Improvement Program Appeals, Minnesota Rules, parts 7840.1500 to 7840.2000, Docket No. G,E-999?R-90-132, and finds these rules to be acceptable.

The Company feels it is extremely critical to the Conservation Improvement Program that the appeals authority remain under the jurisdiction of the Commission.

Sincerely,

Ceedy Mewszel/skh

Ceedy Mewszel, Manager
Energy Management Programs

cc: Jay Myster
Bill Giesen

Minnegasco
A Company of Diversified Energies, Inc.

April 26, 1990

RECEIVED
MAY 04 1990
MINNESOTA PUBLIC UTILITIES COMMISSION

Ms. Diane Sorrells
Minnesota Public Utilities Commission
780 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101

Re: Notice of Intent to Solicit Outside Information in Preparing to Propose Rules Governing Conservation Improvement program Appeals, Minnesota Rules, parts 7840.1500 to 7840.2000, Docket No. G,E-999/R-90-132

Dear Ms. Sorrells:

Thank you for the opportunity to comment on the Commission's proposed permanent rules relating to Conservation Improvement Program appeals. Minnegasco concurs with the proposed rules in general and believes the proposed rules reflect the intent and direction of the legislation. Minnegasco would, however, like to suggest a few minor changes to add clarification to the proposed rules.

Parts 7840.1500 - 7840.1700: No changes are suggested.

Part 7840.1800, Service of Petition. Minnegasco suggests the word "simultaneous" instead of "contemporaneous" in the last sentence. According to the dictionary, "contemporaneous" has a "basic sense usually with reference to an age or period"[1] while "simultaneous" "more narrowly specifies occurence of events at the same point in time."[2]

Part 7840.1900, Comments in Response to Petition. Minnegasco suggests the words "by the Commission" be added to the last sentence, thereby amending the last sentence to read: "These comments must be filed with the Commission within 15 days after the petition is received by the Commission." This would clarify the point at which the counting of days begins.

General Comments:

It is Minnegasco's understanding that the appeals process is being proposed with the following time lines:

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[1] The American Heritage Dictionary

[2] Ibid.

201 South Seventh Street
Minneapolis, MN 55402

Action	Time Line
DPS decision is mailed	
Petition filed with Commission	Within 20 days of mailing of DPS decision
Written comments on petition	Within 15 days after petition is filed with the Commission
Commission Order requesting additional information if appropriate	
Additional information due	Within 14 days of date of Commission Order
Comments on additional information	Within 10 days after additional information is filed with the Commission
Commission decision	

Assuming Minnegasco's understanding of the time line to be correct, Minnegasco would like to suggest one minor modification to simplify the process. There are currently four different timeframes -- 20, 15, 14, and 10 day timeframes. The number of timeframes in the process should be set at a maximum of two. For instance, petitioners may be allowed 20 days in which to file the appeal and all other steps may be allowed 15 days.

Minnegasco also requests clarification on the process. Does the timeframe begin and end by the date of action or by the number of days in the time frame? For instance, if the Commission orders additional information and that additional information is provided in 5 days rather than 14 days, does the 10 day comment period start on the 6th day rather than the 15th day after the Commission Order?

If you have any questions, please feel free to call Sue Nathan at 342-4939 or me.

Sincerely,

Dawn Reimer

Dawn Reimer
Manager, Revenue Requirements
and Regulatory Administration

AUTHORIZATION TO PROCEED WITH ADOPTION
OF RULES WITHOUT A PUBLIC HEARING
Docket No. G,E-999/R-90-132

BE IT RESOLVED, that the Executive Secretary of the Minnesota Public Utilities Commission (Commission) is hereby granted the authority to sign and to give notice of the Commission's intent to adopt, without a public hearing, the attached rules governing conservation improvement program appeals, Minn. Rules, parts 7840.1500 to 7840.2000 to all persons who have registered their names with the Commission for that purpose, to publish the notice and the rules in the State Register, and to perform any acts incidental thereto, including making any form changes in the rules that the Revisor of Statutes requires the Commission to make in order to obtain the Revisor's certification under Minn. Stat. § 14.07, subd. 2.

BE IT FURTHER RESOLVED, that in the event a public hearing becomes necessary, the Executive Secretary is hereby granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as to perform any and all acts incidental thereto, including but not limited to signing an Order for and Notice of Hearing, as well as acting as the Commission's representative at all hearings.

Darrel L. Peterson

Darrel Peterson
Chair

The Minnesota Department of Labor and Industry, Code Enforcement High Pressure Piping Division, requests information and opinions concerning the subject matter of these rules. Interested or affected persons or groups may submit data or views on the subject matter of concern. Written statements should be addressed to:

Linda Finney, Assistant Commissioner
Department of Labor and Industry
4th Floor, 443 Lafayette Road
St. Paul, Minnesota 55155-4304

Any written material received by the Minnesota Department of Labor and Industry, Code Enforcement High Pressure Piping Division shall become part of the rulemaking record to be submitted to the Attorney General or Administrative Law Judge in the event that the amendments to the rules are adopted.

Information and opinions will be accepted until further notice or until the proposed rules are published in the *State Register.*

Dated: 16 March 1990

Ken Peterson, Commissioner
Department of Labor and Industry

Department of Public Safety

Emergency Response Commission

Announcement of a Meeting for Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing Hazardous Chemical Reporting Fees

NOTICE IS HEREBY GIVEN that the Emergency Response Commission is conducting a meeting on May 10 at 1:00 p.m. in Room G-15 of the State Capitol in order to seek information and/or opinions for the adoption of the rule setting fees for hazardous chemical reporting. The fees as proposed are to be paid by a facility when the owner or operator submits its emergency and hazardous chemical inventory form as required under section 11022 of the federal Emergency Planning and Community Right to Know Act, *United States Code,* title 42. *Minnesota Statutes,* section 229 K.09 requires the agency to adopt rules to establish a fee to cover the costs for all data management, including administration of fees, by the commission and regional review committees.

The Emergency Response Commission requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views at the meeting or in writing to the Office of the Commission. Written statements should be addressed to:

Minnesota Emergency Response Commission
290 Bigelow Building
450 North Syndicate Street
St. Paul, Minnesota 55104

An information paper about the fees is available through the Office of the Commission (612) 643-3000.

Any written material received by the Department of Public Safety, Emergency Response Commission shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Minnesota Public Utilities Commission

Notice of Intent to Solicit Outside Information in Preparing to Propose Rules Governing Conservation Improvement Programs Appeals, *Minnesota Rules*, parts 7840.1500 to 7840.2000, Docket No. G,E-999/R-90-132

NOTICE IS HEREBY GIVEN that the Minnesota Public Utilities Commission (Commission) is seeking information or opinions from outside sources in preparing to propose the adoption of rules governing conservation improvement program appeals. A preliminary draft of these rules is published below. The adoption of these rules is authorized by *Minnesota Statutes*, sections 216B.08, 216B.09 (1988) and section 216B.241, subdivision 2 (Supp. 1989).

The Commission requests information and opinions concerning the subject matter of the rules. Interested persons or groups may submit data or views in writing or orally. Written statements or comments should be directed to:

Diane Sorrells
Minnesota Public Utilities Commission
780 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101
(612) 297-4563

Oral statements or comments will be received during regular business hours, 8:00 a.m. to 4:30 p.m., Monday through Friday.

All statements of information and opinion will be accepted until 4:30 p.m. on May 14, 1990. Any written materials that the Commission receives by the above deadline shall become part of the rulemaking record to be submitted to the attorney general under *Minnesota Rules*, part 2010.0300, item L or the administrative law judge under *Minnesota Rules*, part 1400.0600, item F.

Lee Larson
Acting Executive Secretary

Preliminary Draft Rules (All new material) **Dated: 4/2/90**

CONSERVATION IMPROVEMENT PROGRAM APPEALS

7840.1500 RIGHT OF APPEAL.

Any interested person, including a utility, a political subdivision, a nonprofit or community organization that has suggested a conservation improvement program, or the attorney general acting on behalf of consumers and small business interests, may petition the commission to modify or revoke a department decision under part 7690.1300 or part 7690.1400 regarding a conservation improvement program.

7840.1600 TIMELINESS OF APPEAL.

A petition challenging a department decision under part 7690.1300 or part 7690.1400 must be filed with the commission within 20 days after the department's decision is mailed. A petition is considered filed when received in the commission offices during normal business hours.

7840.1700 CONTENTS OF PETITION AND SUPPORTING DOCUMENTATION.

A petition filed under part 7840.1500 must comply with part 7830.2100, except that the petitioner shall provide the commission with 15 copies of the petition. The petition must include as attachments a copy of the department's written decision being challenged and all written materials not already provided to the commission that the petitioner believes are relevant to the dispute. The petition must incorporate by reference any documents it believes are relevant to the dispute but which have already been provided to the commission.

7840.1800 SERVICE OF PETITION.

The petition and accompanying documents must be served on all persons who were served with the department's proposed decision as provided under part 7690.1000, subpart 2. Service may be in person or by mail and must be contemporaneous with the filing with the commission.

7840.1900 COMMENTS IN RESPONSE TO PETITION.

Any person may submit written comments on the petition filed under part 7840.1500. These comments must be filed with the commission within 15 days after the petition is received.

7840.2000 COMMISSION DECISION.

Subpart 1. **Burden of proof and decision criteria.** The petitioner has the burden of proving that the department's decision will result in a conservation improvement program that is ineffective, does not adequately address the needs of renters and low-income persons, or is otherwise not in the public interest. The commission shall sustain the department's decision if the petitioner fails to meet this burden.

Subp. 2. **Insufficient information.** If the commission determines that more information is needed before issuing a decision on the merits of the petition, the commission shall issue an order requiring supplemental filings. The additional filings must be served on the commission and the parties on whom the petition was initially served. The additional filings must be served within 14 days after the commission issues its order under this subpart unless otherwise ordered by the commission. Any responses by interested persons to the supplemental filings must be served on the commission and the persons who filed supplemental filings within 10 days after receipt of the supplemental filings.

Subp. 3. **Final disposition.** After review of the petition and comments the commission shall issue an order which accepts, rejects or modifies the department's decision, or which orders a contested case under *Minnesota Statutes*, chapter 14.

CERTIFICATE OF RESOLUTION ADOPTING RULES

Docket No. G,E-999/R-90-132

I, Richard R. Lancaster, do hereby certify that I am the Executive Secretary of the Minnesota Public Utilities Commission (Commission), an agency 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 Commission duly and properly called and held on the 25th day of September, 1990, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified:

> BE IT RESOLVED, that the Minnesota Public Utilities Commission (Commission) hereby approves and adopts the rules governing conservation improvement program appeals, parts 7840.1500 to 7840.2000, pursuant to the authority vested in the Commission by Minn. Stat. § 216B.241, subd. 2 (Supp. 1989) and § 216B.08 (1988).
>
> BE IT FURTHER RESOLVED, that prior to publishing the rules as adopted in the State Register, the Executive Secretary is authorized to make any form changes in the rules that the Revisor of Statutes requires the Commission to make in order to obtain the Revisor's Certificate as required by Minn. Stat. § 14.28 (1988).
>
> BE IT FURTHER RESOLVED, that the Commission adopts the attached Findings of Fact, Conclusions, and Order Adopting Rules and that the Executive Secretary is hereby authorized to sign the above-mentioned document on behalf of the Commission and to perform the necessary acts to provide that the rules shall have the force and effect of law.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 26th day of September, 1990.

Richard R. Lancaster
Executive Secretary

RESOLUTION ADOPTING RULES

Docket No. G,E-999/R-90-132

BE IT RESOLVED, that the Minnesota Public Utilities Commission (Commission) hereby approves and adopts the rules governing conservation improvement program appeals, parts 7840.1500 to 7840.2000, pursuant to the authority vested in the Commission by Minn. Stat. § 216B.241, subd. 2 (Supp. 1989) and § 216B.08 (1988).

BE IT FURTHER RESOLVED, that prior to publishing the rules as adopted in the State Register, the Executive Secretary is authorized to make any form changes in the rules that the Revisor of Statutes requires the Commission to make in order to obtain the Revisor's Certificate as required by Minn. Stat. § 14.28 (1988).

BE IT FURTHER RESOLVED, that the Commission adopts the attached Findings of Fact, Conclusions, and Order Adopting Rules and that the Executive Secretary is hereby authorized to sign the above-mentioned document on behalf of the Commission and to perform the necessary acts to provide that the rules shall have the force and effect of law.

Officer of the Commission

Attest by one other Commission member

MINNESOTA PUBLIC UTILITIES COMMISSION

July 23, 1990

Minnesota Public Utilities Commission

Proposed Rules Governing Conservation Improvement Program Appeals, Minn. Rules, parts 7840.1500 to 7840.2000, Docket No. G,E-999/R-90-132.

Notice of Intent to Adopt Rules Without a Public Hearing

(1) Notice is hereby given that the Minnesota Public Utilities Commission (Commission) intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing, Minn. Stat. §§ 14.22 to 14.28 (1988). The Commission's authority to adopt the rules is set forth in Minn. Stat. §§ 216B.241, subd. 2 (Supp. 1989) and 216B.08 (1988).

(2) All persons have until 4:30 p.m. on September 5, 1990, to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. (3) Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. PLEASE USE DOCKET NO. G,E-999/R-90-132 ON ALL CORRESPONDENCE.

Any person may make a written request for a public hearing on the rules within the comment period. (4) If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. (6) Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed.

(7) If a public hearing is required, the Commission will proceed pursuant to Minn. Stat. §§ 14.131 to 14.20 (1988).

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

(5) Dan Lipschultz
Minnesota Public Utilities Commission
780 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 296-9617

AMERICAN CENTER BUILDING • KELLOGG AND ROBERT STS • SAINT PAUL, MN 55101

(8) The proposed rules may be modified if the modifications are supported by data and views submitted to the Commission and do not result in a substantial change in the proposed rules as noticed.

(11) The proposed rules, if adopted, will establish procedures and standards governing appeals to the Commission seeking the rejection or modification of a Department of Public Service decision regarding a conservation improvement program. The proposed rules are attached to this notice. One free copy of the rules is available upon request from the Commission by contacting the Commission's receptionist, Kris Kline, at the above address or by calling (612) 296-7124.

(12) 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 the Commission by contacting the Commission's receptionist, Kris Kline, at the above address or by calling (612) 296-7124.

(14) You are hereby advised, pursuant to Minn. Stat. § 14.115 (Supp. 1989), "small business considerations in rulemaking," that the proposed rules may affect small businesses. The small businesses potentially affected by these rules are small electric and gas utilities. These smaller utilities will be governed by the same appeal procedures as larger utilities.

(13) The adoption of these rules by the Commission will not require the expenditure of public money by local public bodies or have a direct impact on agricultural land. Therefore, Minn. Stat. § 14.11 (1988) is not applicable to this rulemaking proceeding.

(9) If no hearing is required, upon adoption of the rules, the rules and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent 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 rules submitted to the Attorney General, must submit a written request to Dan Lipschultz at the above address.

Richard R. Lancaster
Executive Secretary

STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

In the Matter of the Proposed Rules Governing Conservation Improvement Program Appeals, Minn. Rules, parts 7840.1500 to 7840.2000.

DOCKET NO. G,E-999/R-90-132

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

STATE OF MINNESOTA)

COUNTY OF RAMSEY)

Mary M. Diedrich, 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 (1988) that their names be placed on the Minnesota Public Utilities Commission's rulemaking mailing list is accurate, complete, and current as of this 1st day of August, 1990.

That on the 1st day of August, 1990, 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.

Mary M Diedrich

Subscribed and sworn to before me

this 1st day of August, 1990.

Deborah J. Smith
Notary Public



MINNESOTA PUBLIC UTILITIES COMMISSION

July 23, 1990

Minnesota Public Utilities Commission

Proposed Rules Governing Conservation Improvement Program Appeals, Minn. Rules, parts 7840.1500 to 7840.2000, Docket No. G,E-999/R-90-132.

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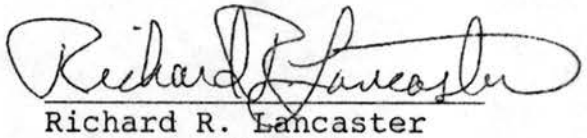

Richard R. Lancaster
Executive Secretary

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Conservation Improvement Program Appeals

AGENCY: Public Utilities Commission

MINNESOTA RULES: Chapter 7840

The attached rules are approved for publication in the State Register

Ron Ray
Senior Assistant Revisor

Public Utilities Commission

Proposed Permanent Rules Relating to Conservation Improvement Program Appeals

Rules as Proposed (all new material)

CONSERVATION IMPROVEMENT PROGRAM APPEALS

7840.1500 RIGHT OF APPEAL.

A utility, a political subdivision, or a nonprofit or community organization that has proposed, or filed comments on, a conservation improvement program under part 7690.0500 or 7690.0900, or the attorney general acting on behalf of consumers and small business interests, may petition the Public Utilities Commission to modify or reject a Department of Public Service decision under part 7690.1300 or 7690.1400 regarding a conservation improvement program.

7840.1600 TIMELINESS OF APPEAL.

A petition challenging a department decision under part 7690.1300 or 7690.1400 must be filed with the Public Utilities Commission within 20 days after the department's decision. A petition is considered filed when received at the commission offices during normal business hours.

7840.1700 CONTENTS OF PETITION AND SUPPORTING DOCUMENTATION.

A petition filed under part 7840.1500 must comply with part 7830.2100, except that the petitioner shall provide the Public Utilities Commission with 15 copies of the petition. The petition must include as attachments a copy of the Department of Public Service's written decision being challenged and the relevant written materials not already provided to the commission. The petition may incorporate by reference the relevant documents that have already been provided to the commission.

7840.1800 SERVICE OF PETITION.

The petition and accompanying documents must be served on

Approved by Revisor

the Department of Public Service and the persons who were served with the department's proposed decision under part 7690.1000, subpart 2. Service may be in person or by mail and must be simultaneous with the filing of the petition.

7840.1900 COMMENTS IN RESPONSE TO PETITION.

A person may submit written comments replying to the petition filed under part 7840.1500. These comments must be filed with the Public Utilities Commission within 15 days after the deadline for filing under part 7840.1600.

7840.2000 COMMISSION DECISION.

Subpart 1. **Burden of proof and decision criteria.** The petitioner has the burden of proving that the decision of the Department of Public Service will result in a conservation improvement program that is ineffective, does not adequately address the needs of renters and low-income persons, or is otherwise not in the public interest. The Public Utilities Commission shall sustain the department's decision if the petitioner fails to meet this burden.

Subp. 2. **Insufficient information.** On determining that more information is needed before issuing a decision on the merits of the petition, the commission shall issue an order requiring supplemental filings. The supplemental information must be filed with the commission and served on the department, the utility, and other parties who filed comments replying to the petition. The supplemental information must be filed and served within 15 days after the commission issues its order under this subpart unless otherwise ordered by the commission. The responses, if any, to the supplemental filings must be filed with the commission and served on the department, the utility, and the persons who filed supplemental information within 15 days after the deadline for supplemental filings.

Subp. 3. **Final disposition.** After review of the petition and comments, the commission shall issue an order that accepts, rejects, or modifies the department's decision, or that orders a contested case under Minnesota Statutes, chapter 14.

Approved
by Revisor _____

STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

In the Matter of the Proposed Rules Governing Conservation Improvement Program Appeals, Minn. Rules, parts 7840.1500 to 7840.2000.

ISSUE DATE: Sept. 25, 1990

DOCKET NO. G,E-999/R-90-132

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES

The above-entitled matter came for decision before the Minnesota Public Utilities Commission (Commission) on the 25th day of September, 1990. After affording all interested persons the opportunity to present written and oral data, statements and arguments to the Commission, in accordance with statutory requirements regarding the adoption of noncontroversial rules, after considering the Statement of Need and Reasonableness, after considering all of the evidence adduced upon the records, files and proceedings herein, the Commission, being fully advised in the premises, hereby adopts the following Findings of Fact, Conclusions, and Order:

FINDINGS OF FACT

1. (1) Notice of the Commission's intent to adopt the above rules without a public hearing was published in the State Register on August 6, 1990, and was sent by mail to all persons on the list maintained by the Commission pursuant to Minn. Stat. §§ 14.14, subd. 1a and 14.22 (1988) on August 1, 1990.

2. (2) The Statement of Need and Reasonableness was prepared prior to mailing and publication of the notice and was made available to the public. The Statement of Need and Reasonableness was also mailed to the Legislative Commission to Review Administrative Rules on August 6, 1990, pursuant to 1990 Minn. Laws, ch. 422, sec. 6.

3. (4) All persons were given the opportunity to submit comments on the rules for 30 days after notice of proposed rulemaking. The 30 day comment period, as set out in the notice, expired on September 5, 1990.

4. (5) No requests for hearing were received by the Commission during the comment period.

5. (6) No requests for notice of submission to the Attorney General were received by the Commission.

6. The Commission received written comments from Northern States Power Company (NSP). No other written or oral comments were received by the Commission during the comment period.

7. The Commission hereby incorporates the Statement of Need and Reasonableness into these findings as the factual basis for the proposed rules.

8. NSP's comments submitted during the public comment period supported the proposed rules, but also suggested the following modification to part 7840.2000, subpart 1, as shown by strikeouts and underlining:

> Subpart 1. **Burden of proof and decision criteria.** The petitioner has the burden of proving that the decision of the Department of Public Service will result in a conservation improvement program that is ~~ineffective~~ not cost-effective, does not adequately address the needs of renters and low-income persons, or is otherwise not in the public interest. The Public Utilities Commission shall sustain the department's decision if the petitioner fails to meet this burden.

NSP asserted in its comments that the term "ineffective" was too vague and that substituting the word "cost-effective" would clarify the rule and "more closely incorporate the cost-effectiveness objective of Minn. Stat. § 216B.241, subd. 2 (Supp. 1989)."

9. The Commission finds that NSP's suggested change is unnecessary and inconsistent with Minn. Stat. § 216B.241, subd. 2 (Supp. 1989), which these rules are intended to implement.

A rule is impermissibly vague only if it fails to give reasonable guidance in discerning the standards by which it will be enforced. In Re Charges of Unprofessional Conduct Against N.P., 361 N.W.2d 386, 394 (Minn. 1985). "[A] rule `should be upheld unless the terms are so uncertain and indefinite that after exhausting all rules of construction it is impossible to ascertain legislative intent.'" Id., quoting Anderson v. Burnquist, 11 N.W.2d 776, 778 (Minn. 1943).

The term "ineffective" is defined as (1) "not producing an intended effect" or (2) "incapable of performing or accomplishing efficiently." The American Heritage Dictionary, Second College Edition (1982). Since "ineffective" is not a technical term with any special meaning, it must be construed according to its "common and approved usage." Minn. Stat. § 645.08 (1) (1988). The

common and approved usage of the term, as reflected in its dictionary definition, provides sufficient guidance to satisfy constitutional and statutory specificity requirements. The Commission will simply assess whether the program being appealed is capable of producing its intended effect and whether it can do so efficiently. There is, therefore, no need to replace the term with any other on vagueness grounds.

Substituting the term "cost-effective," as suggested by NSP, would not only be an unnecessary change to the proposed rules, it would also conflict with the enabling statute which uses the term "ineffective" in delineating the standard of review in CIP appeals. This statute provides the following in relevant part:

> [A] utility, a political subdivision, or a nonprofit or community organization that has suggested a program, or the attorney general acting on behalf of consumers and small business interests, may petition the commission to modify, or revoke a department decision to require a program under this subdivision, and the commission may do so if it determines that the program **is ineffective**, does not adequately address the needs of renters and low-income families and individuals, or is otherwise not in the public interest (emphasis added).

Minn. Stat. § 216B.241, subd. 2 (Supp. 1989).

The term "cost-effective," as described in Minn. Stat. § 216B.241, subd. 2 (Supp. 1989), focuses on whether a conservation improvement program "will result in energy savings at a total cost to the utility less than the cost to the utility to produce or purchase an equivalent amount of new supply of energy." This is a much narrower focus than an inquiry into the overall effectiveness of a program. Determining whether a program is ineffective would likely involve the consideration of a multitude of factors in addition to the cost comparison associated with an evaluation of cost-effectiveness.

Minn. Rules, part 7690.1200, subpart 1 identifies a number of the factors that might be considered, setting forth the criteria to use in determining whether to approve a program. The criteria include (1) the impact on energy consumption and utility rates, (2) the diversity of customer classes expected to participate in the program, and (3) "other facts and circumstances . . . relevant to determining the overall importance of the investment in energy conservation improvements." These "other facts and circumstances" could include such things as the program's impact on the economic health of the community or the natural environment. Cost-

effectiveness, as described in Minn. Stat. § 216B.241, subd. 2 (Supp. 1989), is also one of the factors listed in this rule provision; there are eight others. Any evaluation of a proposed program's effectiveness would almost certainly involve consideration of at least some of the other eight.

Minn. Stat. § 216B.241, subd. 2 (Supp. 1989) addresses both the Department of Public Service's (Department's) initial evaluation of conservation improvement programs and the Commission's authority to hear CIP appeals challenging Department decisions. The statute uses the term "cost-effective" when referring to the Department's evaluation of a program, but uses the term "ineffective" in delineating the Commission's appellate responsibilities. Had the legislature intended to narrow the focus of Commission review to the issue of cost-effectiveness, as that term is described in Minn. Stat. § 216B.241, subd. 2, it could have stated this expressly as it did defining the Department's duties. Instead, the legislature chose to use the more general term "ineffective." It would be inappropriate for the Commission to restrict the meaning of the statute after the legislature presumably chose not to do the same.

10. The above-captioned rules are needed and reasonable.

CONCLUSIONS

1. The Minnesota Public Utilities Commission duly acquired and has jurisdiction over this proceeding pursuant to Minn. Stat. § 216B.241, subd. 2 (Supp. 1989) and § 216B.08 (1988).

2. The Commission published and served due, timely, and adequate notice of the intent to adopt the rules without a public hearing.

3. The Commission has complied with all relevant legal and procedural requirements of statute and rule.

4. No modifications to the proposed rules are needed. The Commission declines to adopt the modification suggested by NSP in its comments dated September 5, 1990 for the reasons stated herein in Finding of Fact 9.

5. Any findings that might properly be termed conclusions and any conclusions that might properly be termed findings are hereby adopted as such.

ORDER

The Commission hereby adopts Minn. Rules, parts 7840.1500 to 7840.2000 governing conservation improvement program appeals.

BY ORDER OF THE COMMISSION

September 26, 1990
Date

Richard R. Lancaster
Executive Secretary

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
PUBLIC UTILITIES COMMISSION

In the Matter of the Proposed Rules Governing Conservation Improvement Program Appeals, Minn. Rules, parts 7840.1500 to 7840.2000.

DOCKET NO. G,E-999/R-90-132

DECLARATION OF COUNSEL

I, Jon Kingstad, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rules and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, ch. 2010 have been followed. For Attorney General billing purposes, the four-digit docket client code is 0729.

Jon Eric Kingstad

Jon Kingstad
Special Assistant
Attorney General