MINNESOTA CODE OF AGENCY RULES

RULES OF THE ENERGY AGENCY

1982 Reprint

All rules as in effect on September 15, 1982

Prepared by

THE OFFICE OF REVISOR OF STATUTES
Room 3, State Capitol, St. Paul, Minnesota 55155

Distributed by

STATE REGISTER AND PUBLIC DOCUMENTS DIVISION
DEPARTMENT OF ADMINISTRATION
117 University Avenue, St. Paul, Minnesota 55155

ENERGY AGENCY

Petroleum Products State Set-Aside Program

Electric Utility Information Reporting

Natural Gas Utilities and Interstate Natural Gas Pipeline Companies Information Reporting

Generating Facilities and Large High Voltage Transmission Lines

6 MCAR S 2.0601	Definitions.
6 MCAR S 2.0602	Purpose of rules.
6 MCAR S 2.0603	Applicability of rules.
6 MCAR S 2.0604	Application procedures and timing.
6 MCAR S 2.0605	Filing fees and payment schedule.
6 MCAR S 2.0611	Criteria for assessment of need.
6 MCAR S 2.0631	Contents of application.
6 MCAR S 2.0632	Need summary and additional considerations.
6 MCAR S 2.0633	Description of proposed large electric generating facility and alternatives.
6 MCAR S 2.0634	Description of proposed large high voltage transmission line and alternatives.
6 MCAR S 2.0635	Peak demand and annual electrical consumption forecast.
6 MCAR S 2.0636	System capacity.
6 MCAR S 2.0637	Conservation programs.
6 MCAR S 2.0638	Environmental data.
6 MCAR S 2.0639	Consequences of delay.
6 MCAR S 2.0641	Certificate of need modifications.

Chapter Seven: Contents of Applications for Certificates of Need and Criteria for Assessment of Need for Large Liquified Gas Storage Facilities and Large Gas Pipelines

6 MCAR S 2.0701	Definitions.
6 MCAR S 2.0702	Purpose of rules.
6 MCAR S 2.0703	Applicability of rules.
6 MCAR S 2.0704	Application procedures and timing.
6 MCAR S 2.0705	Filing fees and payment schedule.
6 MCAR S 2.0711	Criteria for assessment of need.
6 MCAR S 2.0721	Contents of application.
6 MCAR S 2.0731	General information.
6 MCAR S 2.0732	Need summary.
6 MCAR S 2.0733	Summary of additional considerations.
6 MCAR S 2.0734	Conservation programs.
6 MCAR S 2.0735	Peak demand and annual gas sales forecast.
6 MCAR S 2.0736	Load and capacity information.
6 MCAR S 2.0737	Alternatives.
6 MCAR S 2.0741	Historical facility data.
6 MCAR S 2.0742	Description of proposed facility.
6 MCAR S 2.0743	Environmental data.
6 MCAR S 2.0781	Other data filed with the application.
6 MCAR S 2.0791	Certificate of need modifications.

Chapter Eight: Contents of Applications for Certificates of Need and Criteria for Assessment of Need for Large Oil Storage Facilities for Energy Users

6 MCAR S 2.0801	Purpose of rules.
6 MCAR S 2.0802	Applicability of rules.
6 MCAR S 2.0803	Application procedures and timing.
6 MCAR S 2.0804	Definitions.

6 MCAR S 2.0805	Filing fees and payment schedule.
6 MCAR S 2.0811	Criteria for assessment of need.
6 MCAR S 2.0821	Contents of application.
6 MCAR S 2.0831	General information.
6 MCAR S 2.0832	Need summary.
6 MCAR S 2.0833	Summary of additional considerations.
6 MCAR S 2.0834	Conservation programs.
6 MCAR S 2.0841	Historical energy data.
6 MCAR S 2.0842	Forecast data.
6 MCAR S 2.0843	Description of proposed facility.
6 MCAR S 2.0844	Alternatives.
6 MCAR S 2.0845	Environmental data.
6 MCAR S 2.0871	Other data filed with the application.
6 MCAR S 2.0881	Certificate of need modifications.

Chapter Nine: Contents of Applications for Certificates of Need and Criteria for Assessment of Need for Large Cool Storage Facilities for Cool Suppliers and Cool Transshipment Facilities

6 MCAR S 2.0901	Purpose of rules.
6 MCAR S 2.0902	Applicability of rules.
6 MCAR S 2.0903	Application procedures and timing.
6 MCAR S 2.0904	Definitions.
6 MCAR S 2.0905	Filing fees and payment schedule.
6 MCAR S 2.0911	Criteria for assessment of need.
6 MCAR S 2.0921	Contents of application.
6 MCAR S 2.0931	General information.
6 MCAR S 2.0932	Need summary.
6 MCAR S 2.0933	Summary of additional considerations.
6 MCAR S 2.0934	Conservation programs.
6 MCAR S 2.0941	Historical energy data.
6 MCAR S 2.0942	Forecast data.
6 MCAR S 2.0943	Description of proposed facility.
6 MCAR S 2.0944	Alternatives.
6 MCAR S 2.0945	Environmental data.
6 MCAR S 2.0971	Other data filed with the application.
6 MCAR S 2.0981	Certificate of need modifications.

Chapter Ten: Contents of Applications for Certificates of Need and Criteria for Assessment of Need for Large LPG Storage Facilities, Large Petroleum Pipelines and Oil Refineries for Petroleum Suppliers

6 MCAR S 2.1001	Purpose of rules.
6 MCAR S 2.1002	Applicability of rules.
6 MCAR S 2.1003	Application procedures and timing.
6 MCAR S 2.1004	Definitions.
6 MCAR S 2.1005	Filing fees and payment schedule.
6 MCAR S 2.1011	Criteria for assessment of need.
6 MCAR S 2.1021	Contents of application.
6 MCAR S 2.1031	General information.
6 MCAR S 2.1032	Need summary.
6 MCAR S 2.1033	Summary of additional considerations.

6 MCAR S 2.1034	Conservation programs.
6 MCAR S 2.1040	Large oil or LPG storage facility section.
6 MCAR S 2.1041	Historical energy data.
6 MCAR S 2.1042	Forecast data.
6 MCAR S 2.1043	Description of proposed facility.
6 MCAR S 2.1044	Alternatives.
6 MCAR S 2.1045	Environmental data.
6 MCAR S 2.1050	Large petroleum pipeline facility section.
6 MCAR S 2.1051	Historical energy data.
6 MCAR S 2.1052	Forecast data.
6 MCAR S 2.1053	Description of proposed facility.
6 MCAR S 2.1054	Alternatives.
6 MCAR S 2.1055	Environmental data.
6 MCAR S 2.1060	Oil refinery facility section.
6 MCAR S 2.1061	Historical energy data.
6 MCAR S 2.1062	Forecast data.
6 MCAR S 2.1063	Description of proposed facility.
6 MCAR S 2.1064	Alternatives.
6 MCAR S 2.1065	Environmental data.
6 MCAR S 2.1081	Other data filed with the application.
6 MCAR S 2.1091	Certificate of need modifications.

Chapter Eleven: Contents of Applications for Certificates of Need and Criteria for Assessment of Need for Fuel Conversion Facilities, Coal Slurry or Coal Liquids Pipelines, Nuclear Fuel Processing Facilities, and Nuclear Waste Storage or Disposal Facilities

6 MCAR S 2.1101	Purpose of rules.
6 MCAR S 2.1102	Applicability of rules.
6 MCAR S 2.1103	Application procedures and timing.
6 MCAR S 2.1104	Definitions.
6 MCAR S 2.1105	Filing fees and payment schedule.
6 MCAR S 2.1111	Criteria for assessment of need.
6 MCAR S 2.1121	Contents of application.
6 MCAR S 2.1131	General information.
6 MCAR S 2.1132	Schedule of other filings.
6 MCAR S 2.1133	Need summary.
6 MCAR S 2.1134	Additional considerations.
6 MCAR S 2.1135	Conservation programs.
6 MCAR S 2.1141	Description of proposed fuel conversion facility.
6 MCAR S 2.1142	Alternatives.
6 MCAR S 2.1143	Historical and forecast data.
6 MCAR S 2.1144	Environmental data.
6 MCAR S 2.1146	Description of proposed coal slurry or coal liquids pipeline.
6 MCAR S 2.1147	Alternatives.
6 MCAR S 2.1148	Historical and forecast data.
6 MCAR S 2.1149	Environmental data.
6 MCAR S 2.1151	Description of proposed nuclear fuel processing facility.
6 MCAR S 2.1152	Alternatives.
6 MCAR S 2.1153	Historical and forecast data.
6 MCAR S 2.1154	Environmental data.

6 MCAR S 2.1156	Description of proposed nuclear waste or disposal facility.
6 MCAR S 2.1157	Alternatives.
6 MCAR S 2.1158	Historical and forecast data.
6 MCAR S 2.1159	Environmental data.
6 MCAR S 2.1186	Other data filed with the application.

Chapter Twenty: Grant of Decorative Gas Lamp Prohibition Variances

6 MCAR S 2.2001	Purpose of rules.
6 MCAR S 2.2002	Applicability of rules.
6 MCAR S 2.2003	Application procedures and timing.
6 MCAR S 2.2004	Definitions.
6 MCAR S 2.2011	Variance criteria.
6 MCAR S 2.2021	Form of application.
6 MCAR S 2.2031	Conversion cost.
6 MCAR S 2.2032	Economic benefit of conversion.

Chapter Twenty-One: Permissible Hours of Operation, Quantity and Efficiency of Outdoor Display Lighting

6 MCAR S 2.2101	Purpose of rules.
6 MCAR S 2.2102	Applicability of rules.
6 MCAR S 2.2104	Definitions.
6 MCAR S 2.2110	Permissible hours of outdoor display lighting operation.
6 MCAR S 2.2115	Permissible efficiency.
6 MCAR S 2.2120	Permissible quantity.

Minnesota Energy Conservation Service Program

6 MCAR S 2.2300	Authority and purpose.
6 MCAR S 2.2301	Definitions.
6 MCAR S 2.2302	Program promotion.
6 MCAR S 2.2303	Energy audits.
6 MCAR S 2.2304	Arrangement services.
6 MCAR S 2.2305	Master list of contractors, lenders and suppliers.
6 MCAR S 2.2306	Post-installation inspections.
6 MCAR S 2.2307	Qualification procedures for auditors and inspectors.
6 MCAR S 2.2308	Consumer grievance procedures.
6 MCAR S 2.2309	Customer payments.
6 MCAR S 2.2310	Utility supply, installation and financing.
6 MCAR S 2.2311	Reporting and recordkeeping.
6 MCAR S 2.2312	Heating suppliers.
6 MCAR S 2.2313	Non-regulated utility program.

Administration and Distribution of Community Energy Planning Grants

Reducing Demand and Increasing Supply of Petroleum Products During an Energy Supply Emergency

District Heating Preliminary Planning Grants Program

Administration of the District Heating Bonding Act Regarding Design Loans

AR020951

6 MCAR S 2.0108 Authority. Rules 6 MCAR SS 2.0108-2.0116 are adopted pursuant to Minnesota Statutes, section 116H.095, subdivision 7.

6 MCAR S 2.0109 Purpose. Rules 6 MCAR SS 2.0108-2.0116 govern the administration of the state petroleum product set-aside program. The state set-aside program provides emergency petroleum supplies to relieve the hardship caused by shortages of refined petroleum products or other emergencies. The purpose of the program is to minimize the adverse impacts of shortages and dislocations on the state's citizens and economy.

6 MCAR S 2.0110 Definitions.

A. Applicability. For the purposes of 6 MCAR SS 2.0108-2.0116 the terms defined in this rule have the meanings given them.

B. Agriculture. "Agriculture" means certain activities in food production, processing, and sales as set out in the Standard Industrial Classification Manual, 1972 edition.

1. Included activities are:

a. activities listed in Division A, Agriculture, Forestry and Fishing, except those excluded by B.2.;

b. activities listed in Division D, Manufacturing, including grain and seed drying under Major Group 20, Food and Kindred Products, except those excluded by B.2.;

c. activities listed in codes 1475, 2141, 2411, 2421, 2873, 2874, 2875, 2879, and 5462; and

d. activities of potash mining listed in code 1474, dicalcium phosphate production listed in code 2819, farm to market hauling and log trucking listed in code 4212, and farm irrigation systems listed in code 4971.

2. Excluded activities are:

a. classification codes 0742, 0752, 0781, 0782, 0849, and non-food producing activities in codes 0271 and 0279 within Division A, Agriculture, Forestry, and Fishing; and

b. classification codes 2047, 2067, and 2085 within Major Group 20, Food and Kindred Products in Division D, Manufacturing.

C. Assignment. "Assignment" means an order by the office or the board to a prime supplier to release state set-aside product to a specific person.

D. Average product use. "Average product use" means the volume of product purchased during the same month last year.

E. Board. "Board" means the state set-aside appeals board.

F. Cargo and freight hauling. "Cargo and freight hauling" means hauling by any truck with a gross vehicle weight of 20,000 pounds or more and the shipping of goods by rail or water.

G. Commissioner. "Commissioner" means the Commissioner of the Minnesota Department of Energy, Planning and Development.

H. Current month requirement. "Current month requirement" means the volume of product needed by an end user to meet its supply need for the present month.

I. Decision. "Decision" means the ruling of the board about any appeal.

J. Department. "Department" means the Minnesota Department of Energy, Planning and Development.

K. Emergency services. "Emergency services" means activities immediately necessary to preserve the health or safety of the citizens. Emergency services include: ambulance operation; city, county, state, and federal law enforcement; firefighting; mobilized national guard; and Red Cross services.

L. End user. "End user" means a final consumer of motor gasoline or middle distillate.

M. Energy production. "Energy production" means the manufacturing, processing, storage, or transportation of primary energy sources including electricity, natural gas, or petroleum products. Energy production excludes electric utilities whose needs for electrical energy can be met by purchase from members of the Mid-Continent Area Power Pool.

N. Essential services. "Essential services" means activities that provide continuing public health and safety services. They include: energy production; government services; maintenance vehicles for telecommunication services; postal services; sanitation services; and cargo and freight hauling.

O. Fuel coordinator. "Fuel coordinator" means city council or county board appointed individuals who verify state set-aside applications.

P. Government services. "Government services" include: activities of the judicial branch of government; jail and prison activities; meetings of elected political officials; the Division of Emergency Services city, county, and state activities; hearings of mobilized Local Energy Conservation Boards; hearings of the Office of Administrative Hearings; and minimum services to provide Aid For Dependent Children, food

stamps, Social Security Income, and Social Security checks.

Q. Middle distillates. "Middle distillates" means distillates obtained between kerosene and lubricating oil fractions in the refining process, including kerosene, number one and number two heating oil, and number one and number two diesel fuel.

R. Motor gasoline. "Motor gasoline" means a liquid mixture of hydrocarbons produced by the distillation of petroleum and used chiefly as a fuel in internal combustion engines.

S. Office. "Office" means the unit within the department responsible for the state set-aside program.

T. Officer. "Officer" means the individual who manages the office and who has authority to sign orders and documents for the state set-aside program.

U. Order. "Order" means a written document signed by the officer or the commissioner directing a prime supplier to release a product for an assignment. The office may telephone an order to the prime supplier, but the office shall promptly send the written order to the prime supplier's representative. The order is effective the day it is signed by the officer or commissioner.

V. Passenger transportation. "Passenger transportation" means conventional public transit service which operates on a fixed route and is available to the public for a fare, intercity bus transportation, van pools, subscription buses, tour and charter bus transportation, bus transportation of pupils for educational purposes, taxicabs licensed to conduct business in a municipality, rail passenger transportation, aviation ground support for regularly scheduled airlines, and special transportation services for the elderly or handicapped.

W. Person. "Person" means an individual and any legally existing business, government unit, or institution.

X. Plant protection. "Plant protection" means sufficient heat and power to keep from freezing pipes and damaging equipment.

Y. Postal service. "Postal service" means the delivery of first, second, or third class United States mail.

Z. Prime supplier. "Prime supplier" means the producer or supplier now or hereafter making the first sale of middle distillates or motor gasoline subject to the state set-aside program for consumption within the state.

AA. Prime supplier's representative. "Prime supplier's representative" means an individual who is authorized to act as liaison for the prime supplier in regular activities of the state set-aside program.

BB. Retail outlet. "Retail outlet" means a person who sells refined petroleum products from fixed tanks in a fixed location to end users in retail volumes.

CC. Sanitation services. "Sanitation services" means the activities of a person who supplies water to the public through public utilities, or collects or disposes gaseous, liquid, or solid wastes for the public.

DD. Service. "Service" means personal service or service by certified United States mail, postage prepaid, addressed to a person at the person's last known address.

EE. Shortfall. "Shortfall" means the amount by which demand exceeds supply of crude oil or refined petroleum products during any month.

FF. State. "State" means the state of Minnesota.

GG. State set-aside. "State set-aside" means the amount of middle distillates or motor gasoline required to be made available by a prime supplier for utilization by the commissioner to resolve or mitigate emergencies or hardships due to shortages of supply.

HH. Supplier. "Supplier" means a person, other than the United States Department of Defense, who furnishes a refined petroleum product or crude oil to end users, other suppliers, wholesale purchaser-consumers, or wholesale purchaser-resellers.

II. Wholesale purchaser-consumer. "Wholesale purchaser-consumer" means an end user who purchases truck transport volumes of middle distillate or motor gasoline or both from a prime supplier.

JJ. Wholesale purchaser-reseller. "Wholesale purchaser-reseller" means a person who obtains petroleum product from a supplier and, without additional refining, sells or transfers the product to other purchasers.

AO-2045T

6 MCAR S 2.0111 Prime supplier's obligations.

A. Monthly reports. Each prime supplier and producer or supplier making the first sale of propane or residual fuel oil within the state shall submit to the office a monthly report. The report shall be submitted in time to be received by the office each month no later than the 25th day of the month. The report shall include actual volumes of product sold in the previous month and the forecasted volumes of product to be delivered in the month following the month in which the report is submitted.

1. The following petroleum products shall be included in each monthly report:

a. propane (consumer grade);

b. motor gasoline (total);

c. unleaded motor gasoline;

d. kerosene;

e. number 1 distillate;

f. number 2 heating oil;

g. diesel fuel;

h. aviation gasoline;

i. kerosene base jet fuel;

j. naphtha base jet fuel;

k. number 4 distillate;

l. residual fuel oil with sulfur content equal to or less than one percent; and

m. residual fuel oil with sulfur content greater than one percent.

2. The monthly reports shall be submitted in a standardized form approved by the office.

B. Prime supplier's representative. Each prime supplier shall report to the office the name, mailing address, and telephone number of a representative to act for the company regarding state set-aside. The duties of this representative shall include confirming monthly state set-aside volumes and accepting and processing state set-aside orders.

C. Nonpublic data. Reports submitted pursuant to this rule are nonpublic data in accordance with Minnesota Statutes, section 15.1682.

AR0209S

6 MCAR S 2.0112 Applications.

A. Who may apply. The following persons may apply for state set-aside if they are supplied middle distillate or motor gasoline or both directly by a prime supplier:

1. a wholesale purchaser-consumer or an end user seeking an assignment because of hardship or emergency; or

2. wholesale purchaser-resellers seeking assignments to supply their traditional wholesale-purchaser and end user accounts because of hardship or emergency.

B. Form of application. An applicant shall submit an application to the office for each month of hardship or emergency.

1. Except as provided in 2., applications shall be submitted in writing on forms approved by the office and signed by the applicant. Each application shall be verified and signed by a fuel coordinator attesting to the applicant's need for state set-aside products. The office may request reasonable additional information from an applicant as needed to support the claim of hardship or emergency.

2. An application may be made orally when extraordinary circumstances make it impossible for the applicant to submit a written application. When an oral application is made, the fuel coordinator shall orally certify to the office that the applicant has an emergency or hardship situation. It is the responsibility of the applicant to insure both that the fuel coordinator contacts the office and that the written application is submitted within five days following the oral application. If the written application is not submitted within five days following the oral application, the office may refuse to accept future oral requests from that applicant.

AR030037

6 MCAR S 2.0113 Evaluation criteria.

A. Middle distillates. The amount of middle distillates available for state set-aside is a volume equal to four percent of all prime suppliers' monthly supply estimate as stated in the monthly report filed pursuant to 6 MCAR S 2.0111. Applicants shall specify the gallons requested for each end user category and the reason for any need of volumes in excess of contract volumes. All assignments shall be based on the following priorities:

1. First priority middle distillate users include:

a. agriculture;

b. emergency services;

c. essential services;

d. heating customers with no alternate source of fuel, including hospitals, multi-unit housing, nursing homes, and residences;

e. major industrial and commercial activities whose continued operation is essential to the economic well-being of an area, including auto manufacturing and mining;

f. minimum plant and building protection; and

g. passenger transportation.

2. Second priority middle distillate users are heating customers on interruptible natural gas or another primary source of fuel. They include hospitals, multi-unit housing, nursing homes, and residences.

3. Third priority middle distillate users include government buildings, for heating; industrial and commercial activities not included in 1.; and schools.

4. Notwithstanding the priorities stated in 1. to 3., when an energy supply fuel oil emergency has been declared pursuant to Minnesota Statutes, section 116H.09 and 6 MCAR SS 2.3101-2.3120, the priorities stated in 6 MCAR S 2.3111 shall apply.

B. Motor gasoline. The volume of motor gasoline available for state set-aside is a volume equal to three percent of all prime suppliers' monthly supply estimate as stated in the monthly report filed pursuant to 6 MCAR S 2.0111. The office may assign state set-aside motor gasoline volumes, when the applicant submits accurate and complete documentation, based on the following criteria.

1. Agricultural motor gasoline shortfall.

a. If the traditional supplier of an agricultural operation is unable to supply average motor gasoline use, the office may release amounts of state set-aside equal to the shortfall. The office may require the applicant to list the name, telephone number, and average motor gasoline use of the ultimate consumer.

b. If unusual weather conditions, natural disasters, or other extreme occurrences require more than average motor gasoline use, the office may make a state set-aside assignment to satisfy the greater requirement. In these cases, the applicant shall provide the office with the current monthly requirement and a justification for the request.

2. Community or area hardship.

a. If a supplier pullout produces a shortfall of motor gasoline in a local area, a wholesale purchaser-reseller in the area may apply for a state set-aside assignment. The applicant shall submit the name, address, and approximate gallons per month sold by the supplier who has pulled out.

b. State set-aside may be assigned to alleviate a shortfall caused by the closing of a motor gasoline retail outlet in a community. The applicant must certify that residents would have to drive 20 or more miles round trip to obtain motor gasoline between the hours of 7:00 a.m. and 8:00 p.m. and provide the office with the name, address, and approximate gallons per month sold of all retail outlets which have opened or closed in the last calendar year within a ten-mile radius of the retail outlet requesting the state set-aside

assignment.

c. A wholesale purchaser-reseller may receive an assignment on the basis of unusual growth if the applicant can demonstrate the existence of a shortfall because of a population increase in the community of over ten percent since 1980, new business in the community employing 500 or more employees since 1980, or relocation of a highway since 1980.

d. The office may assign state set-aside motor gasoline to a retail outlet that has historically remained open 24 hours a day and provided emergency road service.

3. The office may assign state set-aside motor gasoline to alleviate a shortage of motor gasoline due to a natural disaster including: floods; blizzards; fire; high winds; and tornadoes. Applicants shall state the nature of the disaster, the number of gallons sold, and to whom.

4. The office may assign state set-aside motor gasoline to meet the requirements of certain priority vehicles because of a shortfall. Applicants may apply for state set-aside to make up the difference between 100 percent of contract volume and the amount of supply currently available for the following types of priority vehicles: emergency services, essential services, and passenger transportation services.

AR02095

6 MCAR S 2.0114 Application processing procedures.

A. Investigations. The office may initiate an investigation of any statement in an application and utilize in its evaluation of the application any relevant facts obtained by the investigation. The office may solicit and accept information from third persons relevant to any application, provided that the applicant is afforded an opportunity to respond.

B. Additional information. If the office determines that the application does not have sufficient information to support a decision, it may request the necessary additional information from the applicant. If the applicant repeatedly or willfully fails to supply additional information, the office may deny the application.

C. Processing. The office shall process applications each month for that month as follows:

1. Applications made by wholesale purchaser-consumers or by wholesale purchaser-resellers on behalf of wholesale purchaser-consumers or end users shall be processed within five working days after receipt.

2. Except when the applicant applies for state set-aside under 6 MCAR S 2.0113 B.2. or 3., applications that are made by or on the behalf of retail outlets shall be processed within five working days after the 15th day of the month.

3. Applications needing additional information shall be processed within five working days after receipt of the requested information.

D. Implementation. State set-aside assignments shall be implemented as follows:

1. Upon approval or modification of a request for state set-aside product, the office shall issue an order authorizing the assignment and serve it on the prime supplier from whom the state set-aside product is to be drawn.

a. An order issued by the office is effective the date it is signed by the officer or the commissioner, unless stayed, modified, suspended, or rescinded.

b. The order represents a call upon the prime supplier's state set-aside volume for the month of issuance even if delivery cannot be made until the following month.

c. The applicant shall arrange for receipt of the product within ten days from the date of the order.

2. Upon denial of an application, the office shall notify the applicant in writing, stating the reason for denial.

AR02095T

6 MCAR S 2.0115 Appeals process.

A. Applicability. Within ten days after the effective date of an order or the mailing date of a denial, any person aggrieved may appeal in writing to the commissioner. The written appeal shall include:

1. the reason for the appeal, including why the action by the office is deemed unwise or unjust;

2. the names, addresses, and telephone numbers of any persons whom it is believed might be injured by the order being appealed; and

3. the objective of the appeal, including reversal of the office action, modification of the action, or other remedies.

B. Commissioner's action. Within five days of receipt of the appeal, the commissioner shall:

1. set a hearing date at least ten days after initiation of the appeal;

2. serve all interested parties with a copy of the appeal and notice of the time and place of the hearing; and

3. issue a stay of the order if:

a. it appears probable that a party may suffer serious

injury;

b. the order appears in conflict with Minnesota Statutes, section 116H.095, or other law; or

c. it appears probable that the board will grant the appeal.

C. State set-aside appeals board. The state set-aside appeals board consists of:

1. the commissioner or the commissioner's designee, as chairperson;

2. the Commissioner of the Minnesota Department of Agriculture or designee thereof;

3. the Director of the Office of Consumer Services of the Minnesota Department of Commerce or designee thereof;

4. the Director of the Office of Emergency Services of the Minnesota Department of Public Safety or designee thereof; and

5. the Chairperson of the Minnesota Public Utilities Commission or designee thereof.

D. Decisions on appeals. The commissioner plus any two or more additional members may hear and decide appeals.

E. Informal disposition. At any time during the proceedings, the affected parties may conclude a mutually acceptable settlement of the appeal.

AR02095T

6 MCAR S 2.0116 Hearings.

A. Rights of the parties to the hearing. Affected parties have a right to:

1. a hearing before the board;

2. representation by an attorney;

3. present public evidence;

4. present witnesses who will testify under oath;

5. cross-examine witnesses; and

6. present rebuttal testimony and argument.

B. Rules of evidence.

1. The board shall admit and consider any reasonable evidence.

2. The board may exclude evidence it determines to be immaterial, irrelevant, or repetitious.

3. The board shall consider only the evidence which is entered into the public record of the hearing.

4. If the board desires to use technical facts within its specialized knowledge or publicly accepted facts that were not part of the evidence presented, the board shall notify the parties and give them an opportunity to rebut those facts. After the rebutting evidence is received and reviewed, the board shall review all the evidence when making the decision.

C. Public record of the hearing. The board shall prepare an official record which shall include:

1. all pleadings, motions, and intermediate rulings;

2. evidence received or considered;

3. a statement of facts not introduced in evidence but considered by the board and questions of those facts by affected persons including rebuttals and objections;

4. proposed findings and exceptions;

5. any decision, opinion, or report by the board; and

6. all memoranda or data submitted to the board by the office except advice of the office's attorney.

D. Verbatim record. The board shall make a verbatim record of the hearing on recording equipment. Any party may request that a court reporter make the record, but that person shall pay the court reporter's fee. The board shall transcribe the record only upon request and only if the requestor agrees to pay for the cost of transcribing.

E. Hearing procedure.

1. If the appellant fails to appear, the board may declare a default and deny the appeal.

2. After opening the hearing, the chairperson shall read the rights of the parties to the hearing and the rules regarding evidence from A. and B. The chairperson shall also call for the parties to present any written matter that they wish to introduce as an exhibit and offer as evidence.

3. A representative of the office shall introduce the jurisdictional exhibits including the written appeal received by the commissioner, the notice of hearing, and any agreements entered into by the parties to the appeal.

4. The appellant may make an opening statement. Other parties may make statements in the order determined by the board.

5. After opening statements, the appellant may present its case. Other parties may present their cases in the order determined by the board.

6. The board shall determine the order for cross-examining witnesses.

7. The parties may next give oral or written rebuttal evidence and final arguments in the order determined by the board.

8. After final arguments, the board may: close the hearing; announce the time and place of the next hearing; or continue the hearing to some future time. The board shall give a five day written notice to all parties prior to holding a continued hearing.

F. Decorum. The chairperson may take action to insure the orderly conduct of public business at the hearing, as authorized by Minnesota Statutes, section 624.72, subdivision 3.

G. Decision.

1. Within five days after the hearing is closed, the board shall issue its decision on the appeal.

2. The decision shall state that the denial or order of the office was modified, reversed, or upheld. If modified or reversed, the decision must state exactly what action is required. The decision shall state the conclusions of fact and law used to reach the ruling.

3. The commissioner shall, by the close of the working day following the decision, serve a copy of the decision on the parties to the hearing.

Chapter Two: 6 MCAR SS 2.0201-2.0214

6 MCAR S 2.0201 Purpose and applicability of these rules.

A. The purpose of these rules is to implement the forecasting, statistical and informational reporting requirements of Minnesota Statutes, sections 116H.10 and 116H.11. These rules are adopted pursuant to the powers of the director conferred by Minnesota Statutes, section 116H.08, clause (a), and are designed to identify emerging energy trends based on supply and demand, conservation and public health and safety factors and to determine the level of statewide and service area energy needs.

B. Each electric utility serving the State of Minnesota shall submit the information required by these rules to the director in the form specified by him.

6 MCAR S 2.0202 Definitions. For purposes of these rules, the following definitions shall apply:

A. "Adjusted net demand" means system demand, minus firm purchases, plus firm sales;

B. "Agency" means the Minnesota Energy Agency;

C. "Annual adjusted net demand" means annual system demand, minus firm purchases, plus firm sales;

D. "Annual electrical consumption" means sales of megawatt-hours of electricity to ultimate consumers over a twelve-month period beginning January 1 and ending December 31 of the reporting year;

E. "Annual system demand" means the highest system demand occurring during the twelve-month period ending with the current month. For seasonal reporting the current month is the last month of the season being reported;

F. "Capacity factor" is the ratio, expressed as a percent, of gross generation in megawatt-hours to the product of period-hours times maximum dependable capacity. There are 8760 period-hours per year, except during a leap year when there are 8784. Maximum dependable capacity is the dependable plant capacity in winter or summer, whichever is smaller;

G. "Director" means the director of the Minnesota Energy Agency;

H. "Distribution only utility" means a utility which distributes electricity to ultimate consumers but which does not generate electricity except on a standby emergency basis. Such emergency power shall not consist of more than five percent of total megawatt-hours sales to ultimate consumers;

I. "Firm purchases" and "firm sales" mean the amount of power to be purchased or sold and intended to have assured availability;

J. "Forced outage rate" is a measure of the total time the plant was unavailable due to forced outage. It is the ratio, expressed as a percent of forced outage hours to the sum of the total number of hours the plant was actually operated with breakers closed to the station bus plus the forced outage hours;

K. "Generating and transmission utility" means any utility which generates in excess of five percent of its total megawatt-hours sales to its own ultimate consumers;

L. "Heat rate" is the measure of thermal efficiency of a generating station or plant expressed in BTU's per net kilowatt-hour and computed by dividing the total BTU content of fuel burned for electric generation by the resulting net kilowatt-hour generation;

M. "Last calendar year" means the calendar year immediately preceding the year in which reports are required to be filed;

N. "Load factor" means the ratio of the average load in megawatts supplied during a designated period to the maximum load in megawatts which was supplied during that designated period;

O. "Minnesota service area" means that portion of a utility's system lying within Minnesota;

P. "Minnesota Wisconsin Power Suppliers Group (MWPSG)" means the planning group which represents the following utilities: Northern States Power Company, Minnesota Power, Ottertail Power Company, Interstate Power Company, Minnkota Power Cooperative, Cooperative Power Association, United Power Association, Dairyland Power Cooperative and the Southern Minnesota Municipal Power Agency;

Q. "Municipal power agency" means a municipal corporation incorporated pursuant to Minnesota Statutes, sections 453.51-453.62.

For purposes of these rules, a municipal power agency may elect to supply in aggregate the data required by these rules for its members. All data submitted in such fashion shall be in the format specified by the director;

R. "Net generating capacity" means the total amount of kilowatts, less station use, that all the generating facilities of a system could supply at the time of its maximum system demand, including the capacity of the generating units which are temporarily out of service for maintenance or repair;

S. "Net generation" means gross generation minus megawatt-hours used for station use;

T. "Net reserve capacity obligation" means the annual adjusted net demand multiplied by the percent reserve capacity requirement;

U. "Operating availability" is a measure of the total time during which a plant is available. It is the ratio, expressed as a percent, of available hours to period hours. Available hours are the sum of service hours and reserve shutdown hours;

V. "Participation power" means power and energy which are sold from a specific generating unit or units for a period of six or more months on a continuously available basis (except when such unit or units are temporarily out of service for maintenance during which time the delivery of energy from other generating units is at the seller's option);

W. "Participation purchases" and "participation sales" means purchases and sales under a participation power agreement or a seasonal participation power agreement;

X. "Peak demand" means the highest megawatt demand during a designated period recorded on a one-hour integrated reading basis;

Y. "Residential electrical space heating customer" means a residential customer who uses electricity as a source of space heating throughout the entire premises from permanently installed electric heating equipment;

Z. "Seasonal adjusted net demand" means seasonal system demand, minus firm purchases, plus firm sales;

AA. "Seasonal participation power" means participation power sold and bought on a seasonal (summer or winter) basis;

BB. "Seasonal system demand" means the maximum system demand on the applicant's system which occurs or is expected to occur in any normal summer season or winter season;

CC. "Summer season" means the period from May 1 through October 31;

DD. "System" means that combination of generating, transmission, and distribution facilities which makes up the operating physical plant of the utility, whether owned or nonowned, for the delivery of electrical energy to ultimate consumers and includes the geographic area where the utility's ultimate consumers are located;

EE. "System demand" means the number of megawatts which is equal to the megawatt-hours required in any clock hour, attributable to energy required by the system during such hour for supply of firm energy to ultimate consumers, including system losses, and also including any transmission losses occurring on other systems and supplied by the system for transmission of firm energy, but excluding generating station

uses and excluding transmission losses charged to another system;

FF. "Ultimate consumers" means consumers purchasing electricity for their use and not for resale;

GG. "Utility" means any entity engaged in the generation, transmission or distribution of electrical energy, including but not limited to a private investor-owned utility or a public or municipally-owned utility; and

HH. "Winter season" means the period from November 1 through April 30.

6 MCAR S 2.0203 Registration. Any electric utility which commences operations in the state shall file a registration statement with the director within 30 days after commencing operation. Each registration statement shall be on forms issued by the director and shall contain the name and headquarter address of the utility, the type of utility, the names and addresses of all officers of the utility, and the name, address and telephone number of a person who may be contacted for information about the utility. Registration statements must be updated as a part of each utility's annual report.

6 MCAR S 2.0204 Reporting dates.

A. Annual.

1. Except as provided by the director, each generating and transmission utility shall file with the director the information required by rules 6 MCAR SS 2.0203, 2.0205, 2.0206, 2.0207, 2.0208, 2.0209 and 2.0210 by July 1 of each year.

2. Except as provided by the director, each distribution only utility shall file with the director only the information required by rules 6 MCAR SS 2.0203, 2.0205 and 2.0210 by July 1 of each year.

B. Quarterly.

1. Except as provided by the director, each utility shall file with the director the information required by rule 6 MCAR S 2.0211 on a quarterly basis as follows:

a. Information for the period of January 1 to March 31 shall be filed by April 30.

b. Information for the period of April 1 to June 30 shall be filed by July 31.

c. Information for the period of July 1 to September 30 shall be filed by October 31.

d. Information for the period of October 1 to December

31 shall be filed by January 31 of the following year.

2. No changes shall be made in reporting dates set forth in this section unless each reporting utility which would be affected has been given written notice of such change 30 or more days before the effective date of such change.

6 MCAR S 2.0205 Federal reports filed by utilities. Each utility shall identify to the director all forms and reports which it regularly files with the Federal Power Commission, the Rural Electrification Administration, and other Federal agencies. Upon request of the director, each utility shall make copies of any such forms or reports available to the director.

6 MCAR S 2.0206 Basic forecast and current data.

A. Each utility shall submit annually to the director data for the last calendar year and a forecast for the present year and the 14 subsequent years of the generation, the peak demand, and the consumption of electrical energy.

B. The basic forecast and current data shall contain the following data for each year cited in rule 6 MCAR S 2.0206 A. in the form requested below.

1. The annual electrical consumption, generation and peak demand forecast shall include:

a. annual total electrical consumption in megawatt-hours by ultimate consumers within the utility's Minnesota service area;

b. annual total electrical consumption in megawatt-hours by the utility's ultimate consumers outside its Minnesota service area;

c. the number of megawatt-hours the utility has received or expects to receive from other systems for sale to its ultimate consumers or to other utilities;

d. the number of megawatt-hours the utility has delivered or expects to deliver to other systems for resale;

e. total annual net generation of electrical energy by the utility in megawatt-hours;

f. electrical energy loss in megawatt-hours due to transmission line and substation losses;

g. peak demand for the system during the summer season and during the winter season;

h. load factor for the system during the summer season and during the winter season.

C. For the last calendar year historical data shall be supplied. If recorded figures are not available, estimates shall be used and shall be identified as such. When the recorded figures become available, they shall be supplied as a supplement to the data. For each other reporting year, a forecast shall be made using the methodology which yields the most meaningful results for the utility's system. The forecast shall be based on the factors which the reporting utility deems most likely to occur in its Minnesota service area. The procedures, assumptions and factors used in arriving at the forecast shall be stated in writing. Each utility shall comment on probable deviations from the projection. Any utility required to file an extended forecast pursuant to rule 6 MCAR S 2.0207 need not file the forecast documentation required in rule 6 MCAR S 2.0206 C.

REP079

6 MCAR S 2.0207 The extended forecast.

A. The following utilities must file an extended forecast: Northern States Power Company, Minnesota Power, Otter Tail Power Company, Interstate Power Company, Minnkota Power Cooperative, Cooperative Power Association, United Power Association and Dairyland Power Cooperative, and the Southern Minnesota Municipal Power Agency. Data which is compiled within the same calendar year for either an extended forecast or a certificate of need application may be substituted interchangeably to satisfy those portions of both sets of rules which have identical data requirements. In such cases, references to the material substituted and a copy of the appropriate reference material shall be submitted to meet the reporting requirements.

B. Content of extended forecast. The following data shall be provided:

1. annual electrical consumption by ultimate consumers and number of customers at year's end within the utility's system and for its Minnesota service area only for the past calendar year, the present calendar year, and the subsequent 14 years, for each of the following categories:

a. farm, excluding irrigation and drainage pumping (for reporting purposes, any tract of land used primarily for agricultural purposes);

b. irrigation and drainage pumping;

c. nonfarm residential (including electricity supplied through a single meter for both residential and commercial uses reported according to its principal use and apartment buildings reported as residential even if not separately metered);

d. commercial (including wholesale and retail trade; communications industries; public and private office buildings, banks, and dormitories; insurance, real estate and rental agencies; hotels and motels; personal business and auto repair

services; medical and educational facilities; governmental units, excluding military bases; warehouses other than manufacturer owned; electric, gas, water and water pumping other than pumping for irrigation, and other utilities);

e. mining;

f. industrial (including all manufacturing industries, construction operations and petroleum refineries);

g. street and highway lighting;

h. electrified transportation (including energy supplied for the propulsion of vehicles, but not energy supplied for office buildings, depots, signal lights or other associated facilities which shall be reported as commercial or industrial);

i. other (including municipal water pumping facilities, oil and gas pipeline pumping facilities, military camps and bases, and all other consumers not reported in categories a through h); and

j. the sum of categories a through i;

2. an estimate of the demand for power by ultimate consumers in the utility's system for each of the categories listed in rule 6 MCAR S 2.0207 B.1. at the time of the last annual system peak demand;

3. the utility's system peak demand by month for the last calendar year;

4. the utility's seasonal firm purchases and seasonal firm sales for each utility involved in each transaction for the last year, the present year, and the 14 subsequent years;

5. the utility's seasonal participation purchases and participation sales for each utility involved in each transaction for the last year, the present year, and the 14 subsequent years;

6. for the summer season and for the winter season of the last year, the present year, and the 14 subsequent years, the load and generation capacity data requested in items a. through m. listed below, including all anticipated purchases, sales, capacity retirements, and capacity additions, including those which may depend upon certificates of need not yet issued:

a. seasonal system demand;

b. annual system demand;

c. total seasonal firm purchases;

d. total seasonal firm sales;

e. seasonal adjusted net demand (a-c+d);

f. annual adjusted net demand (b-c+d);

g. net generating capacity;

h. total participation purchases;

i. total participation sales;

j. adjusted net capability (g+h-i);

k. net reserve capacity obligation;

l. total firm capacity obligation (e+k); and

m. surplus or deficit (-) capacity (j-l);

7. the utility's proposed additions and retirements. For the present calendar year and the subsequent 14 years, each utility shall provide a list in megawatts of proposed additions and retirements in generating capability; and

8. the utility's method of determining its system reserve margin and the appropriateness of the margin.

C. Forecast documentation for rules 6 MCAR SS 2.0206 and 2.0207.

1. Forecast methodology. Each applicant may use the forecast methodology which yields the most useful results for its system. However, the applicant shall detail in written form the forecast methodology employed to obtain the forecasts provided under rules 6 MCAR SS 2.0206 and 2.0207 including:

a. the overall methodological framework which is used;

b. the specific analytical techniques which are used, their purpose, and the component(s) of the forecast to which they have been applied;

c. the manner in which these specific techniques are related in producing the forecast;

d. where statistical techniques have been used, the purpose of the technique, typical computations (e.g., computer printouts, formulas used) specifying variables and data, and the results of appropriate statistical tests;

e. forecast confidence levels or ranges of accuracy for annual peak demand and annual electrical consumption;

f. a brief analysis of the methodology used, including its strengths and weaknesses, its suitability to the system, cost considerations, data requirements, past accuracy, and any other factors considered significant by the utility; and

g. an explanation of any discrepancies which appear between the forecasts presented by the utility in rule 6 MCAR S 2.0207 and those contained in rule 6 MCAR S 2.0206 this year or in the past years.

2. Data base for forecasts. The utility shall discuss in written form the data base used in arriving at the forecast presented in rules 6 MCAR SS 2.0206 and 2.0207 including:

a. a complete list of all data sets used in making the forecast, including a brief description of each data set and an explanation of how each was obtained, (e.g., monthly observations, billing data, consumer survey, etc.) or a citation to the source (e.g., population projection from the state demographer); and

b. a clear identification of any adjustments made to raw data to adapt them for use in forecasts, including the nature of the adjustment, the reason for the adjustment and the magnitude of the adjustment.

3. Assumptions and special information.

a. Discussion. The utility shall discuss in writing each essential assumption made in preparing the forecasts, including the need for the assumption, the nature of the assumption, and the sensitivity of forecast results to variations in the essential assumptions.

b. Subject of assumption. The utility shall discuss the assumptions made regarding the availability of alternative sources of energy, the expected conversion from other fuels to electricity or vice versa, future prices of electricity for customers in the utility's system and the effect that such price changes will likely have on the utility's system demand, the assumptions made in arriving at any data requested in 6 MCAR SS 2.0206 or 2.0207 which is not available historically or not generated by the utility in preparing its own internal forecast, the effect of existing energy conservation programs under federal or state legislation on long-term electrical demand, the projected effect of new conservation programs which the utility deems likely to occur through future state and federal legislation on long-term electrical demand, and any other factor considered by the utility in preparing the forecast. In addition the utility shall state what assumptions were made, if any, regarding current and anticipated saturation levels of major electric appliances and electric space heating within the utility's service area. If a utility makes no assumptions in preparing its forecast with regard to current and anticipated saturation levels of major electrical appliances and electric space heating it shall simply state this in its discussion of assumptions.

4. Coordination of forecasts with other systems. The utility shall provide in writing:

a. a description of the extent to which the utility coordinates its load forecasts with those of other systems, such as neighboring systems, associate systems in a power pool, or coordinating organizations; and

b. a description of the manner in which such forecasts are coordinated, and any problems experienced in efforts to coordinate load forecasts.

REPORT

6 MCAR S 2.0208 Generating facilities.

A. Present facilities. Each utility required to report under rule 6 MCAR S 2.0204 A.1. shall provide the following information with regard to each power plant serving or capable of serving its Minnesota service area as of January 1 of the current year:

1. the name and type of the plant;

2. its location and address;

3. actual summer and winter plant capacity as measured by the maximum load that could be supplied by present equipment on a peaking basis;

4. the total number of net megawatt-hours generated by the plant for non-plant use during the last calendar year;

5. the annual heat rate of the plant;

6. the quantities of primary and secondary fuels consumed during the last calendar year;

7. the year in which the plant or each unit of a multiunit plant began operation;

8. the type of unit and name plate megawatt rating for each unit of generating equipment in the plant;

9. if available, for all base load plants provide the capacity factor, operating availability, and forced outage rate.

B. Future facility additions. Each utility required to report under rule 6 MCAR S 2.0204 A.1. shall estimate the additional power plants or additions to existing plants necessary to provide for the energy growth predicted by the forecasts in rules 6 MCAR SS 2.0206 and 2.0207. Each utility shall supply the following information about each additional plant or addition:

1. the proposed general location of each plant currently in the planning stage, or the actual location of each plant currently under construction;

2. the year the plant is to begin operation;

3. the estimated cost of the new facility at the time of construction;

4. the estimated summer and winter plant capacity of anticipated generating equipment;

5. the estimated total annual net megawatt-hours generated for nonplant use by the plant operating at normal conditions under normal maintenance and circumstances, during its first full calendar year of operation;

6. the estimated type and amount of fuel to be used to operate the plant on an annual basis under conditions set forth in 6 MCAR S 2.0208 B.5.;

7. the estimated heat rate of the plant; and

8. the type of unit or units proposed for the plant.

C. Future facility retirements. Each utility required to report under rule 6 MCAR S 2.0204 A.1. shall list any planned facility retirements that will take place within the next 15 years. Each utility shall provide the following information about each facility retirement:

1. the location and type of the plant;

2. the forecasted retirement date; and

3. the plant's actual summer and winter capacity.

D. Fuel requirements and generation by fuel type.

1. Based on the data reported under rule 6 MCAR S 2.0208 A. each utility shall report the quantity of coal, natural gas, middle distillates, heavy oils, nuclear energy, and other fuels used by its Minnesota power plants during the last calendar year, and the net megawatt-hours of electrical energy generated by each type of fuel. Net generation from Minnesota hydro power plants shall also be provided. If data is reported for other fuels, the type of fuel shall be specified.

2. Each utility shall estimate the quantities of the fuel which will be necessary for use by its Minnesota power plants to provide for the electrical energy growth predicted by the forecast projected in rules 6 MCAR SS 2.0206 and 2.0207. Each utility shall also estimate by fuel type the net megawatt-hours electricity which will be produced by its Minnesota power plants under the forecast. A forecast of net generation from Minnesota hydro power plants shall also be provided. In preparing such estimates, each utility shall consider increases in fuel use by existing facilities and possible conversions between fuel types.

REF079 6 MCAR S 2.0209 Transmission lines.

A. Existing transmission lines. Each utility shall report the following information in regard to each transmission line over 200 kilovolts now in existence:

1. a map showing the location of each line;

2. the design voltage of each line;

3. the size and type of conductor;

4. the approximate location of D.C. terminals or A.C. substations; and

5. the approximate length of each line in Minnesota.

B. Transmission line additions. Each generating and transmission utility, as defined in 6 MCAR S 2.0202, shall report the information required in rule 6 MCAR S 2.0209 A. for all future transmission lines over 200 kilovolts which the utility plans to build within the next 15 years.

C. Transmission line retirements. Each generation and transmission utility as defined in 6 MCAR S 2.0202 shall identify all present transmission lines over 200 kilovolts which the utility plans to retire within the next 15 years.

REPORT

6 MCAR S 2.0210 Other information reported annually. Each utility shall provide the following information for the last calendar year:

A. a table and a graphed curve of the demand in megawatts by hour over a 24-hour period for:

1. the 24-hour period during the summer season when the megawatt demand on the system was the greatest; and

2. the 24-hour period during the winter season when the megawatt demand on the system was the greatest;

B. the names, addresses, and the kilowatt-hours of electricity consumed by customers of the utility who annually consume over 600,000 kilowatt-hours;

C. the names and addresses of the utility's suppliers of primary fuels. Provide for each supplier of primary fuels the type of fuel purchased;

D. a detailed map, on which the scale is indicated, of the utility's Minnesota service area, identifying power plants, principal substations, and transmission lines over 200 kilovolts, identified by voltage;

E. a listing of the purchases and sales for resales the utility had with other utilities, including:

1. the name of any such utility;

2. megawatt-hours purchased or sold for resale during the last year;

F. its present rate schedules as of June 1 of the present year;

G. a copy of whichever of the following reports it files with either the Energy Information Administration of the U.S. Department of Energy or the U.S. Department of Agriculture:

1. F.P.C. Form Number 12;

2. Part D. of the financial and statistical report to the United States Department of Agriculture;

H. for distribution-only utilities the megawatt-hours generated on an emergency standby basis and the amount of fuel used to generate such electricity;

I. actual data on the number of residential electric space heating customers and units it has and the total megawatt-hours of electricity sold these customers during the past calendar year. If a utility cannot provide actual data estimates may be accepted.

J. its deliveries to ultimate consumers for the last calendar year broken down by categories determined by the director. (This rule is not applicable to electric utilities completing rule S 2.0207 B.1.)

REP079

6 MCAR S 2.0211 Quarterly reports of energy delivered to ultimate consumers.

A. Beginning in the year 1976 all utilities, except municipal utilities with sales of under 20 million kilowatt-hours annually, shall report quarterly the kilowatt-hours delivered each month during the preceding quarter to ultimate consumers, broken down by customer class/geographic area combination.

1. Geographic areas will be defined by the customer's county.

2. Customer class will be defined by standard industrial classification (SIC) codes with extensions for more detailed breakdown of households and governmental units.

3. In each customer class/geographic area combination the utility shall report the number of customers and the total kilowatt-hours consumed.

B. Said information shall be in the form determined by the director. Upon written application, the director may allow a

utility to report said information in a different form.

6 MCAR S 2.0212 The Minnesota Wisconsin Power Suppliers Group (MWPSG). For purposes of these rules the MWPSG may provide a joint report to either the agency, or both the agency and the Minnesota Environmental Quality Board (MEQB) on behalf of its member utilities. Such a joint report shall contain all information required by these rules and shall be in a format deemed acceptable by the director. Such a joint report shall fulfill the obligations of the member utilities in meeting these rules and the statutory informational requirements of Minnesota Statutes, sections 116H.10 and 116H.11.

Within these rules where the agency's reporting requirements and those of the MEQB are similar the MWPSG in its report need file only one joint listing of the required information so long as that listing provides all the data requirements of these rules and is in a format acceptable to the director.

The following rules within these reporting requirements shall be considered similar to those of the MEQB: 6 MCAR SS 2.0207 B.4.-7., 2.0208 B.-C., and 2.0209 A.-B. In addition to these rules, the director may designate other rules similar as well.

6 MCAR S 2.0213 Corrections. Substantial corrections of any report or statement must be filed with the agency within 10 days following the date of the event prompting the change in reported information or the date upon which the person filing became aware of the inaccuracy. The change or correction shall identify the form and the paragraph of the information to be changed or corrected.

6 MCAR S 2.0214 Federal or state data substitution for Energy Agency data requirements. Upon written request by any utility, the director may allow it to substitute data provided to the federal government or another state agency in lieu of data required by these regulations if the data required by both agencies is substantially the same.

RULES GOVERNING NATURAL GAS UTILITIES AND INTERSTATE NATURAL GAS PIPELINE COMPANIES INFORMATION REPORTING 6 MCAR §§ 2.0301-2.0315

§ 2.0301 Purpose.

A. The purpose of these rules is to implement the forecasting, statistical and informational reporting requirements of Minn. Stat. §§ 116H.10 and .11. These rules are adopted pursuant to the powers of the director conferred by Minn. Stat. § 116H.08(a), and are designed to identify emerging energy trends based on supply and demand, conservation and public health and safety factors and to determine the level of state-wide and service area energy needs.

B. Each gas utility serving ultimate consumers in the State of Minnesota and each interstate gas pipeline company serving any gas utility located in the State of Minnesota or ultimate consumers in the State shall submit the information required by these rules to the director in the form specified by him.

Any entity which is both a gas utility company and an interstate gas pipeline company shall file one report on its pipeline operations and one report on its utility operations.

§ 2.0302 Definitions. For purposes of these rules, the following definitions shall apply:

A. "Agency" means the Minnesota Energy Agency;

B. "Annual gas consumption" means the total amount of gas used or disposed of in Minnesota for all purposes by either a gas utility or interstate pipeline company. This definition shall not include natural gas in storage at the end of the reporting year;

C. "Annual sales to ultimate consumers" means gas sales to end-use customers in a utility's or pipeline company's Minnesota service area;

D. "Basic forecast" refers to that more elementary, less documented forecast required of all Minnesota gas utilities. While all utilities must file a basic forecast, only specifically designated utilities must, in addition, file an extended forecast which requires additional data and greater documentation;

E. "Construction" means any significant physical alteration of a site to install or enlarge a large energy facility but shall not include activities incident to preliminary engineering or environmental studies;

F. "Curtailment" means a reduction or cutoff of supply to firm or interruptible customers which is related directly to deficiencies in gas supply;

G. "Design day" means the 24-hour period of the greatest theoretical gas demand at a given 24-hour average temperature;

H. "Design day availability" means the volume of each type of gas available on the design day and the maximum total volume of such supplies;

I. "Director" means the director of the Minnesota Energy Agency;

J. "Firm contract customers" means customers served under schedules or contracts which neither anticipate nor permit interruption;

K. "Gas" means any form of gaseous fuel distributed as a vapor through distribution systems to ultimate consumers including natural gas and all gaseous fuels equivalent in performance to natural gas;

L. "Gas volume" means the volume of gas as measured at 14.73 psia at 60° Fahrenheit. All volumes shall be in thousands of cubic feet (MCF) unless otherwise stated;

M. "Interruptible contract customers" means customers served under schedules or contracts which anticipate or permit interruption of service during the term of the contract;

N. "Large energy facility" means any pipeline for transporting natural or synthetic gas at pressure in excess of 200 pounds per square inch with more than 50 miles of its length in Minnesota, any facility designed for or capable of storing on a single site more than 100,000 gallons of liquefied natural gas or synthetic gas, or any underground gas storage facility requiring a permit pursuant to Minn. Stat. § 84.57;

O. "Last calendar year" means the calendar year immediately preceding the year in which reports are required to be filed;

P. "Liquefied natural gas" means natural gas stored as a liquid at or near atmospheric pressure at a temperature of approximately -260° Fahrenheit;

Q. "Minnesota service area" means the geographical area within the State of Minnesota where a gas utility or interstate pipeline company serves ultimate consumers. The Minnesota service area for an interstate pipeline company shall also include all Minnesota utilities which it services;

R. "Natural gas" means a naturally occurring mixture of hydrocarbons and nonhydrocarbon gases found in porous geologic formations beneath the earth's surface, the principal constituent of which is methane;

S. "Peak day" means the 24-hour period of greatest gas send-out;

T. "Interstate gas pipeline company" means an entity which operates an interstate gas pipeline which provides gas to any utility located in Minnesota (also referred to in these rules as "pipeline company" or "interstate pipeline company");

U. "Substitute natural gas" means any gaseous fuel equivalent in performance to natural gas which is created from other gases, liquids, or solid hydrocarbons. Substitute natural gas shall include manufactured gas, gas produced from liquid petroleum gases, such as propane, butane, and gas produced from naphtha. Whenever the term synthetic gas is used within these rules it shall be construed to mean the same as substitute natural gas;

V. "Ultimate consumer" means end-use customers who do not sell gas for resale;

W. "Utility" means any entity in Minnesota whose primary business is the distribution of gas to ultimate consumers including, but not limited to, a private investor-owned utility or a public or municipally owned utility.

§ 2.0303 Registration. Each gas utility serving ultimate consumers and each interstate gas pipeline company serving any utility in Minnesota must file a registration statement with the director. Any utility or interstate pipeline company which commences operation in the state after June 1, 1975, shall file a registration statement with the director within 30 days after commencing operation. Each registration statement shall be on forms issued by the director and available from the Agency and shall contain the name and headquarters address of the utility or interstate pipeline company, the names and addresses of all officers of the utility or interstate pipeline company, and the name, address and telephone number of a person who may be contacted for information about the utility or interstate pipeline company.

§ 2.0304 Reporting dates.

A. Gas utilities.

1. Except as provided by the director or in these rules, each utility shall file with the director the information required by 6 MCAR §§ 2.0303, 2.0305 - 2.0307, 2.0309, and 2.0313 by November 1, 1977, and by July 1 of each year thereafter.

2. Except as provided by the director, each utility shall file with the director the information required by 6 MCAR § 2.0311 on a quarterly basis as follows:

a. the information for the period of January 1 to March 31 shall be filed by April 30;

b. the information for the period of April 1 to June 30 shall be filed by July 31;

c. the information for the period of July 1 to September 30 shall be filed by October 31;

d. the information for the period of October 1 to December 31 shall be filed by January 31 of the following year.

B. Interstate gas pipeline companies. Except as provided by the director, each interstate pipeline company shall file with the director the information required by 6 MCAR § 2.0305, 2.0308, 2.0310, and 2.0312 by July 1 of each year.

§ 2.0305 Federal reports filed by gas utilities and interstate gas pipeline companies. Each utility and interstate pipeline company shall identify to the director all forms and reports pertaining to gas supply and demand which it regularly filed with the Federal Power Commission, Bureau of Mines and other federal agencies. Upon request of the director, any utility or pipeline company shall make copies of any forms or reports available to the director.

§ 2.0306 Basic forecasts and current statistics for gas utilities.

A. Each gas utility shall submit annually to the director for the last calendar year, the present calendar year, the subsequent first five, tenth and fifteenth years, actual data and forecasts of anticipated annual gas consumption and supply.

B. The basic forecast and current data shall contain the following data for each year cited in rule 6 MCAR § 2.0306 A:

1. Annual sales to ultimate consumers within the utility's Minnesota service area;

2. The annual volume of gas delivered or expected to be delivered to other utilities for resale;

3. The annual volume of gas used in the operation of the utility within its Minnesota service area;

4. The annual volume of gas used in the utility's Minnesota service area but unaccounted for in 6 MCAR § 2.0306 B. 1. through 3.;

5. The total annual gas consumption, for all purposes, in the utility's Minnesota service area. (total consumption equals items 1 + 2 + 3 + 4 = 5). Exclude gas held in storage at year's end;

6. The total annual volume of substitute natural gas provided by the utility to supplement the utility's supply of natural gas for use in its Minnesota service area;

7. The total annual volume of liquefied natural gas supply withdrawn from storage by the utility for use in its Minnesota service area;

8. The total volume of natural gas withdrawn from underground storage by the utility for use in its Minnesota service area;

9. The total annual volume of gas received or estimated to be received from the interstate pipeline company for use in its Minnesota service area;

10. The design day maximum gas demand volume for the utility's Minnesota service area firm customers;

11. The maximum winter peak day volume of gas sent out or expected to be sent out in the utility's Minnesota service area;

12. The design day availability of each type of gas and the maximum one-day volume of gas such supplies will provide;

13. The amount of substitute natural gas the utility can produce from the feedstock it will have in storage at the beginning of the winter heating season for use in its Minnesota service area;

14. The amount of liquid natural gas the utility will have for use in storage at the beginning of the winter heating season for use in its Minnesota service area;

15. The amount of natural gas the utility will have in underground storage for use at the beginning of the winter heating season;

16. The type and amount of fuel used or to be used in Minnesota to produce substitute natural gas; and

17. The actual historic data and a forecast of direct sales to ultimate customers and the number of such customers in each of the following categories:

a. residential firm;

b. commercial firm customers who use less than 200 MCF on peak day;

c. commercial firm customers who use 200 MCF or greater on peak day;

d. commercial interruptible;

e. industrial firm customers who use less than 200 MCF on peak day;

f. industrial firm customers who use 200 MCF or greater on peak day;

g. industrial interruptible;

h. other consumers firm;

i. other consumers interruptible;

j. own company use;

k. unaccounted for gas;

l. gas delivered to other utilities for sale; and

m. total annual gas consumed in Minnesota (total a-l should equal 6 MCAR § 2.0306 B. 5.).

C. For the last calendar year historical data shall be supplied. For each other reporting year, the forecasts shall be made using the utility's or pipeline company's best estimate for each of the items requested. The Agency recognizes 5 to 15 year forecasts can be difficult to calculate and subject to considerable error but utilities shall prepare these forecasts to the best of their ability and knowledge. The forecasts shall be based on those assumptions and factors which the reporting utility deems most likely to occur. The assumptions and factors used in deriving the forecasts shall be stated in writing. Each utility shall evaluate the size of the estimating error, given the conditions and factors used in the estimate. Each utility shall comment on possible deviations from the forecast and what factors might create such changes. Any utility required to file an extended forecast pursuant to rule 6 MCAR § 2.0307 need not file forecast documentation required in rule 6 MCAR § 2.0306 C.

§ 2.0307 Extended forecast and documentation.

A. The following utilities must file an extended forecast with documentation: Minnesota Gas Company, North Central Public Service Company, Northern States Power Company, and Peoples Natural Gas Company. Each utility required to file its extended forecast pursuant to rule 6 MCAR § 2.0307 shall identify or estimate the demand for gas by ultimate consumer categories listed in rule 6 MCAR § 2.0306 B. 17. on the peak send-out day for each of the reporting years cited in rule 6 MCAR § 2.0306 A.

B. Forecast documentation for rule 6 MCAR §§ 2.0306 and 2.0307 A.

1. Forecast methodology. Each utility may use whatever forecast methodology it believes is most appropriate for its Minnesota service area. However, those utilities required under rules 6 MCAR §§ 2.0306 and 2.0307 A. to file forecasts shall describe the forecast methodology employed by providing the following documentation:

a. the overall methodological framework used;

b. the specific analytical techniques used, their purpose, and the component(s) of the forecast to which they have been applied;

c. the manner in which these specific techniques are related in producing the forecast;

d. where statistical techniques have been used, the purpose of the techniques, typical computations (e.g., computer printouts, formulas used), specifying variables and data and the results of appropriate statistical tests;

e. forecast confidence levels or ranges of accuracy for annual peak demand and annual gas consumption;

f. a brief analysis of the methodology used, including its strengths and weaknesses, its suitability to the utility's service area, cost considerations, data requirements, past accuracy and any other factors considered significant by the utility; and

g. an explanation of any discrepancies between the forecasts presented by the utility and forecasts submitted in past years.

2. Data base for forecasts. The utility shall provide a written discussion of the data base used in arriving at the forecast presented in rules 6 MCAR §§ 2.0306 and 2.0307 A. including:

a. a complete list of all data sets used in making the forecast, including a brief description of each data set and an explanation of how it was obtained, (e.g., monthly observations, billing data, consumer survey, etc.) or a citation to the source (e.g., population projection from the state demographer); and

b. a clear explanation of any adjustments made to raw data to adapt them for use in forecasts, including the nature of the adjustments, the reasons for the adjustments and the magnitude of the adjustments.

3. Assumptions and special information.

a. Discussion. The utility shall discuss in writing each essential assumption made in preparing the forecasts, including the need for the assumption, the nature of the assumption, and the sensitivity of forecast results to variations in the essential assumption.

b. Subject of assumption. The utility shall discuss the assumptions made regarding the availability of alternative sources of energy, any expected conversion from other fuels to gas or vice versa, future prices of gas for customers in the utility's Minnesota service area and the effect that such price changes will likely have on demand, the assumptions made in arriving at any data requested in 6 MCAR §§ 2.0306 or 2.0307 A. which are not available historically or not generated by the utility in preparing its own internal forecast, the effect of existing energy conservation programs under federal or state legislation or long-term gas demand, the projected effect of new conservation programs which the utility deems likely to occur through future state and federal legislation on long-term gas demand, and any other factor considered by the utility in preparing the forecast.

§ 2.0308 Basic forecast and current statistics for interstate gas pipeline companies.

A. Each interstate pipeline company shall annually submit to the director for the last calendar year, the present calendar year and the subsequent first five, tenth and fifteenth years, actual data and forecasts of anticipated annual Minnesota service area consumption and supply of natural gas.

B. The basic forecast and current data report shall contain the following data for each year cited in rule 6 MCAR § 2.0308 A.:

1. The annual sales to Minnesota gas utility distribution companies for resale;

2. The maximum one-day amount of gas that must be provided to the Minnesota service area to meet contractual obligations to the gas utilities served.

C. In meeting the requirements of 6 MCAR § 2.0308 A., historical data for the last calendar year shall be supplied. For each other reporting year the forecasts shall be made using the interstate pipeline company's best estimate for each of the items. The Agency recognizes 5 to 15 year forecasts can be difficult to calculate and subject to considerable error, but interstate pipeline companies should prepare these forecasts to the best of their ability and knowledge. The forecasts shall be based on those assumptions and factors which the reporting utility deems most likely to occur. The assumptions and factors used in deriving the forecasts shall be stated in writing. Each interstate pipeline company shall evaluate the size of estimating error possible given the conditions and factors used in the estimate. Each utility company shall comment on possible deviation from the forecast and what factors might create such changes.

§ 2.0309 Facility requirements for gas utility companies.

A. Present facilities. Each gas utility shall provide the following information with regard to existing facilities serving its Minnesota service area as of January 1 of the current year:

1. The name and geographic location of all underground storage facilities for natural gas. For each facility include:

a. the total storage capacity of the facility in MCF minus the required reserves of gas;

b. the actual volume of gas in storage in MCF at the beginning of the winter heating season not including required reserves of gas;

c. the maximum single-day withdrawal capacity of the facility in MCF; and

d. the anticipated facility retirement date.

2. The name and geographic location of all liquefied natural gas facilities. For each facility include:

a. the total storage capacity of the facility in MCF of natural gas minus the required reserves;

b. the actual equivalent volume in MCF of natural gas in storage in the facility at the beginning of the winter heating season minus the required reserves;

c. the maximum single-day withdrawal capacity of natural gas in MCF; and

d. the anticipated facility retirement date.

3. The name and geographic location of all substitute natural gas facilities. For each facility include:

a. the maximum storage capacity of the substitute natural gas facility in converted MCF of substitute natural gas;

b. the volume in storage at the beginning of the winter heating season in MCF;

c. the maximum single-day production capacity in MCF that can be injected into the utility's pipeline;

d. the anticipated facility retirement year; and

e. the type of fuel to be converted to substitute natural gas.

4. A map, on which the general scale is indicated, of the utility's Minnesota service area, identifying municipalities served, substitute natural gas facilities, underground natural gas storage facilities, liquefied natural gas facilities, major distribution lines, interconnections with other utilities and delivery points with interstate pipeline companies.

B. Future facility requirements. Each utility shall estimate the additional facilities or additions to existing facilities necessary to meet the level of gas consumption predicted in its forecast in 6 MCAR § 2.0306. Each utility shall supply the following information:

1. The name and geographic location of all new underground natural gas storage facilities or additions to existing facilities. For each facility include:

a. the anticipated year and month the facility will be ready for operation;

b. the estimated storage capacity of the new facility in MCF minus necessary reserves that must be kept in storage;

c. the estimated actual storage in MCF of the volume that will be available for usage at the beginning of each heating season. This figure should not include necessary reserves of gas; and

d. the maximum single-day withdrawal capacity of the proposed facility.

2. The name and geographic location of all new liquefied natural gas storage facilities or additions to existing facilities. For each facility include:

a. the anticipated year and month the facility will be ready for operation;

b. the estimated storage capacity in equivalent MCF of natural gas of the new facility minus reserves that must be kept in storage;

c. the estimated actual storage in equivalent MCF of natural gas that will be available at the beginning of each heating season when the facility is in operation; and

d. the maximum single-day withdrawal capacity of the proposed facility.

3. The name and geographic location of all new substitute natural gas facilities or additions to existing facilities. For each facility include:

a. the type of fuel which will be converted to substitute natural gas;

b. the month and year in which the plant is predicted to begin operation;

c. the storage capability of the facility in equivalent MCF of substitute natural gas;

d. the estimated actual storage in equivalent MCF of substitute natural gas that will be available for use at the beginning of each heating season when plant begins operation; and

e. the maximum daily volume of substitute natural gas that can be produced by the facility and injected into the utility's system.

§ 2.0310 Facility requirements for interstate pipeline companies.

A. Present facilities. Each interstate pipeline company shall provide the following information with regard to existing facilities serving its Minnesota service area as of January 1 of the current year:

1. The name and geographic location of all underground storage facilities owned, operated or leased by the interstate pipeline company in Minnesota. For each facility include:

a. the total storage capacity in MCF of the facility minus the required reserves of gas;

b. the actual volume of gas in storage in MCF at the beginning of the winter heating season, not including required reserves of gas;

c. the maximum single day withdrawal capacity of the facility in MCF; and

d. the anticipated facility retirement date.

2. The name and geographic location of all liquefied natural gas facilities owned, operated or leased by the interstate pipeline company in Minnesota. For each facility include:

a. the total storage capacity of the facility in MCF of natural gas minus required reserves;

b. the actual volume of natural gas in MCF in storage at the beginning of the winter heating season minus the required reserves;

c. the maximum single day withdrawal capacity in MCF of natural gas; and

d. the anticipated facility retirement date.

3. The name and geographic location of all substitute natural gas facilities owned, operated or leased by the interstate pipeline company in Minnesota. For each facility include:

a. the maximum storage capacity of the facility in MCF of converted substitute natural gas;

b. the maximum volume in storage in converted MCF of substitute natural gas at the beginning of the winter heating season;

c. the maximum single day withdrawal capacity of the facility in MCF that can be injected into the pipeline;

d. the anticipated date of facility retirement; and

e. the type of fuel to be converted to substitute natural gas.

4. A map, on which the general scale is indicated, of the utility's Minnesota service area identifying distribution utility companies served, underground natural gas storage facilities, underground liquid natural gas facilities,

substitute natural gas facilities, major transmission lines, and interconnection with other interstate pipeline companies.

B. Future facility requirements. Each interstate pipeline company shall estimate the additional facilities or additions to existing facilities necessary to meet the level of gas consumption predicted in its forecast in 6 MCAR § 2.0308. Each interstate pipeline company shall supply the following information regarding its own planned or projected operations or facilities:

1. The name and geographic location of all new underground natural gas storage facilities or additions to existing facilities. For each facility include:

a. the anticipated year and month the facility will be in operation;

b. the estimated storage capacity in MCF of the new facility minus necessary reserves of gas;

c. the estimated actual storage in MCF that will be available for usage at the beginning of each heating season, not including necessary reserves of gas; and

d. the maximum single-day withdrawal capacity of the proposed facility.

2. The name and geographic location of all new underground liquefied natural gas storage facilities or additions to existing facilities. For each facility include:

a. the anticipated year and month the facility will be ready for operation;

b. the estimated storage capacity in converted MCF of natural gas of the new facility minus any necessary reserves that must be kept in storage;

c. the estimated actual storage in converted MCF of natural gas that will be available at the beginning of each heating season when the facility is in operation, not including necessary reserves that must be kept in storage; and

d. the maximum single-day withdrawal capacity of the proposed facility in converted MCF of natural gas.

3. The name and geographic location of all new substitute natural gas facilities or additions to existing facilities. For each facility include:

a. the type of fuel which is to be converted into substitute natural gas;

b. the month and year in which the plant is predicted to begin operation;

c. the theoretical storage capability of the facility in MCF of converted substitute natural gas;

d. the estimated actual storage in converted MCF of substitute natural gas that will be available at the beginning of each heating season not including required reserves; and

e. the maximum daily volume of substitute natural gas in MCF that will be available to be withdrawn from the facility and injected into the pipeline.

4. Based on your 15-year forecast, provide a Minnesota service area map identifying future transmission lines, natural gas storage facilities, liquefied natural gas storage facilities, substitute natural gas storage facilities, any additional distribution utility companies to be served and any additional interconnections with other interstate natural gas pipeline companies.

§ 2.0311 Quarterly disposition of gas by utilities. Beginning in the year 1976, all utilities shall report quarterly the monthly volume of gas delivered to ultimate consumers, broken down by customer class and geographic area.

A. Geographic areas shall be defined by county;

B. Customer class shall be defined by standard industrial classification (SIC) codes;

C. In each customer class and geographic area combination, the utility shall report the number of customers and the total gas volume consumed;

D. Said information shall be in the form determined by the director. Upon written application, the director may allow a utility to report said information in a different form.

§ 2.0312 Disposition of gas by interstate pipeline companies. Each interstate pipeline company shall file a copy of its annual FPC forms 2 and 16 with the Agency.

§ 2.0313 Other information to be reported by gas utilities.

A. An annual load curve for the last calendar year consisting of a single graph and accompanying data table indicating the total monthly consumption of gas in the following classifications:

1. residential firm;

2. commercial industrial firm;

3. small volume interruptible;

4. large volume interruptible;

5. electric generation;

6. gas to storage;

7. other dispositions and losses; and

8. level of contract demand;

B. Any additional municipalities or geographic areas outside the utility's current service area which it expects to serve and the year when service will begin.

C. A list of customers who will be curtailed or completely phased out in the five years following the year of filing;

D. The criteria used to determine the classification of a customer as a firm or interruptible customer;

E. Its total sales in MCF to ultimate customers by county for the last calendar year;

F. For the last calendar year provide a list of customers and their addresses:

1. Who have gas requirements in excess of 200 MCF on their peak day each year. For each customer so identified list:

a. annual actual sales;

b. annual estimated curtailment;

c. annual estimated requirements (sum of a and b should equal c);

d. alternative fuel used; and

e. curtailment priority rank.

2. Who are small volume interruptible users. For each small volume interruptible user identify the volume of gas consumed during the last calendar year and the curtailment priority rank.

3. Who are firm customers and consume 6,000 MCF or greater annually. For each customer so identified list the volume of gas consumed during the last calendar year and the curtailment priority rank.

§ 2.0314 Corrections. Corrections of a substantial nature to any report or statement which pertain to historical data and not forecasts shall be filed with the Agency within 10 days following the date of the event prompting the change in reported information or the date upon which the person filing became aware of the inaccuracy. The change or correction shall identify the form and the paragraph of the information to be changed or corrected.

§ 2.0315 Federal or state data substitution for energy agency data requirements. Upon written request by any utility, the director may allow it to substitute data provided to the federal government or another state agency in lieu of data required by these regulations if the data required by both agencies is substantially the same.

RULES AND REGULATIONS GOVERNING INFORMATION REPORTING BY MINNESOTA PRIME PETROLEUM SUPPLIERS AND PETROLEUM PIPELINE COMPANIES

CHAPTER FOUR: EA 400-411

EA 400 Purpose

The purpose of these rules is to implement the forecasting, statistical and informational requirements of Minnesota Statutes §§ 116H.10 and 11 (1974). These rules are adopted pursuant to the powers of the director conferred by Minnesota Statutes § 116H.08 subdivision a (1974) and are designed to identify emerging energy trends based on supply and demand, conservation and public health and safety factors and to determine the level of state-wide and service area energy needs.

EA 401 Applicability of These Rules

Each prime petroleum supplier and petroleum pipeline company in the State shall submit the information required by these rules to the director in the form specified by him.

EA 402 Definitions

For the purposes of these regulations, the following definitions shall apply:

(a) "Agency" means the Minnesota Energy Agency;

(b) "Aviation gasoline" means all of the various grades of aviation gasoline as defined in American Society for Testing and Materials (ASTM) D 910-70;

(c) "Construction" means significant physical alteration of a site to install or enlarge a large energy facility but does not include activities incident to preliminary engineering or environmental studies;

(d) "Director" means the director of the Minnesota Energy Agency;

(e) "End-user" means any person who is an ultimate consumer of a petroleum product other than a wholesale purchaser-consumer;

(f) "Jet fuel" means those fuels commonly known as kerosene-base jet fuel and naptha-base jet fuel;

(g) "Large energy facility" means any facility on a single site designed for or capable of storing more than one million gallons of crude petroleum or petroleum fuels or oil or derivatives thereof or any pipeline greater than six inches in diameter and having more than 50 miles of its length in Minnesota used for the transportation of crude petroleum or petroleum fuels or oil or derivatives thereof;

(h) "Middle distillate" means any derivative of petroleum including kerosene, home heating oil, range oil, stove oil, and diesel fuel which has a fifty per cent boiling point in the ASTM D86 standard distillation test falling between 371°-700° F. "Middle distillate" shall not include kerosene-based and

naptha-based jet fuel, heavy fuel oils grades #4, 5 and 6, intermediate fuel oils which are blends containing #6 oil, and all specialty items such as solvents, lubricants, waxes and process oil;

(i) "Motor gasoline" means a mixture of volatile hydrocarbons, suitable for operation of an internal combustion engine whose major components are hydrocarbons with boiling points ranging from 140° to 390° F. and whose source is distillation of petroleum and cracking, polymerization, and other chemical reactions by which naturally occurring petroleum hydrocarbons are converted to those that have superior fuel properties;

(j) "Petroleum pipeline company" means any company which owns or operates in Minnesota any pipeline greater than six inches in diameter and having more than 50 miles of its length in Minnesota used for the transportation of crude petroleum or petroleum fuels or oil or derivatives thereof;

(k) "Prime petroleum supplier" means the supplier or producer which makes the first sale of any petroleum product into the state distribution system for consumption within the state. Any supplier or producer which is considered a Minnesota prime supplier by the Federal Energy Agency shall be deemed to be a prime petroleum supplier under these regulations. "Prime petroleum supplier" shall not include any licensed petroleum distributor or propane retailer who takes delivery of a product in another state for use in Minnesota if he has in his possession a letter from his supplier stating that the supplier has or will report the sales of said product to the Federal Energy Agency and the State or if the total amount of any single product so received by the distributor or retailer is less than 500,000 gallons per year.

(l) "Propane" means the chemical C_3H_8 in its commercial forms including propane-butane mixes in which propane constitutes greater than ten (10) per cent of the mixture by weight. Included within the definition of propane is the propane content of natural gas liquids and refinery gas when used for refinery fuel use.

(m) "Residual fuel oil' means the fuel oil commonly known as (a) No. 4, No. 5, and No. 6 fuel oils; (b) Bunker C; (c) Navy Special Fuel Oil; (d) crude oil when burned directly as a fuel; and all other fuel oils which have a fifty per cent boiling point over 700° F. in the ASTM D-86 standard distillation test;

(n) "Total petroleum products" means propane, butane, propane/butane mix, motor gasoline, kerosene, #2 heating oil, diesel fuel, other middle distillates, aviation gasoline, jet fuel, #4 for utilities, #5 and #6 for utilities, #4 for non-utilities, #5 and #6 for non-utilities, Bunker C, Navy Special, other residuals, lubricants, special napthas and solvents;

(o) "Wholesale purchaser-consumer" means any ultimate consumer which, as part of its normal business practices, purchases or obtains a product from a supplier and receives delivery of that product into a storage tank substantially under the control of that consumer at a fixed location and which either (a) purchased or obtained more than 20,000 gallons of that allocated product for its own use in agricultural production in any completed calendar year subsequent to 1971; (b) purchased or obtained more than 50,000 gallons of that allocated product in any completed calendar year subsequent to 1971 for use in one or more multi-family residences; or (c) purchased or obtained

more than 84,000 gallons of that allocated product in any completed calendar year subsequent to 1971;

(p) "Wholesale purchaser-reseller" means any firm which purchases, receives through transfer, or otherwise obtains (as by consignment) an allocated product and resells or otherwise transfers it to other purchasers without substantially changing its form.

EA 403 Registration

Each prime petroleum supplier and petroleum pipeline company operating in Minnesota must file a registration statement with the director by July 1, 1975. Any prime petroleum supplier or petroleum pipeline company which commences operations in the state after June 1, 1975, shall file a registration statement with the director within 30 days after commencing operation. Each registration statement shall be on forms issued by the director and shall contain the name and headquarter address of the prime petroleum supplier or petroleum pipeline company, the names and addresses of all officers of the supplier or company and the name, address and telephone number of a person who may be contacted for information about the prime petroleum supplier or petroleum pipeline company.

EA 404 Reporting Dates

Except as provided by the director, each prime petroleum supplier shall file with the director or its trade association, as applicable, the information required by EA 405. EA 406, EA 407 and EA 409 by July 1st of each reporting year. Except as provided by the director, each prime petroleum supplier shall file with the director the information required by EA 408 on a quarterly basis as follows:

Information for the period of January 1 to March 31 shall be filed by April 30;

Information for the period of April 1 to June 30 shall be filed by July 31;

Information for the period of July 1 to September 30 shall be filed by October 31;

Information for the period of October 1 to December 31 shall be filed by January 31 of the following year.

Each petroleum pipeline company shall file with the director the information required by EA 405 and EA 407, by July 1st of each reporting year.

No changes shall be made in reporting dates set forth in this section unless each prime petroleum supplier or petroleum pipeline company has been given written notice of such change 30 or more days before the effective date of such change.

EA 405 Federal Reports Filed by Prime Petroleum Suppliers and Petroleum Pipeline Companies

Each prime petroleum supplier and petroleum pipeline company shall identify to the director all forms and reports pertaining to energy supply and demand which it regularly files with any federal agency. Upon request of

the director, each firm shall make copies of any such forms or reports available to the director.

EA 406 Forecasts

(a) Each prime petroleum supplier shall submit annually to the director 5, 10 and 15 year forecasts of petroleum supply and demand within its Minnesota service area.

(b) The energy forecast shall contain the following data for each reporting year:

(1) The annual supply of motor gasoline, middle distillates, jet fuels, aviation gasoline, residual fuel oil, propane, and total petroleum products that the supplier provides or will provide to its Minnesota service area.

(2) The annual demand for motor gasoline, middle distillates, jet fuels, aviation gasoline, residual fuel oil, propane and total petroleum products if sufficient product were available to meet all demands within the supplier's Minnesota Service Area.

(3) The annual volume of crude oil in number of barrels available to the supplier's refineries located in Minnesota.

(c) Reporting years. The data required in 406(b) shall be supplied for the following years:

(1) the last calendar year;

(2) the present calendar year;

(3) the year 5 years after the present calendar year;

(4) the year 10 years after the present calendar year;

(5) the year 15 years after the present calendar year. In 1975, data shall also be supplied for the calendar year 1973.

(d) Criteria For Forecast. For the last calendar year and for the year 1973, historical data shall be supplied. If recorded figures are not available, estimates shall be used and shall be identified as such. For each other reporting year, the forecast shall be made using the supplier's best estimates of the amount of each petroleum product which will be supplied or consumed. These estimates shall be based on the factors which the supplier deems most likely to occur in its Minnesota service area. The data for each reporting year shall be calculated by applying these factors to the data for the last calendar year for which actual data required in 406(b) is available. The assumptions and factors used in arriving at the forecast shall be stated in writing. Each prime petroleum supplier shall evaluate the size of the estimating error given the conditions and factors used in the estimate. Each prime petroleum supplier shall comment on probable deviations from the forecast.

EA 407 Facility Requirements

(a) Present facilities. Each prime petroleum supplier or pipeline company shall provide to the director the following information with regard to any facilities which it owns in Minnesota as of January 1 of the current year:

(1) Refineries

(aa) the name of the refinery;

(bb) the location and address;

(cc) the year constructed;

(dd) average barrels per day production;

(ee) present maximum barrel per day production capacity;

(2) Storage tanks at any one site in excess of 1 million gallons:

(aa) the location and address of the site;

(bb) the total storage capacity for the site;

(cc) the total storage capacity for the site by product stored;

(3) Pipelines:

(aa) a geographical description of the pipeline from its origin to its termination in Minnesota;

(bb) the diameter of the pipeline;

(cc) whether it is a crude or refined product pipeline;

(dd) the maximum volume in barrels that can be delivered through the pipeline in a single day.

(b) Future facility requirements. Each prime petroleum supplier and pipeline company shall supply the director with an estimate of the additional Minnesota facilities or additions to existing facilities necessary to provide for the forecast of supply that will be available to its Minnesota service area as projected in EA 406(b)(i) or, in the case of pipeline companies, the facilities the company estimates will be necessary for the reporting years specified in EA 406(c). Each prime petroleum supplier or pipeline company shall provide the following information to the director about each additional facility or addition to existing facility:

(1) Refineries:

(aa) the location and address of any new facility or construction of an addition;

(bb) the year of anticipated commencement and completion of construction;

(cc) the maximum barrel per day capacity of the facility after completion;

(2) Storage tanks:

(aa) the location and address of any new storage tank location with a storage capacity of over 1 million gallons or an addition to an existing storage tank location with a storage capacity of over 1 million gallons;

(bb) the total storage capacity of the site by product stored;

(3) Pipelines:

(aa) a geographical description of any new pipeline from its origin to its termination in Minnesota;

(bb) the diameter of the new pipeline;

(cc) whether the new facility will transport crude or refined product;

(dd) maximum volume of product that can be delivered through the pipeline in a single day.

(c) Refinery fuel requirements. Each prime petroleum supplier shall identify for each of its Minnesota refineries the annual volume of each petroleum product used in the refinery process for each of the requested forecasting years in 406(c).

EA 408 Petroleum Delivered to Customers

(a) Beginning in the year 1976, each prime petroleum supplier shall report quarterly its volume of each of the following petroleum products delivered to its customers: motor gasoline, middle distillates, residual fuel oil, jet fuel, aviation gasoline, and propane by a customer class/geographic area combination.

(1) geographic areas shall be defined by the customer's zip code;

(2) customer class shall be defined by standard industrial classification (SIC) codes with extensions for more detailed breakdown of households and governmental units;

(3) in each customer class/geographic area combination the supplier shall report the number of customers and the total gallons of product consumed; Said information shall be in the form determined by the director. Upon written application, the director may allow a prime petroleum supplier to report said information in a different form.

In lieu of the data described in EA 408(a) each prime petroleum supplier may submit to the agency the manifest data required to be filed with the Commissioner of Revenue by Gas Tax Regulation 1(c) if the manifest data covers the product classes listed in EA 408(a). Said manifest data shall be in the form determined by the director.

(b) The director may, after an evaluation of the data availability, level of automation and homogeneity of accounts of any supplier, require said supplier to report the information required by this section for the 3rd and 4th quarters of 1975. Third quarter statistics for such suppliers shall be filed by October 31, 1975. No prime petroleum supplier shall be required to report in 1975 unless it has been notified in writing by the director of its obligation 30 or more days prior to the reporting dates;

EA 409 Other Information Reported Annually

Each prime petroleum supplier shall provide to the director, the name and address of the 25 largest wholesale purchaser-consumers during the last calendar year and the type and volume of product sold to each in that year.

EA 410 Corrections

Corrections of any report or statement must be filed with the agency within 10 days following the date of the event prompting the change in reported information or the date upon which the person filing became aware of the inaccuracy. The change or correction shall identify the form and the paragraph of the information to be changed or corrected.

EA 411 Federal or State Data Substitution for Energy Agency Data Requirements

The director may, upon written request, allow any prime petroleum supplier or petroleum pipeline company to substitute data provided to the federal government or another state agency in lieu of data required by these regulations if the data required by both agencies is substantially the same.

RULES OF PROCEDURE GOVERNING CERTIFICATE OF NEED PROGRAM CHAPTER FIVE: EA 500-520

EA 500 PURPOSE AND APPLICABILITY

(a) Purpose. The purpose of these rules is to provide procedures to be followed in the issuance of a certificate of need for the construction of large energy facilities in Minnesota pursuant to Minn. Stat. § 116H.13 (1974). These rules are adopted pursuant to the power of the director conferred by Minn. Stat. § 116H.08 (a) (1974).

(b) Applicability. On or after the effective date of Agency rules and regulations governing assessment of need criteria, no large energy facility for which such criteria have been promulgated shall be sited or constructed in Minnesota unless a certificate of need for said facility has been issued by the director pursuant to these rules; provided, however, that any utility which, as of the effective date of Agency rules for criteria of assessment of need governing its facility, has pending before the Minnesota Environmental Quality Council an application for a certificate of site compatibility, an application for corridor designation, or an application for a permit for transmission line construction, may pursue its application before the Council, but in any event, shall not begin construction of said facility until a certificate of need for said facility has been issued pursuant to these rules.

(c) Exception. Any person who, as of the effective date of rules of criteria of assessment of need governing his facility, has pending before the Minnesota Environmental Quality Council an application for a certificate of site compatibility, an application for corridor compatibility, or an application for a construction permit for a transmission line, or who has received a certificate of corridor compatibility, may pursue the pending application and subsequent applications for a construction permit for the facility, before the Council. However, such person shall not begin construction of said facility until a certificate of need for said facility has been issued pursuant to these rules.

EA 501 DEFINITIONS

(a) **"Agency"** means the Minnesota Energy Agency;

(b) **"Applicant"** means the person or persons submitting a Certificate of Need application;

(c) **"Coal supplier"** means any entity engaged in Minnesota in the wholesale distribution of coal or transportation into this state of any coal intended for use or distribution in the state or transhipment from the state;

(d) **"Construction"** means significant physical alteration of a site to install or enlarge a large energy facility, but not including activities incident to preliminary engineering or environmental studies;

(e) **"Director"** means the director of the Minnesota Energy Agency;

(f) **"Large energy facility"** means any electric power generating plant or combination of plants at a single site with a combined capacity of 50,000 kilowatts or more, any high voltage transmission line with a capacity of 200 kilovolts or more having more than 100 miles of its length in Minnesota, any facility on a single site designed for or capable of storing more than one million gallons of crude petroleum or petroleum fuels or oil or derivatives

thereof, any pipeline greater than six inches in diameter and having more than 50 miles of its length in Minnesota used for the transportation of crude petroleum or petroleum fuels or oil or derivatives thereof, any pipeline for transporting natural or synthetic gas at pressures in excess of 200 pounds per square inch and having more than 50 miles of its length in Minnesota, any facility designed for or capable of storing on a single site more than 100,000 gallons of liquified natural gas or synthetic gas, any underground gas storage facility requiring a permit pursuant to Minn. Stat. § 84.57 (1974), any facility designed for or capable of serving as a depot for coal transported into this state for use within the state or transhipment from the state and any petroleum refinery, and any facility intended to convert coal into any other combustible fuel and having the capacity to process in excess of 25 tons per hour.

(g) **"Person"** means any individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or any government or governmental subdivision, unit or agency, other than a court of law;

(h) **"Petroleum supplier"** means any petroleum refinery in the state and any entity engaged in transmission or wholesale distribution of more than 100,000 gallons of crude petroleum or petroleum fuels or oil or derivatives thereof annually in this state;

(i) **"Utility"** means any entity engaged in the generation, transmission or distribution of electric energy and any entity engaged in the transmission or distribution of natural or synthetic natural gas, including, but not limited to, a private investor owned utility or a public or municipally owned utility.

EA 502 APPLICATION FOR CERTIFICATE OF NEED

(a) Time, Form and Content of Application. Except as provided in EA 500 (b), any person desiring to construct a new large energy facility in Minnesota shall submit an application for a certificate of need for said facility to the director prior to commencing construction of said facility or, in the case of large electric generating facilities and large high voltage transmission lines, prior to filing an application for a certificate of site compatibility or an application for a transmission line corridor designation. The application shall contain the information required in the applicable substantive rules (see EA 601 et seq.) and shall be verified by the person responsible for its preparation.

(b) Number of Copies. An applicant shall submit the original and four copies of its application including one unbound copy, and shall make additional copies available upon request of the director.

(c) Fee. Each application for a certificate of need shall be accompanied by a fee as prescribed by the applicable substantive rules (EA 601 et seq.).

EA 503 HEARING EXAMINER

(a) Appointment and Qualifications. Within five days of receipt of an application, the director shall appoint a hearing examiner. Such appointment shall be in accordance with law and any applicable rules and regulations. The hearing examiner shall be an attorney licensed to practice law in Minnesota. At the time of his appointment, he shall not be an employee of, or on retainer to, the Agency. To the extent possible, he shall possess some

familiarity with the type of facility proposed in the application. After appointment, the hearing examiner shall be considered an employee of the Agency for the sole purpose of compensation and authorization to conduct the hearing and recommend findings of fact and a decision to the director. In all other respects he shall be independent of the Agency.

(b) Authority. The appointment of the hearing examiner shall, to the extent permitted by law, authorize the hearing examiner to call and conduct the hearing and recommend a decision to the director.

(c) Functions. The functions of the hearing examiner shall be to hear and rule on preliminary motions, issue subpoenas, conduct the hearing, examine witnesses, make such preliminary discovery, interlocutory, or other orders as he deems appropriate, recommend a decision to the director and do all things necessary or proper to the performance of the foregoing.

(d) Disqualification

(1) The director may, for good cause shown, revoke the appointment of any hearing examiner upon the filing of a petition for disqualification by a party or upon the director's own motion. Unless the basis for the request for disqualification is misconduct on the part of the hearing examiner, any petition for disqualification shall be filed within ten days after the appointment of the hearing examiner. The reasons for the revocation shall be made a part of the official record.

(2) A hearing examiner shall withdraw from participation in a hearing at any time prior to the final determination if he deems himself disqualified for any reason.

(3) Whenever a hearing examiner is disqualified or removed, the director may vacate and annul all proceedings and orders issued as of the date of disqualification, or may order the hearing to proceed in the same manner as if disqualification had not occurred.

EA 504 ACTION ON APPLICATION

(a) Hearing Date. Within ten days after an application is received by the Agency, the hearing examiner shall set a time and place for a public hearing on the application. The hearing shall commence within eighty days after the receipt of an application.

(b) Hearing Examiner to Issue Notice. Within ten days after an application is received by the Agency, the hearing examiner shall issue a notice of application and hearing. Such notice shall contain a brief description of the substance of the application, the name of the hearing examiner, and the time and place of hearing, and shall be published in the state register. The notice shall also be published in newspapers of general circulation throughout the state, and shall be publicized in such other manner as the director may deem appropriate. Copies of the notice shall be mailed to appropriate state, federal and local agencies.

(c) Application Available to Public. An application shall be available for viewing by the public at the office of the Agency. Any person may request a copy of the application. Each person requesting a copy shall identify himself and the person he represents, if any. The director may grant any such request for good cause shown. Any state or local or federal agency requesting a copy of an application shall receive one. The applicant shall supply the

Agency with sufficient copies of the application to enable the Agency to comply with this subdivision.

(d) Agency Evaluation. Immediately following receipt of an application, the Agency shall evaluate the application and the need for the proposed facility and may, if it so elects, within 60 days of receipt of the application, issue its report thereon. A copy of the report shall be served on all parties to the proceeding. The persons responsible for preparation of the report shall be available for examination regarding the report by parties to the proceeding. The Agency may become a party to the proceeding by filing a notice of intervention pursuant to EA 506(a), but in any event, shall be deemed a party if it has exercised its option to issue a report pursuant to this section.

EA 505 STATE AGENCY PARTICIPATION

Any state agency authorized to issue permits for siting, construction or operation of large energy facilities shall present its position regarding the need for the facility proposed in the application at the public hearing. Any such state agency may become a party to the proceeding by filing a notice of intervention pursuant to EA 506(a).

EA 506 INTERVENTION

(a) Notice of Intervention. The Agency and any federal, state or local agency with authority to grant permits or certificate of siting, construction, or operation of large energy facilities may become a party to the proceeding by filing a notice of intervention with the director. Such notice shall be filed within 30 days of the date of issuance of the notice of application unless after that time the director, at his discretion, permits the filing of a notice of intervention. Such notice shall contain:

(1) a statement of the jurisdiction of the agency with respect to the proposed facility;

(2) a statement of the agency's interest in and its position with respect to the application.

(b) Petition for Leave to Intervene. Any person wishing to become a party to the proceeding may petition for leave to intervene by filing a petition for leave to intervene. Such petition shall be filed within 30 days of the date of issuance of the notice of application unless after that time the director, at his discretion, permits the filing of a petition for leave to intervene. Such petition shall contain:

(1) a statement of the interest of the petitioner in the proposed facility; and

(2) a statement of the position of the petitioner with respect to the application.

(c) Service. A copy of any notice of intervention or petition for leave to intervene shall be served upon the applicant and all other parties by the proposed intervenor and proof of service shall be filed with the notice or petition.

(d) Granting Petition to Intervene. The hearing examiner shall grant or deny any petition to intervene within ten days after such petition has been

filed with the Agency. A petition for intervention shall be granted if the hearing examiner determines that:

(1) the petitioner may be materially affected by the outcome of the proceedings; or

(2) the intervention of the petitioner will materially advance the consideration of the application.

Notice of the action of the petition shall be served on all parties.

EA 507 PARTIES

(a) Identity. Parties to any proceeding under these rules shall include:

(1) the applicant; and

(2) any person who has properly intervened under EA 506.

(b) Representation. Any party in a proceeding under these rules shall be represented by counsel; provided, however, that the hearing examiner may, upon good cause shown, permit any party to represent himself.

(c) Consolidation of Parties. The hearing examiner may consolidate parties that are similarly situated if he determines that such consolidation would enhance the orderliness and efficiency of the hearing without substantially prejudicing any party.

(d) Role of Participants. Any person who is not a party to a proceeding may appear and give written or oral testimony at the public hearing. However, the right to call and examine witnesses is reserved exclusively to parties to the proceeding.

EA 508 CONSOLIDATION

At any time prior to a hearing, the hearing examiner, either upon his own motion or upon motion of any party, may recommend to the director that separate proceedings be consolidated for hearing if he determines that:

(1) the separate proceedings present substantially the same issues of fact or law;

(2) a decision in one proceeding would affect the rights of parties in another proceeding; and

(3) consolidation would not substantially prejudice any party.

The director shall take action on any recommendation on consolidation within five days after the recommendation is made. If he orders proceedings consolidated, notice of consolidation shall be served on all parties.

EA 509 PREHEARING CONFERENCE

A prehearing conference where all parties are invited and which is open to the public may be held at the discretion of the hearing examiner at any time for the purpose of considering such matters as the hearing examiner shall direct, including, but not limited to:

(a) the simplification or settlement of any issue;

(b) the disclosure of the identity of witnesses and a summary of the testimony of each;

(c) the exchange of documentary evidence and the reports of expert witnesses to be submitted at the hearing;

(d) any other appropriate matter.

The conference shall be an informal proceeding conducted fairly and expeditiously by the hearing examiner. Any decision made or agreements reached at the prehearing conference shall be included in a prehearing order issued by the hearing examiner not less than three days prior to the hearing. Said order shall be served on all parties. No agreement may be made to waive the public hearing.

EA 510 MOTIONS

(a) Motions To Be In Writing. Any application for procedural relief shall be made by motion which, unless made during the hearing, shall be made in writing and shall state with particularity the relief or order sought. A motion shall be filed with the hearing examiner and served on all parties in accordance with EA 511.

(b) Answers. Any party may reply to a motion within ten days after its service upon him or within such time as the hearing examiner shall state.

(c) Delay. No procedural motion shall cause the delay of a hearing unless the hearing examiner determines that good cause for such delay exists.

(d) Hearing Examiner's Ruling. The ruling of the hearing examiner shall be served on all parties, or if made at the hearing, shall be made part of the record.

(e) Review. The ruling of the hearing examiner on any motion shall be subject to review by the director only upon his review of the report of the hearing examiner as provided in EA 516.

EA 511 SERVICE

Copies of all pleadings except applications, and copies of all petitions to intervene, written motions and notices shall be served upon all other parties personally or by mail and proof of service shall be filed with the hearing examiner. When a party is represented by an attorney, service upon the attorney shall be deemed service upon the party.

EA 512 DISCOVERY

Upon motion of any party for good cause shown, the hearing examiner may permit the service of interrogatories, the taking of depositions, or such other discovery as may be appropriate. No motion made under this rule shall be granted except upon a showing that the moving party has made a request for the information sought and such request has been refused and that the information produced would be relevant to the proceeding or may demonstrably lead to relevant information. The hearing examiner may issue subpoenas to compel the attendance of witnesses or the production of documents. Parties shall determine whether such requests shall be complied with and inform the requestor of that decision within three working days, and shall provide the discovery requested within a reasonable time.

EA 513 ADDITIONAL INFORMATION

Upon request of the hearing examiner and subject to the limitations contained in EA 514(d), the applicant shall submit such additional information as the hearing examiner deems necessary. The application of an applicant who without good cause shown fails to comply with an order to supply additional information may be dismissed. Any other party who without good cause fails to comply with any order to supply additional information may be dismissed.

EA 514 THE HEARING

(a) Conduct of the Hearing. The hearing shall be open to the public. The parties may cross-examine witnesses and present evidence, rebuttal testimony, oral argument and written briefs. The sequence of events shall be determined by the hearing examiner.

(b) Witnesses. Any party may be a witness or may present witnesses on his behalf. All testimony at a hearing shall be under oath or affirmation. Every party shall have the right to cross-examination of adverse witnesses. Any person offering oral testimony who is not a party shall be subject to cross-examination by any party.

(c) Written Testimony

(1) Statement by Any Person. Any person may submit a written statement, under oath, relevant to the subject matter of the hearing prior to or at the hearing. In the absence of special circumstances, any person submitting such a statement shall be subject to cross-examination by any party. If such person is not available for cross-examination upon timely request, the written statement may be stricken from the record, in whole or in part, or may be given such weight as the hearing examiner deems appropriate.

(2) Cross-examination of Preparer of Application. The person or persons responsible for preparation of the application or other persons having substantial knowledge of its preparation shall be available for cross-examination by any party. Failure to comply with this section may result in dismissal of an application.

(3) Cross-examination of Preparer of Agency Report. The person or persons responsible for the preparation of the Agency report or other persons having substantial knowledge of its preparation shall be available for cross-examination by any party.

(4) After the Close of the Hearing. All statements or information submitted after the close of the hearing during the period in which the record is open shall become a part of the record only if submitted under oath or by affirmation. Such statements or information shall be provided to all parties and proof of service shall be filed with the hearing officer at the time such statements or information is submitted. Upon request of a party, the hearing examiner may reconvene the hearing for the purpose of cross-examination of the statement or information submitted after the close of the hearing.

(d) Rules of Evidence

(1) Admission. The hearing examiner may admit and rely on evidence which possesses probative value commonly accepted by reasonable people. The hearing examiner shall give effect to the rules of privilege recognized by law. Proposed evidence which is incompetent, irrelevant, immaterial, repetitious, or otherwise objectionable may be excluded.

(2) Official Notice. The hearing examiner may take notice of judicially cognizable facts and, in addition, may take notice of technical or scientific facts within his specialized knowledge. Where final determination rests on official notice of material facts not appearing in the evidence in the record, the hearing examiner shall serve and file a statement of Notice of Facts upon the parties. A party is entitled, upon timely request, to an opportunity to rebut such facts.

(3) Burden of Proof. The burden of proving any contested assertion of fact in the proceeding shall be upon the proponent thereof.

(e) Transcript

(1) Record. A verbatim record of the hearing shall be taken by court reporters or by recording equipment. A court reporter shall be used if demanded by any party. Unless the Agency agrees to bear the expense of the court reporter, such expense shall be paid by the party demanding the reporter.

(2) Cost. If a transcript is requested, the Agency may require the requesting party to pay the reasonable cost of preparing the transcript.

(f) Disruption of Hearing

(1) Cameras. Television, newsreel, motion picture, still, or other cameras, and lights or other devices used in connection with such cameras, shall be permitted in the hearing room while the hearing is in progress, subject to such conditions and restrictions as the hearing examiner may impose in order to avoid disruption of the hearing. Mechanical recording devices, in addition to those provided by the Agency or at its discretion, shall also be permitted in the hearing room during the course of the hearing subject to such conditions and restrictions as the hearing examiner may impose in order to avoid disruption of the hearing.

(2) Interference. Pursuant to and in accordance with provisions of Minn. Stat. § 624.72 (1974), no person shall interfere with the free, proper, and lawful access to or egress from the hearing room. No person shall interfere with the conduct of the hearing.

EA 515 PROPOSED FINDINGS AND BRIEFS

Within 20 days after the close of the hearing the parties shall file proposed findings and conclusions and a brief in support thereof.

EA 516 REPORT OF THE HEARING EXAMINER

The hearing examiner shall prepare a written report of his findings and his recommendation as to issuance of a certificate of need and submit it to the director within 50 days after the close of the hearing. The Agency shall immediately serve a copy of the report on all parties to the proceeding.

EA 517 COMMENTS AND EXCEPTIONS

Within ten days following receipt of the hearing examiner's report, any party may file written comments on or exceptions to the findings and recommendation of the hearing examiner. Such comments or exceptions shall be served upon all parties.

EA 518 THE RECORD

In each proceeding, the Agency shall prepare an official record which shall contain:

(a) all pleadings, motions and intermediate rulings;

(b) the prehearing order of the hearing examiner, if any;

(c) all evidence received or considered;

(d) a statement of matters officially noticed;

(e) questions and offers of proof, objections and rulings thereon;

(f) proposed findings and briefs in support thereof;

(g) the report of the hearing examiner;

(h) all comments and exceptions and briefs in support thereof;

(i) all memoranda or data submitted to the hearing examiner by the Agency staff or any person in connection with the proceeding.

The official record shall be made available to the director for use in reaching his decision.

EA 519 DECISION OF THE DIRECTOR

Within 30 days after the date of the hearing examiner's report and in any case within 180 days after receipt of the application, the director shall render a decision on the application. The decision shall be in writing and shall be accompanied by a statement of the reasons therefor, including a concise statement of conclusions upon each contested issue of fact necessary to the decision. The director shall also rule on any decision of the hearing examiner appealed to him during the course of the proceeding. The decision shall be served on all parties to the case.

EA 520 REHEARING

(a) Director's Right to Reconsider. The director may within 180 days after the receipt of the application, upon request and good cause shown, or on his own motion, reconsider a final decision.

(b) Obtaining a Rehearing

(1) Petition for Rehearing. Within 30 days of the issuance of the director's decision, any party to the matter may request a rehearing by filing a Petition for Rehearing. Such petition shall contain:

(i) the name and address of the petitioner;

(ii) the Agency designation for the matter; and

(iii) the reasons for the petition.

(2) Director's Action. The director shall grant or deny a Petition for Rehearing as part of the record. Such petition shall be granted upon a showing that there are irregularities in the hearing, errors of law, or newly discovered material evidence of such importance as likely to have altered the outcome of the hearing, or upon a showing of good cause for failure to appear at the hearing. Evidence and argument may be presented at the dis-

cretion of the director, in written or oral form, or both, by any party to the matter with respect to the granting or denial of petition.

(c) Notice of Rehearing. Notice of rehearing shall be served on all parties and published in the same manner prescribed for notice of hearing.

(d) Rehearing Procedure. A rehearing in a matter shall be conducted in the same manner prescribed for a hearing.

(e) Decision After Rehearing. The decision after rehearing shall be made in the same manner prescribed for the decision after a hearing.

GOVERNING CONTENTS OF APPLICATIONS FOR CERTIFICATES OF NEED AND CRITERIA FOR ASSESSMENT OF NEED FOR LARGE ELECTRIC GENERATING FACILITIES AND LARGE HIGH VOLTAGE TRANSMISSION LINES

Chapter Six: §§ 2.0601-2.0641

§ 2.0601 Definitions. For purposes of these rules, the following definitions shall apply:

A. "Adjusted Net Demand" means system demand, minus firm purchases, plus firm sales;

B. "Adjusted Net Capability" means net generating capacity, minus participation sales, plus participation purchases;

C. "Agency" means the Minnesota Energy Agency;

D. "Annual Adjusted Net Demand" means annual system demand, minus firm purchases, plus firm sales;

E. "Annual Electrical Consumption" means sales of kilowatt-hours of electricity to ultimate consumers over a twelve-month period beginning January 1 and ending December 31 of the forecast year;

F. "Annual System Demand" means the highest system demand occurring during the twelve-month period beginning May 1 of the forecast year;

G. "Director" means the director of the Minnesota Energy Agency;

H. "Firm Purchases" and "Firm Sales" mean the amount of power to be purchased or sold which is intended to have assured availability;

I. "Forecast Years" means the 26 calendar years consisting of the calendar year the application is filed with the Agency, the ten previous calendar years, and the fifteen subsequent calendar years;

J. "Heat Rate" means a measure of average thermal efficiency of an electric generating facility expressed as the ratio of input energy per net kilowatt-hour produced, computed by dividing the total energy content of fuel burned for electricity generation by the resulting net kilowatt-hour generation;

K. "Large Electric Generating Facility (LEGF)" means any electric power generating unit or combination of units at a single site and associated facilities designed for or capable of operation at a combined capacity of 50,000 kilo-

watts or more, or any facility of 5,000 kilowatts or more which requires oil, natural gas, or natural gas liquids as a fuel and for which an installation permit has not been applied for by May 19, 1977, pursuant to Minn. Reg. APC 3(a) (6 MCAR § 4.003 A.);

L. "Large High Voltage Transmission Line (LHVTL)" means a conductor of electrical energy and associated facilities designed for and capable of operation at a nominal voltage of 200 kilovolts or more with more than 50 miles (80.4 kilometres) of its length in Minnesota, or at a nominal voltage of 300 kilovolts or more with more than 25 miles (40.2 kilometres) of its length in Minnesota. Associated facilities shall include, but not be limited to, insulators, towers, and substations and terminals operating at the nominal voltage;

M. "Load Center" means that portion or those portions of a utility's system where electrical energy demand is concentrated;

N. "Load Factor" means the ratio of the average load in kilowatts supplied during a designated period to the maximum load in kilowatts that was supplied during that designated period;

O. "Minnesota Service Area" means that portion of a utility's system lying within Minnesota;

P. "Net Generating Capacity" means the total number of kilowatts, less station use, that all the generating facilities of a system could supply at the time of its maximum system demand. The capability of the generating units which are temporarily out of service for maintenance or repair shall be included in the net generating capacity;

Q. "Net Reserve Capacity Obligation" means the annual adjusted net demand multiplied by the percent reserve capacity requirement;

R. "Participation Power" means power and energy which are sold from a specific generating unit or units for a period of six or more months on a continuously available basis (except when such unit or units are temporarily out of service for maintenance during which time the delivery of energy from other generating units is at the seller's option);

S. "Participation Purchases" and "Participation Sales" mean purchases and sales under a participation power agreement or a seasonal participation power agreement;

T. "Peak Demand" means the highest system demand occurring within any designated period of time;

U. "Promotional Practices" means any action or policies by an applicant, except those actions or policies which are permitted or mandated by statute or rule, which directly or indirectly give rise to the demand for the facility including, but not limited to, advertising, billing practices, promotion of increased use of electrical energy, and other marketing activities;

V. "Seasonal Adjusted Net Demand" means seasonal system demand, minus firm purchases, plus firm sales;

W. "Seasonal Participation Power" means participation power sold and bought on a seasonal (summer or winter) basis;

X. "Seasonal System Demand" means the maximum system demand on the applicant's system which occurs or is expected to occur in any summer season or winter season;

Y. "Summer Season" means the period from May 1 through October 31;

Z. "System" means the service area where the utility's ultimate consumers are located and that combination of generating, transmission, and distribution facilities which makes up the operating physical plant of the utility, whether owned or nonowned, for the delivery of electrical energy to ultimate consumers;

AA. "System Demand" means the number of kilowatts which is equal to the kilowatt-hours required in any clock hour, attributable to energy required by the system during such hour for supply of firm energy to ultimate consumers, including system losses, and also including any transmission losses occurring on other systems and supplied by the system for transmission of firm energy, but excluding generating station uses and excluding transmission losses charged to another system;

BB. "Ultimate Consumers" means consumers purchasing electricity for their own use and not for resale;

CC. "Utility" means any entity engaged in the generation, transmission or distribution of electrical energy, including but not limited to a private investor-owned utility or a public or municipally-owned utility; and

DD. "Winter Season" means the period from November 1 through April 30.

§ 2.0602 Purpose of rules. The purpose of these rules is to specify the content of applications for certificates of need and to specify criteria for the assessment of need for large electric generating facilities and large high voltage transmission lines. In accordance with Minn. Stat. § 116H.13, subd. 2, no LEGF or LHVTL shall be sited or constructed in Minnesota without the issuance of a certificate of need by the director pursuant to Minn. Stat. §§ 116H.01 through 116H.15 and consistent with the criteria for assessment of need.

§ 2.0603 Applicability of rules. Each person applying for a certificate of need for an LEGF or an LHVTL shall provide all information required by these rules. A certificate of need is required for each new LEGF, each new LHVTL, and for each expansion of either such facility, which expansion is

itself of sufficient size to come within the definition in either rule 6 MCAR § 2.0601 K. or rule 6 MCAR § 2.0601 L.

§ 2.0604 Application procedures and timing.

A. Each applicant for a certificate of need shall apply in a form and manner prescribed by the director.

B. A minimum of fifty (50) bound copies and one (1) unbound copy of the application shall be filed with the director. The director may require additional bound copies, not to exceed 100 bound copies total. All documents, forms, and schedules filed with the application shall be typed on 8½" x 11" paper except for drawings, maps, and similar materials. Each application shall contain a title page and a complete table of contents which includes the applicable rule by the titles and numbers given in these rules. The date of preparation and the applicant's name shall appear on the title page, as well as on each document filed with the application.

C. Subsequent to the filing of an application, any changes or corrections to the application shall comply with rule 6 MCAR § 2.0604 B. as to the number of copies and size of documents. In addition, each page of a change or correction to a previously filed page shall be marked with the word "REVISED" and with the date the revision was made. The original copy of the changes or corrections shall be filed with the hearing examiner, and the remaining copies shall be submitted to the director.

D. Each application for a certificate of need shall be accompanied by a cover letter signed by an authorized officer or agent of the applicant. The cover letter shall specify the type of facility for which a certificate of need is requested and the number of copies of the application filed.

E. A hearing examiner shall be assigned, and a public hearing shall be scheduled to commence no later than eighty days after the receipt of the application, in accordance with Minnesota Energy Agency Rules of Procedure Governing Certificate of Need Program, Minn. Regs. EA 500 (6 MCAR § 2.0500) et seq., and the Hearing Examiner Rules for Contested Case Procedures, Minn. Regs. HE 201 (9 MCAR § 2.201) et seq.

F. A decision on an application for a certificate of need shall be made by the director no later than six months from the receipt of the application, provided that the application as received is substantially complete.

G. The director shall notify the applicant within 15 days of the receipt of an application if the application is not substantially complete. Upon such notification, the applicant may correct any deficiency and may resubmit the application. A decision shall be made upon the revised application within six months of the date of resubmission, assuming it is then substantially complete.

H. Prior to the submission of an application, a person may be exempted

from any data requirement of these rules upon a written request to the director for exemption from specified rules and a showing by that person in the request that the data requirement 1) is unnecessary to determine the need for the proposed facility or 2) may be satisfied by submission of another document. A request for exemption must be filed at least 20 days prior to submission of an application. The director shall respond in writing to each such request within 15 days of receipt including reasons for the decision. The director shall file a statement of exemptions granted and reasons therefor prior to commencement of the hearing.

§ 2.0605 Filing fees and payment schedule.

A. The fee for processing an application shall be:

1. $10,000 plus $50 for each megawatt of plant capacity for LEGF's; or

2. $10,000 plus $40 per kilovolt of design voltage for LHVTL's;

plus such additional fees as are reasonably necessary for completion of the evaluation of need for the proposed facility.

B. Twenty-five percent of the fee set according to either item A. 1. or A. 2. of 6 MCAR § 2.0605 shall accompany the application, and the balance shall be paid in three equal installments within 45, 90, and 135 days after submission of the application. The applicant shall be notified prior to the time its application is acted upon by the director of any additional fees, which fees shall be paid within 30 days of notification. The billing of such additional fees shall be accompanied by an itemized document showing the necessity for the additional assessment.

C. No certificate of need shall be issued until all fees are paid in full.

§ 2.0611 Criteria for assessment of need.

A. Purpose of the Criteria. The criteria for assessment of need shall be used by the director in the determination of the need for a proposed large energy facility pursuant to Minn. Stat. §§ 116.H.01 through 116H.15. The factors listed under each of the criteria set forth herein at 6 MCAR § 2.0611 C. shall be evaluated to the extent that the director deems them applicable and pertinent to each facility proposed pursuant to these rules. The director shall make a specific written finding with respect to each of the criteria.

B. Consideration of Alternatives. The director shall consider only those alternatives proposed before the close of the public hearing and for which there exists substantial evidence on the record with respect to each of the criteria listed in 6 MCAR § 2.0611 C.

C. Criteria. A certificate of need shall be granted to the applicant if it is determined that:

1. the probable result of denial would be an adverse effect upon the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states, considering:

a. the accuracy of the applicant's forecast of demand for the type of energy that would be supplied by the proposed facility;

b. the effects of the applicant's existing or expected conservation programs and state and federal conservation programs;

c. the effects of promotional practices of the applicant which may have given rise to the increase in the energy demand, particularly promotional practices which have occurred since 1974;

d. the ability of current facilities and planned facilities not requiring certificates of need to meet the future demand; and

e. the effect of the proposed facility, or a suitable modification thereof, in making efficient use of resources;

2. a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant, considering:

a. the appropriateness of the size, the type, and the timing of the proposed facility compared to those of reasonable alternatives;

b. the cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;

c. the effects of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives; and

d. the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives;

3. it has been demonstrated by a preponderance of the evidence on the record that the proposed facility, or a suitable modification thereof, will provide benefits to society in a manner compatible with protection of the natural and socioeconomic environments, including human health, considering:

a. the relationship of the proposed facility, or a suitable modification thereof, to overall state energy needs;

b. the effects of the proposed facility, or a suitable modification thereof, upon the natural and socioeconomic environments compared to the effects of not building the facility;

c. the effects of the proposed facility, or a suitable modification thereof, in inducing future development; and

d. the socially beneficial uses of the output of the proposed facility, or a suitable modification thereof, including its uses to protect or enhance environmental quality;

and that

4. it has not been demonstrated on the record that the design, construction or operation of the proposed facility, or a suitable modification thereof, will fail to comply with relevant policies, rules and regulations of other state and federal agencies and local governments.

§ 2.0631 Contents of application.

A. Large Electric Generating Facilities. Each application for a certificate of need for an LEGF shall include all of the information required by 6 MCAR §§ 2.0632, 2.0633, and 2.0635-2.0639.

B. Large High Voltage Transmission Lines. Each application for a certificate of need for an LHVTL shall include all of the information required by 6 MCAR §§ 2.0632 and 2.0634-2.0639. If, however, a proposed LHVTL is designed to deliver electric power to a particular load center within the applicant's system, the application shall contain the information required by 6 MCAR § 2.0635 for that load center rather than for the system as a whole.

C. Joint Ownership and Multi-Party Use. If the proposed LEGF or LHVTL is to be owned jointly by two or more utilities or by a pool, all information required by 6 MCAR §§ 2.0632, 2.0635-2.0637 and 2.0639 shall be provided by each joint owner for its system. If the facility is designed to meet the long-term needs (in excess of 50 megawatts) of a particular utility which is not to be an owner, that utility shall also provide all information required by 6 MCAR §§ 2.0632, 2.0635-2.0637 and 2.0639.

§ 2.0632 Need summary and additional considerations.

A. Need Summary. Each application shall contain a summary of the major factors which justify the need for the proposed facility. This summary shall not exceed, without the approval of the director, 15 pages in length, including text, tables, graphs and figures.

B. Additional Considerations. Each application shall contain an explanation of the relationship of the proposed facility to each of the following socioeconomic considerations:

1. socially beneficial uses of the output of the facility, including its uses to protect or enhance environmental quality;

2. promotional activities which may have given rise to the demand for the facility; and

3. the effects of the facility in inducing future development.

§ 2.0633 Description of proposed large electric generaging facility and alternatives. Each application for a proposed LEGF shall include the following information:

A. a description of the facility, including:

1. a description of the generating capacity of the facility, which includes a discussion of the effect of the economies of scale on the facility size and timing;

2. a description of the anticipated operating cycle, including the expected annual capacity factor;

3. the type of fuel used, including:

a. the reason for the choice of fuel;

b. projection of the availability of this fuel type over the projected life of the facility; and

c. alternate fuels, if any;

4. the anticipated heat rate of the facility; and

5. to the fullest extent known to the applicant, the anticipated areas where the proposed facility could be located;

B. a discussion of the availability of alternatives to the facility, including but not limited to:

1. purchased power;

2. increased efficiency of existing facilities, including transmission lines;

3. new transmission lines;

4. new generating facilities of a different size or using a different energy source (fuel oil, natural gas, coal, nuclear fission, and the emergent technologies); and

5. any reasonable combinations of the alternatives listed in 6 MCAR § 2.0633 B.1. through 4.

C. for the proposed facility and for each of the alternatives provided in response to 6 MCAR § 2.0633 B. that could provide electric power at the asserted level of need, a discussion of:

1. its capacity cost in current dollars per kilowatt;

2. its service life;

3. its estimated average annual availability;

4. its variable operating and maintenance costs in current dollars per kilowatt-hour;

5. the total cost in current dollars of a kilowatt-hour provided by it; and

6. its efficiency, expressed for a generating facility as the estimated heat rate, or expressed for a transmission facility as the estimated losses under projected maximum loading and under projected average loading in the length of the transmission line and at the terminals or substations; and

7. any major assumptions made in providing the information in items 1 through 6 of 6 MCAR § 2.0633 C.

D. a map (of appropriate scale) showing the applicant's system; and

E. such other information about the proposed facility and each alternative as may be relevant to determination of need.

§ 2.0634 Description of proposed large high voltage transmission line and alternatives. Each application for a proposed LHVTL shall include the following information:

A. a description of the type and general location of the proposed line, including:

1. the design voltage;

2. the number, the size(s) and the type(s) of conductor(s);

3. the expected losses under projected maximum loading and under projected average loading in the length of the transmission line and at the terminals or substations;

4. the approximate length of the proposed transmission line and the portion of that length in Minnesota;

5. the approximate location of DC terminals or AC substations, which information shall be on a map of appropriate scale; and

6. a list of all counties reasonably likely to be affected by construction and operation of the proposed line;

B. a discussion of the availability of alternatives to the facility, including but not limited to:

1. new generation;

2. upgrading of existing transmission lines or existing generating facilities;

3. transmission lines with different design voltages or with different numbers, sizes and types of conductors;

4. transmission lines with different terminals or substations;

5. double circuiting of existing transmission lines;

6. if the proposed facility is for DC (AC) transmission, an AC (DC) transmission line;

7. if the proposed facility is for overhead (underground) transmission, an underground (overhead) transmission line; and

8. any reasonable combinations of the alternatives listed in 6 MCAR § 2.0634 B.1. through 7.

C. for the proposed facility and for each of the alternatives provided in response to 6 MCAR § 2.0634 B. that could provide electric power at the asserted level of need, a discussion of:

1. its total cost in current dollars;

2. its service life;

3. its estimated average annual availability;

4. its estimated annual operating and maintenance costs in current dollars;

5. its efficiency, expressed for a transmission facility as the estimated losses under projected maximum loading and under projected average loading in the length of the transmission line and at the terminals or substations, or expressed for a generating facility as the estimated heat rate; and

6. any major assumptions made in providing the information in items 1 through 5 of 6 MCAR § 2.0634 C.

D. a map (of appropriate scale) showing the applicant's system or load center to be served by the proposed LHVTL; and

E. such other information about the proposed facility and each alternative as may be relevant to determination of need.

§ 2.0635 Peak demand and annual electrical consumption forecast.

A. Scope. Each application shall contain pertinent data concerning peak

demand and annual electrical consumption within the applicant's service area and system, as provided in 6 MCAR § 2.0631, including but not limited to the data requested in subsection B. of 6 MCAR § 2.0635. When recorded data is not available, or when the applicant does not use the required data in preparing its own forecast, the applicant shall use an estimate and indicate in the forecast justification section (6 MCAR § 2.0635 C.) the procedure(s) used in deriving the estimate. The application shall clearly indicate which data are historical and which are projected. It is expected that data provided by the applicant should be reasonable and internally consistent.

B. Content of Forecast. For each forecast year, the following data shall be provided:

1. when the applicant's service area includes areas other than Minnesota, annual electrical consumption by ultimate consumers within the applicant's Minnesota service area;

2. for each of the following categories, estimates of the number of ultimate consumers within the applicant's system and annual electrical consumption by those consumers:

a. farm, excluding irrigation and drainage pumping (for reporting purposes, any tract of land used primarily for agricultural purposes shall be considered farm land);

b. irrigation and drainage pumping;

c. nonfarm residential (when electricity is supplied through a single meter for both residential and commercial uses, it shall be reported according to its principal use, and apartment buildings shall be reported as residential even if not separately metered);

d. commercial (this category shall include wholesale and retail trade; communication industries; public and private office buildings, banks, and dormitories; insurance, real estate and rental agencies; hotels and motels; personal business and auto repair services; medical and educational facilities; recreational, social, religious, and amusement facilities; governmental units, excluding military bases; warehouses other than manufacturer owned; electric, gas, water and water pumping, excluding water pumping for irrigation, and other utilities);

e. mining;

f. industrial (this category shall include all manufacturing industries, construction operations and petroleum refineries);

g. street and highway lighting;

h. electrified transportation (this category shall include energy supplied for the propulsion of vehicles, but shall not include energy supplied for

office buildings, depots, signal lights or other associated facilities which shall be reported as commercial or industrial);

i. other (this category shall include municipal water pumping facilities, oil and gas pipeline pumping facilities, military camps and bases, and all other consumers not reported in categories a. through h.); and

j. the sum of categories a. through i.;

3. an estimate of the demand for power in the applicant's system at the time of annual system peak demand, including an estimated breakdown of the demand into the consumer categories listed in 6 MCAR § 2.0635 B.2.;

4. the applicant's system peak demand by month;

5. the estimated annual revenue requirement per kilowatt-hour; and

6. the applicant's system weekday load factor by month.

C. Forecast Justification.

1. Forecast Methodology. Each applicant may use a forecast methodology of its own choosing, with due consideration given to cost, manpower requirements and data availability. However, any forecast data provided by the applicant shall be subject to tests of accuracy, reasonableness and consistency. The applicant shall detail the forecast methodology employed to obtain the forecasts provided under section B. of 6 MCAR § 2.0635, including:

a. the overall methodological framework which is used;

b. the specific analytical techniques which are used, their purpose, and the component(s) of the forecast to which they have been applied;

c. the manner in which these specific techniques are related in producing the forecast;

d. where statistical techniques have been used:

(1) the purpose of the technique;

(2) typical computations (e.g., computer printouts, formulas used), specifying variables and data; and

(3) the results of appropriate statistical tests;

e. forecast confidence levels or ranges of accuracy for annual peak demand and annual electrical consumption, as well as a description of their derivation;

f. a brief analysis of the methodology used, including:

(1) its strength and weaknesses;

(2) its suitability to the system;

(3) cost considerations;

(4) data requirements;

(5) past accuracy; and

(6) other factors considered significant by the applicant; and

g. an explanation of any discrepancies which appear between the forecasts presented in the application and the forecasts submitted to the Agency under Minn. Regs. EA 201 (6 MCAR § 2.0201) et seq. or in the applicant's previous certificate of need proceedings.

2. Data Base for Forecasts. The applicant shall discuss the data base used in arriving at the forecast presented in its application, including:

a. a complete list of all data sets used in making the forecast, including a brief description of each data set and an explanation of how each was obtained, (e.g., monthly observations, billing data, consumer survey, etc.) or a citation to the source (e.g., population projection from the state demographer's office);

b. a clear identification of any adjustments made to raw data in order to adapt them for use in forecasts, including:

(1) the nature of the adjustment;

(2) the reason for the adjustment; and

(3) the magnitude of the adjustment.

The applicant shall provide to the director or the hearing examiner on demand copies of all data sets used in making the forecasts, including both raw and adjusted data, input and output data.

3. Assumptions and Special Information.

a. Discussion. The applicant shall discuss each essential assumption made in preparing the forecast, including:

(1) the need for the assumption;

(2) the nature of the assumption; and

(3) the sensitivity of forecast results to variations in the essential assumptions.

b. Subject of Assumption. The applicant shall discuss the assumptions made regarding:

(1) the availability of alternate sources of energy;

(2) the expected conversion from other fuels to electricity or vice versa;

(3) future prices of electricity for customers in the applicant's system and the effect that such price changes will likely have on the applicant's system demand;

(4) the assumptions made in arriving at any data requested in 6 MCAR § 2.0635 B. which is not available historically or not generated by the applicant in preparing its own internal forecast;

(5) the effect of existing energy conservation programs under federal or state legislation on long-term electrical demand; and

(6) any other factor considered by the applicant in preparing the forecast.

4. Coordination of Forecasts with Other Systems. The applicant shall provide:

a. a description of the extent to which the applicant coordinates its load forecasts with those of other systems, such as neighboring systems and associate systems in a power pool or coordinating organization; and

b. a description of the manner in which such forecasts are coordinated, and any problems experienced in efforts to coordinate load forecasts.

§ 2.0636 System capacity. The applicant shall describe the ability of its existing system to meet the demand for electrical energy forecast in response to 6 MCAR § 2.0635 and the extent to which the proposed facility will increase this capability. In preparing this description, the applicant shall present the following information:

A. a brief discussion of power planning programs, including criteria, applied to the applicant's system and to the power pool or area within which the applicant's planning studies are based;

B. the applicant's seasonal firm purchases and seasonal firm sales for each utility involved in each transaction for each of the forecast years;

C. the applicant's seasonal participation purchases and seasonal participation sales for each utility involved in each transaction for each of the forecast years;

D. for the summer season and for the winter season corresponding to each

forecast year, the load and generation capacity data requested in items 1 through 13 below, including all anticipated purchases, sales, capacity retirements and capacity additions, except those which depend on certificates of need not yet issued by the Agency:

1. seasonal system demand;

2. annual system demand;

3. total seasonal firm purchases;

4. total seasonal firm sales;

5. seasonal adjusted net demand (1 - 3 + 4);

6. annual adjusted net demand (2 - 3 + 4);

7. net generating capacity;

8. total participation purchases;

9. total participation sales;

10. adjusted net capability (7 + 8 - 9);

11. net reserve capacity obligation;

12. total firm capacity obligation (5 + 11); and

13. surplus or deficit (-) capacity (10 - 12);

E. for the summer season and for the winter season corresponding to each forecast year subsequent to the year of application, the load and generation capacity data requested in items 1 through 13 of 6 MCAR § 2.0636 D., including purchases, sales and generating capability contingent on the proposed facility;

F. for the summer season and for the winter season corresponding to each forecast year subsequent to the year of application, the load and generation capacity data requested in items 1 through 13 of 6 MCAR § 2.0636 D., including all projected purchases, sales and generating capability;

G. for each of the forecast years subsequent to the year of application, a list of proposed additions and retirements in net generating capability, including the probable date of application for any addition which is expected to require a certificate of need;

H. for the previous calendar year, the current year, the first full calendar year before the proposed facility is expected to be in operation and the first full calendar year of operation of the proposed facility, a graph of monthly

adjusted net demand and monthly adjusted net capability, as well as a plot on the same graph of the difference between the adjusted net capability and actual, planned, or estimated maintenance outages of generation and transmission facilities; and

I. a discussion of the appropriateness of and the method of determining system reserve margins, considering the probability of forced outages of generating units, deviation from load forecasts, scheduled maintenance outages of generation and transmission facilities, power exchange arrangements as they affect reserve requirements, and transfer capabilities.

§ 2.0637 Conservation programs. Each application shall include the following information:

A. the name of the committee, department or individual responsible for the applicant's energy conservation and efficiency programs;

B. a list of the applicant's energy conservation and efficiency goals and objectives;

C. a description of the specific energy conservation and efficiency programs the applicant has considered, a list of those which have been implemented, and the reasons why the other programs have not been implemented;

D. a description of the major accomplishments which have been made by the applicant with respect to energy conservation and efficiency;

E. a description of the applicant's future plans through the forecast years with respect to energy conservation and efficiency; and

F. a quantification of the manner by which these programs affect or help determine the forecast provided in response to 6 MCAR § 2.0635 B., a list of their total costs by program, and a discussion of their expected effects in reducing the need for new generating facilities.

§ 2.0638 Environmental data. Each applicant shall provide environmental data for the proposed facility and for each alternative considered in detail in response to 6 MCAR § 2.0633 C. or 6 MCAR § 2.0634 C. Information relating to construction and operation of each of these alternatives shall be provided as indicated below, to the extent that such information is reasonably available to the applicant and applicable to the particular alternative. Where appropriate, the applicant shall submit data for a range of possible facility designs. Major assumptions should be stated, and references should be cited where appropriate.

A. Generating Facilities. The applicant shall provide the following information for each alternative which would involve construction of an LEGF:

1. the estimated range of land requirements for the facility with a dis-

cussion of assumptions on land requirements for water storage, cooling systems and solid waste storage;

2. the estimated amount of vehicular, rail and barge traffic generated by construction and operation of the facility;

3. for fossil-fueled facilities:

a. the expected regional source(s) of fuel for the facility;

b. the typical fuel requirement (in tons per hour, gallons per hour, or thousand cubic feet per hour) during operation at rated capacity and the expected annual fuel requirement at the expected capacity factor;

c. the expected rate of heat input for the facility in Btu per hour during operation at rated capacity;

d. the typical range of the heat value of the fuel (in Btu per pound, Btu per gallon or Btu per thousand cubic feet) and the typical average heat value of the fuel; and

e. the typical ranges of sulfur, ash and moisture content of the fuel;

4. for fossil-fueled facilities:

a. the estimated range of trace element emissions and the maximum emissions of sulfur dioxide, nitrogen oxides, and particulates in pounds per hour during operation at rated capacity; and

b. the estimated range of maximum contributions to 24-hour average ground-level concentrations at specified distances from the stack of sulfur dioxide, nitrogen oxides and particulates in micrograms per cubic meter during operation at rated capacity and assuming generalized worst-case meteorological conditions;

5. water use by the facility for alternate cooling systems, including:

a. the estimated maximum use, including the groundwater pumping rate in gallons per minute and surface water appropriation in cubic feet per second;

b. the estimated groundwater appropriation in million gallons per year; and

c. the annual consumption in acre-feet;

6. the potential sources and types of discharges to water attributable to operation of the facility;

7. radioactive releases, including:

a. for nuclear facilities, the typical types and amounts of radionuclides released by the facility in curies per year for alternate facility designs and levels of waste treatment; and

b. for fossil-fueled facilities, the estimated range of radioactivity released by the facility in curies per year;

8. the potential types and quantities of solid wastes produced by the facility in tons per year at the expected capacity factor;

9. the potential sources and types of audible noise attributable to operation of the facility;

10. the estimated work force required for construction and operation of the facility; and

11. the minimum number and size of transmission facilities required to provide a reliable outlet for the generating facility.

B. Transmission Facilities. The applicant shall provide data for each alternative that would involve construction of an LHVTL. The following information shall be included:

1. for overhead transmission facilities:

a. schematic diagrams which show the dimensions of the support structures and conductor configurations for each type of support structure that may be used;

b. a discussion of the strength and distribution of the electric field attributable to the transmission facility, including the contribution of air ions if appropriate;

c. a discussion of ozone and nitrogen oxide emissions attributable to the transmission facility;

d. a discussion of radio and television interference attributable to the transmission facility; and

e. a discussion of the characteristics and estimated maximum and typical levels of audible noise attributable to the transmission facilities;

2. for underground transmission facilities:

a. the types and dimensions of the cable systems and associated facilities that would be used;

b. the types and quantities of materials required for the cable system, including materials required for insulation and cooling of the cable; and

c. the amount of heat released by the cable system in kilowatts per meter or cable length;

3. the estimated width of the right-of-way required for the transmission facility;

4. a description of construction practices for the transmission facility;

5. a description of operation and maintenance practices for the transmission facility;

6. the estimated work force required for construction and for operation and maintenance of the transmission facility; and

7. a narrative description of the major features of the region between the endpoints of the transmission facility. The region shall encompass the likely area for routes between the endpoints. The description should emphasize the area within three miles of the endpoints. The following information shall be described where applicable:

a. hydrologic features including lakes, rivers, streams and wetlands;

b. natural vegetation and associated wildlife;

c. physiographic regions; and

d. land-use types, including human settlement, recreation, agricultural production, forestry production, and mineral extraction.

C. The Alternative of No Facility. The applicant shall provide the following information for the alternative of no facility:

1. a description of the expected operation of existing and committed generating and transmission facilities;

2. a description of the changes in resource requirements and wastes produced by facilities discussed in response to 6 MCAR § 2.0638 C.1., including:

a. the amount of land required;

b. induced traffic;

c. fuel requirements;

d. airborne emissions;

e. water appropriation and consumption;

f. discharges to water;

g. reject heat;

h. radioactive releases;

i. solid waste production;

j. audible noise; and

k. labor requirements; and

3. a description of equipment and measures that may be used to reduce the environmental impact of the alternative of no facility.

§ 2.0639 Consequences of delay. The applicant shall present a discussion of anticipated consequences to its system, neighboring systems, and the power pool should the proposed facility be delayed one, two and three years or postponed indefinitely.

§ 2.0641 Certificate of need modifications.

A. Issuance of a certificate of need may be made contingent upon modifications required by the director. When an application is denied, the director shall state the reason(s) for the denial.

B. Applications for changes in in-service date for large generation and transmission facilities previously certified shall conform to the following:

1. If an applicant determines that a change in the in-service date is necessary for a large generation or transmission facility previously certified by the director, it shall inform the director of the desired change of date for in-service operation, accompanied by a written statement detailing the reasons for the proposed change. The director shall evaluate these reasons and within 45 days of receipt of said application, notify the applicant if the proposed change of in-service date is acceptable.

2. Delays in the in-service date of large generation or transmission facilities previously certified by the director for up to one year are not subject to review by the director. The applicant shall inform the director as soon as it determines that a delay is imminent, accompanied by a written statement detailing the reasons for such delay.

C. Small additions and subtractions to generating plant capacity and transmission line length shall conform to the following:

1. Power plant capacity additions and subtractions of less than 50 megawatts from the capacity approved in a certificate of need issued by the director shall not require recertification.

2. Large transmission line length modifications shall conform to the following:

a. Large transmission line length additions or subtractions made as a result of the route length approved by the Minnesota Environmental Quality Board (hereinafter "MEQB") for projects previously certified shall not require recertification.

b. If a utility applies to the MEQB for a transmission line route which is not expected to meet the definition of LHVTL in 6 MCAR § 2.0601 L., but at some time in the routing process it becomes apparent that the MEQB may approve a route that meets the definition, the utility may apply for a certificate of need as soon as possible after that time. The length of a route is determined by measuring the length of its center line.

D. When a certificate of need is granted for the proposed facility, or modification thereof, the director shall state which fuel types are not permitted in supplying the additional generation capacity certified.

RULES GOVERNING CONTENTS OF APPLICATIONS FOR CERTIFICATES OF NEED AND CRITERIA FOR ASSESSMENT OF NEED FOR LARGE LIQUEFIED GAS STORAGE FACILITIES, LARGE UNDERGROUND GAS STORAGE FACILITIES, AND LARGE GAS PIPELINES

Chapter 7: 6 MCAR §§ 2.0701-2.0791

§ 2.0701 Definitions. For purposes of these rules, the following definitions shall apply:

A. "Agency" means the Minnesota Energy Agency;

B. "Annual gas consumption" means the total annual amount of natural or synthetic gas used or disposed of in Minnesota for all purposes by either a utility or pipeline company. This definition shall not include natural gas in storage at the end of the reporting year;

C. "Construction" means significant physical alteration of a site to install or enlarge a large energy facility but not including activities incident to preliminary engineering or environmental studies;

D. "Curtailment" means reduction or cutoff of supply to interruptible contract customers which is related directly to deficiencies in gas supply;

E. "Design day" means the 24-hour period of the greatest theoretical gas demand at a given average temperature;

F. "Design day availability" means the volume of each type of gas arranged to be available on the design day and the maximum total volume of such supply;

G. "Director" means the director of the Minnesota Energy Agency;

H. "Equivalent Mcf" shall mean the volume in thousands of cubic feet (Mcf) of the liquefied gas if it were gasified, measured at 14.73 pounds per square inch absolute (psia) and 60°F;

I. "Firm contract customers" means customers served under schedules or contracts which neither anticipate nor permit interruption unless a state of emergency exists;

J. "Forecast years" means the 18 calendar years consisting of the calendar year the application is filed with the Agency, the ten previous calendar years, and the first five, tenth and fifteenth subsequent calendar years;

K. "Gas volume" means the volume of gas as measured at 14.73 psia and 60°F. All volumes shall be in Mcf unless otherwise stated;

L. "Interruptible contract customers" means customers served under schedules or contracts which anticipate or permit interruption of service during the term of the contract;

M. "Large gas pipeline" means any pipeline for transporting natural or synthetic gas at pressures in excess of 200 psia with more than 50 miles of its length in Minnesota;

N. "Large liquefied gas storage facility" means any facility designed for or capable of storing on a single site more than 100,000 gallons of liquefied natural or synthetic gas;

O. "Large underground gas storage facility" means any facility requiring a permit pursuant to Minn. Stat. §§ 84.57-.621;

P. "Liquefied gas" means natural or synthetic gas stored or transported as a liquid;

Q. "Minnesota service area" means the geographical area within the State of Minnesota where a utility or a pipeline company serves ultimate consumers. The Minnesota service area for a pipeline company shall also include all Minnesota utilities it serves;

R. "MMcfpd-mile" means a descriptive unit used as a measure of the size of the pipeline, the quantity of which is obtained by multiplying (1) either the length in miles of the Minnesota portion of the new (sections of) pipeline, or 50 if the capacity expansion would be achieved by adding power, with (2) the new or additional design throughput in thousands of Mcf or equivalent Mcf per day (MMcfpd). If the capacity would be expanded by a combination of looping and adding power, then the MMcfpd-mile corresponding to each method of expansion shall be calculated and the pipeline size shall be the sum of the two quantities thus calculated;

S. "Natural gas" means a naturally occurring mixture of hydrocarbon and nonhydrocarbon gases and vapors found in porous geologic formations beneath the earth's surface, the principal constituent of which is methane;

T. "Off-peak contract customers" means customers served on special schedules or contracts on a firm basis but only for a specified time during the off-peak season;

U. "Peak day" means the 24-hour period of greatest gas sendout;

V. "Person" means an individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or a government or governmental subdivision, unit or agency, other than a court of law;

W. "Petroleum supplier" means any petroleum refinery in the state and any entity, other than a utility, engaged in the transmission or wholesale distribution of more than 100,000 gallons of crude petroleum or petroleum fuels or oil or their derivatives or liquefied gas, in this state;

X. "Pipeline company" means an entity which operates a large gas pipeline;

Y. "Substantially complete application" means an application which is deemed by the director to be in substantial compliance with the informational requirements of these rules;

Z. "Synthetic gas" means flammable gas created from gaseous, liquid, or solid hydrocarbons or other organic or inorganic matter. Synthetic gas shall include ethane, propane, butane, or their mixtures whether extracted from gas streams, lifted from oil and gas wells, or produced at refineries or fuel conversion plants. It shall also include hydrogen or methane produced at conversion plants;

AA. "System" means that combination of production, gathering, processing, transmission, and storage facilities of the pipeline company or utility for the delivery of natural or synthetic gas to other pipeline companies, other utilities or ultimate consumers and includes the company's geographic service area;

BB. "Utility" means any entity engaged in Minnesota in the transmission or distribution of natural or synthetic gas to ultimate consumers including, but not limited to, a private investor-owned utility or a public or municipally-owned utility; and

CC. "Ultimate consumers" means end-use customers, who do not purchase natural gas or synthetic gas for resale.

§ 2.0702 Purpose of rules. The purpose of these rules is to specify the contents of applications for certificates of need and to specify criteria for assessment of need for large liquefied gas storage facilities, large underground gas storage facilities and large gas pipelines for utilities and pipeline companies pursuant to Minn. Stat. § 116H.13.

§ 2.0703 Applicability of rules.

A. A petroleum supplier applying for a certificate of need to construct a large liquefied petroleum gas storage facility or large liquefied petroleum gas pipeline shall apply under Minn. Regs. EA 1001 et seq.; an energy user shall apply under 6 MCAR § 2.0801 et seq.

B. Each utility or pipeline company applying for a certificate of need to construct one of the following types of large energy facilities shall provide all information required by these rules:

1. a new large liquefied gas storage facility;

2. a new large underground gas storage facility;

3. a new large gas pipeline;

4. any project which, within a period of 2 years, would expand the liquefied gas storage capacity of an existing large liquefied gas storage facility in excess of either 20% of capacity or 100,000 gallons, whichever is greater;

5. any project which, within a period of 2 years, would expand the capacity of an existing large gas pipeline in excess of either 20% of rated design throughput or 17,000 Mcf per day (or equivalent Mcf per day), whichever is greater; and

6. any project which, within a period of 2 years, would expand the capacity of an existing large underground gas storage facility in excess of 20% of capacity.

C. Exceptions.

1. Any person who as of the effective date of these rules has begun or has completed construction of a large energy facility shall not be subject to these rules for that facility.

2. An interstate pipeline requiring a certificate of public convenience and necessity from the Federal Energy Regulatory Commission shall not be subject to these rules.

§ 2.0704 Application procedures and timing.

A. Each applicant for a certificate of need shall apply in a form and manner prescribed by the director.

B. A minimum of seven (7) bound copies and one (1) unbound copy of the application shall be filed with the director. The director may require additional bound copies, not to exceed 100 copies total. All documents, forms, and schedules filed with the application shall be typed on 8½" x 11" paper except for drawings, maps, and similar materials. Each application shall contain a title page and a complete table of contents which includes the applicable rule by the titles and numbers given in these rules. The date of preparation and the applicant's name shall appear on the title page, as well as on each document filed with the application.

C. Subsequent to the filing of an application, any changes or corrections to the application shall comply with rule 6 MCAR § 2.0704 B. as to the number of copies and size of documents. In addition, each page of a change or correction to a previously filed page shall be marked with the word "REVISED" and with the date the revision was made. The original copy of the

changes or corrections shall be filed with the hearing examiner, and the remaining copies shall be submitted to the director.

D. Each application for a certificate of need shall be accompanied by a cover letter signed by an authorized officer or agent of the applicant. The cover letter shall specify the type of facility for which a certificate of need is requested and the number of copies of the application filed.

E. A hearing examiner shall be assigned, and a public hearing shall be scheduled to commence no later than eighty days after the receipt of the application, in accordance with Minnesota Energy Agency Rules of Procedure Governing Certificate of Need Program, Minn. Regs. EA 500 et seq., and the Hearing Examiner Rules for Contested Case Procedures, Minn. Regs. HE 201 et seq.

F. A decision on an application for a certificate of need shall be made by the director no later than six months from the receipt of the application, provided that the application as received is substantially complete.

G. The director shall notify the applicant within 15 days of the receipt of an application if the application is not substantially complete. Upon such notification, the applicant may correct any deficiency and may resubmit the application. A decision shall be made upon the revised application within six months of the date of resubmission, assuming it is then substantially complete.

H. Prior to the submission of an application, a person shall be exempted from any data requirement of these rules upon a written request to the director for exemption from specified rules and a showing by that person in the request that the data requirement (1) is unnecessary to determine the need for the proposed facility or (2) may be satisfied by submission of another document. A request for exemption must be filed at least 20 days prior to submission of an application. The director shall respond in writing to each such request within 15 days of receipt including reasons for the decision. The director shall file a statement of exemptions granted and reasons therefor prior to commencement of the hearing.

I. When an application is denied, the director shall state the reason(s) for the denial.

§ 2.0705 Filing fees and payment schedule.

A. The fee for processing an application shall be:

1. $2,000 plus $10 per 4,000 Mcf of design storage capacity for a large underground gas storage facility;

2. $2,000 plus $10 per one hundred thousand gallons of design storage capacity for a large liquefied gas storage facility; or

3. $5,000 plus $0.60 per MMcfpd-mile for a large gas pipeline;

plus such additional fees as are reasonably necessary for completion of the evaluation of need for the proposed facility. In no event shall the total fee required of the applicant exceed $50,000.

B. Fifty percent of the fee set according to item A. 1., A. 2., or A. 3. of 6 MCAR § 2.0705 shall accompany the application and the balance shall be paid 90 days after submission of the application. The applicant shall be notified when any additional fees are due and shall pay them within 30 days of notification. The billing for such additional fees shall be accompanied by an itemized statement.

C. No certificate of need shall be issued unless all fees are paid in full.

§ 2.0711 Criteria for assessment of need.

A. Purpose of the criteria. The criteria for assessment of need shall be used by the director in the determination of the need for a proposed large energy facility pursuant to Minn. Stat. ch. 116H. The factors listed under each of the criteria below shall be evaluated to the extent that the director deems them applicable and pertinent to each facility proposed pursuant to these rules. The director shall make a specific written finding with respect to each of the criteria.

B. Consideration of alternatives. The director shall consider only those alternatives proposed before the close of the public hearing and for which there exists substantial evidence on the record with respect to each of the criteria listed in 6 MCAR § 2.0711 C.

C. Criteria. A certificate of need shall be granted to the applicant if it is determined that:

1. the probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states, considering:

a. the accuracy of the applicant's forecast of demand for the type of energy that would be supplied by the proposed facility;

b. the effects of the applicant's existing or expected conservation programs and state and federal conservation programs;

c. the effects of the applicant's promotional practices which may have given rise to the increase in the energy demand, particularly promotional practices which have occurred since 1974;

d. the ability of current facilities and planned facilities not requiring certificates of need to meet the future demand; and

e. the effect of the proposed facility, or a suitable modification of it, in making efficient use of resources;

2. a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of evidence on the record by parties or persons other than the applicant considering:

a. the appropriateness of the size, the type, and the timing of the proposed facility compared to those of reasonable alternatives;

b. the cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;

c. the effects of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives; and

d. the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives;

3. the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate, considering:

a. the relationship of the proposed facility, or a suitable modification of it, to overall state energy needs;

b. the effects of the proposed facility, or a suitable modification of it, upon the natural and socioeconomic environments compared to the effects of not building the facility;

c. the effects of the proposed facility, or a suitable modification of it, in inducing future development; and

d. the socially beneficial uses of the output of the proposed facility, or a suitable modification of it, including its uses to protect or enhance environmental quality;

and that

4. it has not been demonstrated on the record that the design, construction or operation of the proposed facility will fail to comply with those relevant policies, rules and regulations of other state and federal agencies and local governments.

§ 2.0721 Contents of application.

A. Each application for a certificate of need shall provide all information required by 6 MCAR §§ 2.0731-2.0743.

B. Joint application. If the proposed application for a certificate of need is jointly submitted by two or more persons, each such person shall, when so specified, submit the information required by these rules.

C. Multi-party ownership and use. Each application for a certificate of need for a facility which would be owned and/or used by two or more persons shall be considered as a joint application for purposes of these rules.

§ 2.0731 General information.

A. Each application shall contain a general information section which shall include the following information:

1. the applicant's complete name and address, telephone number, and standard industrial classification code(s);

2. the complete name, title, address and telephone number of the official or agent to be contacted concerning the applicant's filing;

3. a brief description of the proposed facility, its complete address (if known) or general location, a brief description of its planned use, its estimated cost, its planned in-service date, and its design capacity in gallons (liquefied gas storage), its design capacity in Mcf or equivalent Mcf (underground gas storage) or its length in miles and maximum design throughput in gallons per day or Mcf per day (gas pipeline);

4. the total fee for the application as prescribed by 6 MCAR § 2.0705, and the amount of the fee submitted with the application; and

5. the signature(s), and title(s) of the applicant's officer(s) or executive(s) authorized to sign the application and the signature of the preparer of the application if prepared by an outside agent.

B. Each application shall contain a schedule in the general information section which lists all known federal, state, and local agencies or authorities with which the applicant must file for the proposed facility. The following information shall be included on the schedule:

1. the names of all known federal, state, or local agencies or authorities with which the applicant must file;

2. the title of each permit or certificate issued by the authorities named in response to 6 MCAR § 2.0731 B. 1.;

3. for each permit or certificate listed in response to 6 MCAR § 2.0731 B. 2., the date an application was filed or the projected date of future application;

4. for each permit or certificate listed in response to 6 MCAR § 2.0731 B. 2., the actual date a decision was made on the application, or the anticipated decision date; and

5. for each permit or certificate listed in response to 6 MCAR § 2.0731 B. 2., for which an application was filed, the disposition or status of the permit or certificate.

§ 2.0732 **Need summary.** Each application shall contain a section which summarizes the major factors which justify the need for the proposed facility. The summary shall not exceed, without the approval of the director, 15 pages in length, including text, tables, schedules, graphs, and figures.

§ 2.0733 **Summary of additional considerations.** Each application shall contain a section which discusses the socioeconomic considerations listed below. The applicant shall explain the relationship of the proposed facility to each of the following:

A. socially beneficial uses of the output of the facility, including its uses to protect or enhance environmental quality;

B. promotional activities which may have given rise to the demand for the facility; and

C. the effects of the facility in inducing future development.

§ 2.0734 **Conservation programs.** Each application shall contain a section which relates to the conservation of energy. Separate responses are required from each person submitting a joint application. The following information shall be included:

A. the energy committee or an individual responsible for determination or coordination of the applicant's energy needs;

B. the applicant's energy conservation and efficiency goals and objectives;

C. a description of the major energy conservation and efficiency programs the applicant has considered, a list of those which have been implemented, and the reasons why the other programs have not been implemented;

D. the major accomplishments in energy conservation and efficiency that have been made by the applicant within the past five years;

E. the major energy conservation and efficiency programs which will be implemented within the next five years;

F. the manner by which these energy conservation and efficiency programs have been reflected in the forecast given in response to 6 MCAR § 2.0735.

§ 2.0735 **Peak demand and annual gas sales forecast.** In a joint application, separate responses are required from each person for information required by 6 MCAR § 2.0735.

A. Scope. Each application shall contain actual data and forecasts of peak demand and annual gas consumption within the applicant's service area and system. When recorded data is not available, or when the applicant does not use the required data in preparing its own forecast, the applicant shall use an estimate and indicate in the forecast justification section (6 MCAR § 2.0735 C.) the procedure(s) used in deriving the estimate. The application shall clearly indicate which are historical data and which are estimates. Data provided by the applicant should be reasonable and internally consistent.

B. Content. For each forecast year, the following data shall be provided:

1. if the applicant's service area includes areas other than Minnesota, annual gas consumption by ultimate consumers within the applicant's Minnesota service area;

2. annual gas consumption by ultimate consumers and the number of such customers within the applicant's system in the following categories:

a. residential firm (when gas is supplied through a single meter for both residential and commercial uses, it should be reported according to its principal use, and apartment buildings shall be reported as residential even if not metered separately);

b. commercial firm who use less than 200 Mcf on peak day;

c. commercial firm with a peak day requirement equal to or greater than 200 Mcf;

d. industrial firm who use less than 200 Mcf on peak day;

e. industrial firm with a peak day requirement equal to or greater than 200 Mcf;

f. commercial and industrial interruptible;

g. other (this category shall include storage gas and other sales or deliveries not covered in categories a. through f.);

h. unaccounted for; and

i. the sum of categories a. through h.;

3. an estimate of the daily demand for gas by ultimate consumers in the applicant's system for each of the categories listed in 6 MCAR § 2.0735 B. 2. at the time of the applicant's system peak demand; and

4. the applicant's system peak demand by month.

C. Forecast justification.

1. Forecast methodology. Each applicant may use a forecast method-

ology of its own choosing, with due consideration given to cost, manpower requirements and data availability. However, any forecasts provided by the applicant shall be subject to tests of accuracy, reasonableness and consistency. The applicant shall detail the forecast methodology employed to obtain the forecasts provided under section B. of 6 MCAR § 2.0735, including:

a. the overall methodological framework which is used;

b. the specific analytical techniques which are used, their purpose, and the component(s) of the forecast to which they have been applied;

c. the manner in which these specific techniques are related in producing the forecast;

d. where statistical techniques have been used:

(1) the purpose of the technique;

(2) typical computations (e.g., computer printouts, formulas used), specifying variables and data; and

(3) the results of appropriate statistical tests;

e. forecast confidence levels or ranges of accuracy for annual peak demand and annual gas consumption, as well as a description of their derivation;

f. a brief analysis of the methodology used, including:

(1) its strength and weaknesses;

(2) its suitability to the system;

(3) cost considerations;

(4) data requirements;

(5) past accuracy; and

(6) other factors considered significant by the applicant; and

g. an explanation of any discrepancies which appear between the forecasts submitted to the Agency under these rules and those submitted under 6 MCAR § 2.0301 et seq., or in the applicant's previous certificate of need proceedings.

2. Data base. The applicant shall discuss the data base used in arriving at the forecast presented in its application, including:

a. a complete list of all data sets used in making the forecast, in-

cluding a brief description of each data set and an explanation of how each was obtained, (e.g., monthly observations, billing data, consumer survey) or a citation to the source (e.g., population projection from the state demographer's office);

b. a clear identification of any adjustments made to raw data to adapt them for use in forecasts, including:

(1) the nature of the adjustment;

(2) the reason for the adjustment; and

(3) the magnitude of the adjustment.

The applicant shall provide to the director or the hearing examiner on demand copies of all data sets used in making the forecasts, including both raw and adjusted data, input and output data.

3. Assumptions and special information.

a. Discussion. The applicant shall discuss each essential assumption made in preparing the forecast, including:

(1) the need for the assumption;

(2) the nature of the assumption; and

(3) the sensitivity of forecast results to variations in the assumption.

b. Subject of assumption. The applicant shall discuss the assumptions made regarding:

(1) the availability of alternate sources of energy;

(2) the expected conversion from other fuels to gas or vice versa;

(3) future prices of gas for customers in the applicant's system and the effect that such price changes will likely have on the applicant's system demand;

(4) the assumptions made in arriving at any data requested in 6 MCAR § 2.0735 B. which are not available historically or not generated by the applicant in preparing its own internal forecast;

(5) the effect of existing energy conservation programs under federal or state legislation on long-term gas demand; and

(6) any other factor considered by the applicant in preparing the forecast.

§ 2.0736 Load and capacity information. In a joint application, separate responses are required from each person for information required by 6 MCAR § 2.0736.

The applicant shall describe the ability of its existing facilities to meet the demand forecast in 6 MCAR § 2.0735 and the extent to which the proposed facility will increase this capability. In preparing this description, the applicant shall provide, for the last calendar year, the current calendar year, the first full calendar year before the proposed facility is expected to be in operation, and the first full calendar year of operation of the proposed facility:

A. an annual load duration curve consisting of a single graph for each year and accompanying tables indicating the total monthly consumption of gas in the following classifications:

1. residential firm;

2. commercial and industrial firm;

3. small volume interruptible;

4. large volume interruptible;

5. electric generation;

6. gas to storage; and

7. other dispositions and losses; and

B. for a utility, an annual supply curve consisting of a single graph for each year and showing the contributions from:

1. pipeline contract demand;

2. gas from storage;

3. synthetic gas other than propane;

4. liquefied natural gas;

5. propane peak shaving gas; and

6. the proposed facility; and

C. for a pipeline company, an annual supply curve showing the contributions from:

1. own production;

2. committed purchases from other gas producers;

3. gas from storage;

4. emergency purchases (historical year only); and

5. other sources; and

D. the applicant's design day availability and the mean temperature assumed for the design day.

§ 2.0737 Alternatives. The applicant shall provide information pertaining to possible alternatives in the following format:

A. a description of the alternative, including its capacity and economic life; and

B. a cost/benefit analysis, comparing investment costs, annual operating and maintenance costs, environmental effects, safety and reliability aspects, and energy requirements of each alternative with those of the proposed facility.

§ 2.0741 Historical facility data. Each applicant (each person in a joint application) shall provide the following information:

A. a system map showing the route and mileage of its large gas pipelines, and the locations of pumping or compressor stations, storage facilities, interconnections, and fuel conversion or processing plants;

B. the design capacity of each line in the system to transport natural or synthetic gas into Minnesota;

C. the design capacity of the system to transport natural or synthetic gas out of the state;

D. identification of the specific facilities listed in response to 6 MCAR § 2.0741 A. normally used to store or transport the type of gas which would be stored or transported in the proposed facility;

E. the end-of-year total capacity of the facilities listed in response to 6 MCAR § 2.0741 D. for each of the ten (10) years preceding the application;

F. average percentage utilization during the peak season and during the off-peak season of the facilities listed in response to 6 MCAR § 2.0741 D.;

G. maximum sendout at the beginning and end of the withdrawal cycle from the storage facilities listed in response to 6 MCAR § 2.0741 D.;

H. if any of the storage facilities listed in response to 6 MCAR § 2.0741 D. is a large underground gas storage facility, the method of containment of the stored natural or synthetic gas and the method of disposal of the water produced in or seeping into the facility;

I. if any of the storage facilities listed in response to 6 MCAR § 2.0741 D. is part of a liquefaction facility, a brief description of the system used to liquefy gas; and

J. if any of the storage facilities listed in response to 6 MCAR § 2.0741 D. is part of a fuel conversion or processing plant, a brief description of the plant.

§ 2.0742 Description of proposed facility.

A. Design. The applicant shall provide the following information pertaining to the design of the proposed facility:

1. the purpose and planned use of the facility, including its relationship to the system which requires it;

2. its initial and ultimate design capacity or throughput in the appropriate unit of measure;

3. if known, the complete name and address of the engineer and firm which would be responsible for the design;

4. the boiling point at 14.73 psia, critical point in degrees Fahrenheit and psia, and Btu content per Mcf or equivalent Mcf of the type(s) of gas which would be stored or transported;

5. the temperature and maximum operating pressure at which the natural or synthetic gas would be stored or transported;

6. preliminary engineering drawings, blueprints, and specifications for:

a. tanks, pipes and valves with the maximum allowable operating pressure for each;

b. compressors or pumps, including representative efficiency, diameter, maximum allowable operating pressure and maximum capacity; and

c. prime movers, including representative type, efficiency, maximum power capacity in horsepower, allowable maximum and minimum operating temperatures, and daily energy requirement at the initial and ultimate design capacities;

7. its economic life; and

8. the estimated tariffs (proposed pipelines only), and capital, maintenance and operating costs of the facility during its economic life.

B. Construction. The applicant shall provide the following information pertaining to the construction of the proposed facility:

1. if known, the complete name and address of the company which would be responsible for the construction; and

2. the proposed date for commencement of construction and the proposed in-service date.

C. Operation. The applicant shall provide the following information on the operation of the proposed facility:

1. the expected average percentage of use of the proposed facility during the first five years of operation;

2. the expected maximum operating pressure and delivery rates of the proposed facility at peak demand;

3. the expected power requirement of the prime movers at peak demand (in kilowatts, Mcf per hour, or gallons per hour); and

4. for a proposed storage facility, the maximum delivery rate of the most likely modes of transportation that would be used to transport gas to the site.

§ 2.0743 Environmental data. If an Environmental Assessment Worksheet (EAW) on the proposed facility is sufficient to meet the requirements of the Minnesota Environmental Quality Board, a copy of the EAW may be submitted in lieu of specific answers to the requirements below. If permits for construction of said facility are required by other state agencies, a copy of each permit application, or the information equivalent, shall also be submitted.

If an environmental impact statement (EIS) is required for the proposed facility, a draft EIS may be submitted with the certificate of need application in lieu of specific answers to the requirements of this section.

In all other cases the applicant for a certificate of need for a large energy facility subject to these rules shall provide environmental information for the proposed facility and for each alternative facility discussed in response to 6 MCAR § 2.0737. Such information shall be provided in the format given below, to the extent that such data is applicable and reasonably available.

A. Location.

1. On a suitable map, identify the site(s) or route(s) which in the opinion of the applicant could serve as the site or route for the proposed facility. For a proposed storage facility, indicate the county, township, range and section(s) of each identified site. For a proposed pipeline, indicate the cities or population centers through which the route passes. Indicate on the map trunk highways, railroads and airports within one mile of the site or along the route.

2. For each site or route identified in response to 6 MCAR § 2.0743 A. 1., list:

a. the general nature of the terrain;

b. the general soil types and approximate percentage of each;

c. the estimated maximum and minimum depths of groundwater;

d. for a proposed pipeline, the number of miles of the route which passes through, respectively, federal lands, state lands, county or tax-forfeit lands, incorporated areas, and private land outside incorporated areas;

e. the types of vegetation (including forest, brush, marsh, pasture, and cropland) on the site or along the route, and the approximate percentage of each;

f. the predominant types of land use (such as residential, forest, agricultural, commercial, and industrial) within one mile of the site or along the route and the approximate percentage of each;

g. national natural landmarks, national wilderness areas, national wildlife refuges, national wild and scenic rivers, national parks, national forests, national trails and national waterfowl production areas within one mile of the site or along the route, as mapped on the Inventory of Significant Resources by the State Planning Agency;

h. state critical areas, state wildlife management areas, state scientific and natural areas, state wild, scenic and recreational rivers, state parks, state scenic wayside parks, state recreational areas, state forests, state trails, state canoe and boating rivers, state zoo, designated trout streams, and designated trout lakes within one mile of the site or along the route, as mapped on the Inventory of Significant Resources by the State Planning Agency; and

i. national historic sites and landmarks, national monuments, National Register Historic Districts, registered state historic or archeological sites, state historical districts, sites listed on the National Register of Historic Places, and any other cultural resources within one mile of the site or along the route, as indicated by the Minnesota Historical Society.

B. Wastewater, projected air emissions and noise sources.

1. Discharges to water.

a. Point discharges. Indicate the location, route and final receiving waters for any discharge points. For each discharge point indicate the source, the amount and the nature of the discharge.

b. Area runoff. Indicate the area from which runoff may occur, potential sources of contamination in the area, and receiving waters for any runoff.

2. Point sources of airborne emissions. Estimate the quantity of gas-

eous and particulate emissions that would occur during full operation from each emission source and indicate the location and nature of the release point.

3. Noise. Indicate the maximum noise levels (in decibels, A scale) expected at the property boundary. Also, indicate the expected maximum increase over ambient noise levels.

C. Pollution control and safeguards equipment.

1. Air pollution controls. Indicate types of emission control devices and measures that would be used.

2. Water pollution controls. Indicate types of water pollution control equipment and runoff control measures that would be used to comply with applicable state and federal regulations and statutes.

3. Explosion and fire safeguards. Describe measures that would be taken to prevent or minimize the impact of an explosion or fire.

4. Other safeguards and controls. Indicate any other equipment or measures, including erosion control, that would be used to reduce impact of the facility. Indicate the types of environmental monitoring, if any, that are planned for the facility and describe relevant environmental monitoring data already collected.

D. Induced developments.

1. Vehicular traffic. Estimate the amounts and types of vehicular traffic which would be generated by the facility due to construction activity and, later, operational needs.

2. Water use. Indicate the amount of water which would be appropriated and the amount which would be consumed by the facility, the expected source of the water, and how the water would be used.

3. Agriculture. Estimate the amount of land, including pasture land, that would be removed from agricultural use if the facility were constructed. Indicate known circumstances with regard to the facility that could lead to reduced productivity of agricultural land on or near the site or along the route. Estimate the amount of excavation, backfilling, grading, soil compaction and soil mixture and ditching to be done in farm fields.

4. Relocation of human beings. Estimate the number of people that would have to relocate if the facility were constructed.

§ 2.0781 Other data filed with the application. In addition to the information required by the director, the applicant may desire to file other data. If, in the opinion of the applicant, additional relevant data should be submitted for consideration, such data should be filed in a separate section of the application.

§ 2.0791 Certificate of need modifications.

A. Issuance of a certificate may be made contingent upon modifications required by the director.

B. The following changes in a facility previously certified by the director shall not require recertification:

1. capacity additions or subtractions of less than ten (10) percent of the capacity approved by the director;

2. pipeline length additions or subtractions of less than ten (10) percent of the length approved by the director; and

3. changes of less than two years in the in-service date.

C. If an applicant determines that a change greater or other than those specified in 6 MCAR § 2.0791 B. is necessary or desirable, it shall inform the director of the desired change, accompanied by a written statement detailing the reasons for the proposed change. The director shall evaluate these reasons and within 45 days of receipt of said statement notify the applicant whether the proposed change is acceptable without recertification.

RULES GOVERNING CONTENTS OF APPLICATIONS FOR CERTIFICATES OF NEED AND CRITERIA FOR ASSESSMENT OF NEED FOR LARGE OIL STORAGE FACILITIES FOR ENERGY USERS

Chapter Eight: §§ 2.0801 - 2.0881

§ 2.0801 Purpose of rules. The purpose of these rules is to specify the contents of applications for certificates of need and to specify criteria for assessment of need for large oil storage facilities for energy users pursuant to Minn. Stat. § 116H.13.

§ 2.0802 Applicability of rules.

A. Each applicant for a certificate of need for a large oil storage facility to be used in conjunction with manufacturing, mining, heating, cooling, processing or generation of electricity, or for fuel storage for vehicles, locomotives or aircraft, shall provide all of the information required by these rules. The following types of oil storage facilities shall be subject to these rules:

1. a new large oil storage facility; and

2. an expansion of an existing oil storage facility, which expansion is itself of sufficient size to fall within the definition in 6 MCAR § 2.0804 L.

B. Exception. The following types of facilities shall not be subject to these rules:

1. a large oil storage facility on which construction has begun or has been completed; and

2. a large oil storage facility to be constructed in conjunction with a large electric generating facility which itself requires a certificate of need, unless that proposed large oil storage facility is not covered by the certificate of need issued for the large electric generating facility and associated facilities.

§ 2.0803 Application procedures and timing.

A. Each applicant for a certificate of need shall apply in a form prescribed by the director.

B. A minimum of seven (7) bound copies and one (1) unbound copy of the application shall be filed with the director. The director may require additional bound copies. All documents, forms, and schedules filed with the application must be typed on 8½" x 11" paper except for blueprints, engineering drawings, maps, and similar materials. The date of preparation and the appli-

cant's name shall appear on each page of the application, as well as on each document filed with the application. Each application shall contain a title page and a complete table of contents which includes the applicable rules by the titles and numbers given in these regulations.

C. Subsequent to the filing of an application, any changes or corrections to the application shall comply with rule 6 MCAR § 2.0803 B. as to the number of copies and size of documents. In addition, each page of a change or correction to a previously filed page shall be marked with the word "REVISED" and with the date the revision was made. The original copy of the changes or corrections shall be filed with the hearing examiner, and the remaining copies shall be submitted to the director.

D. Each application for a certificate of need shall be accompanied by a cover letter signed by an authorized officer or agent of the applicant. The cover letter shall specify the type of facility for which a certificate of need is requested, the number of copies filed, and the rules and subdivisions thereof to which the applicant has responded.

E. A hearing examiner shall be appointed and a public hearing shall be scheduled to commence no later than eighty days after the receipt of the application, in accordance with the Minnesota Energy Agency Rules of Procedure Governing Certificate of Need Program, rules EA 500 et seq. (6 MCAR § 2.0500), and the Hearing Examiner Rules of Contested Case Procedures, rules HE 201 et seq. (9 MCAR § 2.0201).

F. A decision on an application for a certificate of need shall be made by the director no later than six months from the receipt of the application, provided that the application as filed is substantially complete.

G. The director shall notify the applicant within 15 days of the receipt of an application if the application is not substantially complete. Upon such notification, the applicant may correct the deficiency and may resubmit the application. A decision shall be made upon the revised application within six months of the date of resubmission, assuming it is substantially complete.

H. Prior to the submission of an application, a person may be exempted from any data requirement of these rules upon a written request to the director for exemption from specified rules and a showing by that person in the request that the data requirement 1) is unnecessary to determine the need for the proposed facility or 2) may be satisfied by submission of another document. A request for exemption must be filed at least 20 days prior to submission of an application. The director shall respond in writing to each such request within 15 days of receipt including reasons for his decision. The director shall file a statement of exemptions granted and reasons therefor prior to commencement of the hearing.

§ 2.0804 Definitions. For purposes of these rules, the following definitions shall apply:

A. "Agency" means the Minnesota Energy Agency;

B. "Applicant" means the person or persons submitting a certificate of need application;

C. "Application" means a document submitted by a person or persons to the director for the purpose of obtaining a certificate of need, the contents of which are described in these rules;

D. "BTU" means British thermal unit, a common unit of energy measurement which is used in these rules for comparative purposes;

E. "Construction" means significant physical alteration of a site to install or enlarge a large energy facility, but not including activities incident to preliminary engineering or environmental studies;

F. "Demand" means the quantity of an energy product which the applicant is willing and able to purchase;

G. "Director" means the director of the Agency;

H. "Energy Product" means a product which may be used to provide energy;

I. "Forecast" means a prediction of future demand for some specified time period;

J. "Forecast Years" means the sixteen-year period consisting of the year in which an application is filed plus the next fifteen years;

K. "Joint Application" means an application submitted to the director by two or more persons;

L. "Large Oil Storage Facility" means a facility on a single site designed for or capable of storing more than one million gallons of crude petroleum or petroleum fuels or oil or derivatives thereof;

M. "Peak Day" means that day during a calendar year when the demand is the greatest;

N. "Person" means an individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or a government or governmental subdivision, unit or agency, other than a court of law;

O. "Substantially Complete Application" means an application which is deemed by the director to be in substantial compliance with the informational requirements of these rules; and

P. "Ton" means 2000 pounds.

§ 2.0805 Filing fees and payment schedule. The fee for processing an applicant shall be $1,500 plus $50 per one hundred thousand gallons of design oil storage capacity. The director may assess additional fees if they are reasonably necessary for completion of the evaluation of need for the proposed facility. In no event shall the total fee required of an applicant exceed the lesser of $50,000 or 200 percent of the fee set according to the above schedule. Fifty percent of the fee set according to the above schedule shall accompany the application, and the balance shall be paid 90 days after submission of the application. The applicant shall be notified when its application is acted on by the director of any additional fees and shall pay them within 30 days of notification. The billing for such additional fees shall be accompanied by an itemized statement. No certificate of need shall be issued unless all fees are paid in full.

§ 2.0811 Criteria for assessment of need.

A. Purpose of the criteria. The criteria for assessment of need will be used by the director in the determination of the need for a proposed large energy facility pursuant to Minn. Stat. §§ 116H.01 through 116H.15. The factors listed under each of the criteria below will be evaluated to the extent that the director deems them applicable and pertinent to each facility proposed pursuant to these rules.

B. A certificate of need shall be granted to the applicant if it is determined that:

1. the probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states. In making this determination, the director shall consider:

a. the accuracy of the applicant's forecast of demand for the type of energy that would be supplied by the proposed facility;

b. the effects of the applicant's existing or expected conservation programs and state and federal conservation programs;

c. the effects of promotional practices of the applicant which may have given rise to the increase in the energy demand, particularly promotional practices which have occurred since 1974;

d. the ability of current facilities and planned facilities not requiring certificates of need to meet the future demand; and

e. the effect of the proposed facility in making more efficient use of resources;

2. a more reasonable and prudent alternative to the proposed facility has not been demonstrated. In making this determination, the following factors shall be considered:

a. the appropriateness of the size, type, and timing of the proposed facility compared to those of reasonable alternatives;

b. the cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;

c. the impact of the proposed facility upon the natural and socio-economic environments compared to the impacts of reasonable alternatives; and

d. the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives;

3. the consequences of granting the certificate of need outweigh the consequences of denying the certificate, considering:

a. the relationship of the proposed facility to overall state energy needs;

b. the impact of the proposed facility upon the natural and socio-economic environments compared to the impact of not building the facility;

c. the effects of the proposed facility in inducing future development; and

d. socially beneficial uses of the output of the proposed facility, including its uses to protect or enhance environmental quality;

and that

4. it has not been demonstrated on the record that the design, construction or operation of the proposed facility will fail to comply with those relevant policies, rules and regulations of other state and federal agencies and local governments which have been considered during the hearing process.

§ 2.0821 Contents of application.

A. Each application for a certificate of need for a large oil storage facility shall include the information required by rules 6 MCAR §§ 2.0831 - 2.0834 and 2.0841 - 2.0845.

B. An application for a certificate of need, if desired by the applicant, may contain information in response to rule 6 MCAR § 2.0871.

C. Joint application. If the proposed application for a certificate of need is jointly submitted by two or more persons, then, when specified in these rules, each such person shall submit the information required by these rules.

D. Multi-party ownership and use. Each application for a certificate of need for a facility which is owned and used by two or more persons shall be considered as a joint application for purposes of these rules.

§ 2.0831 General information.

A. Each application shall contain a general information section which shall include the following information:

1. the applicant's complete name and address, telephone number, and standard industrial classification code(s);

2. the complete name, title, address, and telephone number of the official or agent to be contacted concerning the applicant's filing;

3. a brief description of the nature of the applicant's business and of the products which are manufactured, produced, or processed, or of the services rendered;

4. a brief description of the proposed facility, its complete address (if known) or general location, a brief description of its planned use, its estimated cost, its planned in-service date, and its design capacity in gallons;

5. the total fee for the application as prescribed by rule 6 MCAR § 2.0805, and the amount of the fee submitted with the application; and

6. the signature(s), and title(s) of the applicant's officer(s) or executive(s) authorized to sign the application and the signature of the preparer of the application if prepared by an outside agent.

B. Each application shall contain a schedule in the general information section which shall list all known federal, state, and local agencies or authorities with which the applicant must file for the proposed facility. The following information shall be included on the schedule:

1. the names of all known federal, state, or local agencies or authorities with which the applicant must file;

2. the title of each required permit or certificate issued by the authorities named in response to rule 6 MCAR § 2.0831 B.1. and needed by the applicant;

3. for each permit or certificate listed in response to rule 6 MCAR § 2.0831 B.2., the date an application was filed or the projected date of future application;

4. for each permit or certificate listed in response to rule 6 MCAR § 2.0831 B.2., the actual date a decision was made on the application, or the anticipated decision date; and

5. for each permit or certificate listed in response to rule 6 MCAR § 2.0831 B.2., for which an application was filed, the disposition or status of the permit or certificate.

§ 2.0832 **Need summary.** Each application shall contain a section which summarizes the major factors which justify the need for the proposed facility. This summary shall not exceed, without the approval of the director, 15 pages in length, including text, tables, schedules, graphs, and figures.

§ 2.0833 **Summary of additional considerations.** Each application shall contain a section which discusses the socioeconomic considerations listed below. The applicant shall explain the relationship of the proposed facility to each of the following:

A. socially beneficial uses of the output of the facility, including its uses to protect or enhance environmental quality;

B. promotional activities which may have given rise to the demand for the facility; and

C. the effects of the facility in inducing future development.

§ 2.0834 **Conservation programs.** Each application shall contain a section which relates to conservation of energy. Separate responses are required from each person submitting a joint application.

A. Does the applicant have an energy committee or an individual responsible for determination or coordination of its energy needs?

B. Has the applicant defined energy or conservation goals or objectives?

C. What specific energy or conservation programs has the applicant considered?

D. Have any energy or conservation programs been implemented? Explain the program(s) and the measured results achieved to date.

E. Has the applicant measured or studied the energy efficiency of the facilities which will use the proposed facility as an energy source? What were the results?

F. What major accomplishments in energy efficiency or conservation have been made by the applicant within the past five years?

§ 2.0841 **Historical energy data.** Each applicant shall provide the following information on historical energy usage in a separate section of the application. The energy usage data provided shall be for the specific facility or facilities which will make use of the energy product from the proposed facility. In a joint application separate responses shall be provided by each person. Applicants who have operated for less than five years the facility or facilities which

will use energy from the proposed facility should provide data for each year of operation.

A. List all energy products used for the five most recent calendar years. For each energy product used indicate the annual usage and peak day usage in the appropriate unit of measure, i.e., natural gas in thousands of cubic feet, oil by type(s) and in gallons, coal by type(s) and in tons, electricity in kilowatt-hours, and liquefied gas in gallons.

B. For each energy product listed in response to rule 6 MCAR § 2.0841 A., provide the annual expense in dollars and the average cost per unit of measure for each of the five most recent calendar years.

C. For each energy product listed in response to rule 6 MCAR § 2.0841 A., provide the annual usage for the five most recent calendar years in BTU's and express the annual usage for each type of energy as a percentage of total annual use.

D. For each energy product listed in response to rule 6 MCAR § 2.0841 A., and for the five most recent calendar years, provide the percentage of energy usage that is accounted for by each of the following categories:

1. space heating and cooling;

2. lighting;

3. manufacturing or processing;

4. electricity generation; and

5. other

E. Describe any significant changes in plant or equipment within the past five years which may have had an effect upon the mix or quantities of energy products used as indicated in response to the paragraphs A. through D. of rule 6 MCAR § 2.0841.

F. If the energy products listed include oil, liquefied gas, or coal, describe the type and size of existing storage capacity, including the average number of days supply which would normally be on hand during the winter season and during the summer season.

G. For each of the energy products listed in response to rule 6 MCAR § 2.0841 F., describe the applicant's handling facilities, including the method of transportation.

§ 2.0842 Forecast data. The applicant shall provide in a separate section of the application answers to each of the questions below. In the answer to each question the applicant shall provide the assumptions upon which the answer is based. Separate responses to the questions are required from each person submitting a joint application.

A. What are the applicant's projected total energy requirements in BTU's for the first six forecast years, the eleventh forecast year (the tenth year after the year of application), and the sixteenth forecast year (the fifteenth year after the year of application)?

B. For the first six forecast years, the eleventh forecast year, and the sixteenth forecast year, what percentage of the total energy requirement given in response to rule 6 MCAR § 2.0842 A. is projected to be utilized for each of the following: space heating and cooling, lighting, manufacturing or processing, electricity generation and other?

C. What different energy products does the applicant expect to use during the forecast years? With respect to the various energy products, what significant shifts from current usage are expected by the applicant during the forecast years?

D. What energy supply problems, if any, does the applicant anticipate during the forecast years?

E. How much reduction, if any, in energy requirements for future years does the applicant anticipate as a result of conservation programs or improvements in the energy efficiencies of equipment?

§ 2.0843 **Description of proposed facility.** Each applicant shall provide a description of the proposed oil storage facility in a separate section of the application. Separate responses to items G. through K. of rule 6 MCAR § 2.0843 are required from each person submitting a joint application. The following information, or as much as is known at the time of application, shall be provided:

A. a description of the proposed oil storage facility, including:

1. its design capacity in gallons;

2. the type(s) of energy products to be stored;

3. its dimensions;

4. its estimated cost;

5. its expected economic life; and

6. an appropriate drawing which shows interconnections with other facilities at the site;

B. the complete name and address of the engineer, or (if designed by an outside agent) the firm, which designed to storage facility;

C. the complete name and address of the contractor or firm which will construct the storage facility;

D. the approximate planned date for starting construction and the approximate planned in-service date;

E. a list of the sources or anticipated fuel suppliers and any contractual arrangements which assure the applicant a source of supply, including:

1. length of the contract(s) in years;

2. contractual volume per year, month, day, or as appropriate;

3. name(s) of supplier(s);

4. notification, if any, required to terminate a contract;

5. method of delivery; and

6. anticipated supply cycle (weekly, monthly, seasonally, by spot purchase, etc.);

F. an explanation of the source of supply for the proposed storage facility, if the applicant does not have a firm contract for necessary additional supplies of fuel;

G. the purpose and planned use of the proposed storage facility, including its relationship to the facility which requires it;

H. the percentage of the annual energy requirements of the energy-consuming facility which will use the proposed storage facility as an energy source that will be provided by the proposed storage facility;

I. the estimated number of days of fuel requirements which are planned to be stored in the proposed storage facility during the winter season and during the summer season for the first full year of operation;

J. an explanation of the effects of the proposed storage facility upon the applicant's ability to supply its customers; and

K. an explanation of the impact, if any, of the proposed facility upon the energy efficiency of operation of the facility which will use the proposed storage facility as a fuel source.

§ 2.0844 **Alternatives.** Each applicant shall respond to the following questions and submit the required data in a separate section of the application.

A. Was conservation of energy or improving the efficiency of the process requiring the proposed facility considered as an alternative to construction of the proposed facility? To what extent was it considered?

B. Are there any known restrictions or limitations on the types of alternatives available to the applicant's proposed facility?

C. Specifically, what other energy alternatives were examined? For each alternative examined provide the following information:

1. a description of the alternative;

2. when it was studied;

3. who performed the study;

4. why it was rejected;

5. whether economics was considered and to what extent; and

6. whether environmental data were considered and to what extent.

§ 2.0845 **Environmental data.** Each applicant shall provide environmental data for the proposed facility and for each alternative large energy facility described in response to rule 6 MCAR § 2.0844, to the extent that such data is reasonably available. Information relating to construction and operation of these facilities shall be provided as indicated below.

A. Location.

1. If the specific location for the proposed facility is known, provide the county, township, range and section(s) of that site. If a specific location has not been chosen, provide the county, township, range and section(s) for each parcel of land which in the opinion of the applicant could serve as the site for the proposed facility.

2. For each site identified in response to rule 6 MCAR § 2.0845 A., list:

a. the nature of the terrain at the site;

b. the general soil type at the site;

c. the depth to groundwater at the site;

d. the types of vegetation (including forest, brush, marsh, pasture, and cropland) on the site;

e. the predominate types of land use (such as residential, forest, agricultural, commercial, and industrial) within one mile of the site;

f. lakes, streams, wetlands or drainage ditches within one mile of the facility and any other lakes, streams, wetlands, drainage ditches, wells or storm drains into which liquid contaminants could flow;

g. national natural landmarks, national wilderness areas, national wildlife refuges, national wild and scenic rivers, national parks, national forests, national trails and national waterfowl production areas within one mile of the site, as mapped on the Inventory of Significant Resources by the State Planning Agency;

h. state critical areas, state wildlife management areas, state scientific and natural areas, state wild, scenic and recreational rivers, state parks, state scenic wayside parks, state recreational areas, state forests, state trails, state canoe and boating rivers, state zoo, designated trout streams, and designated trout lakes within one mile of the site, as mapped on the Inventory of Significant Resources by the State Planning Agency; and

i. national historic sites and landmarks, national monuments, National Register Historic Districts, registered state historic or archaeological sites, state historical districts, sites listed on the National Register of Historic Places, and any other Cultural Resources within one mile of the facility site, as indicated by the Minnesota Historical Society.

B. Wastewater, projected air emissions and noise sources.

1. Discharges to water.

a. Point discharges. Indicate the location, route and final receiving waters for any discharge points. For each discharge point indicate the source, the amount and the nature of the discharge. (Provide quantitative data if possible.)

b. Area runoff. Indicate the area from which runoff may occur, potential sources of contamination in the area, and receiving waters for any runoff.

2. Airborne emissions.

a. Point sources. Estimate the quantity of gaseous and particulate emissions that would occur during full operation from each emission source and indicate the location and nature of the release point.

b. Area sources. Indicate locations which may be sources of fugitive dust and indicate the nature of the source (including type of material, amount, and turnover rate).

3. Noise. Indicate the maximum noise levels (in decibels, A scale) expected at the property boundary. Also, indicate the expected maximum increase over ambient noise levels.

C. Pollution control and safeguards equipment.

1. Air pollution controls. Indicate types of emission control devices and measures that would be used.

2. Water pollution controls. Indicate types of pollution control equipment and runoff control measures that would be used to comply with applicable state and federal regulations and statutes.

3. Oil spill safeguards. Describe measures that would be taken to prevent oil spills or to minimize the environmental impact of a spill on surface waters and groundwaters of the state.

4. Other safeguards and controls. Indicate any other equipment or measures, including erosion control, that would be used to reduce impact of the facility. Indicate the type of environmental monitoring, if any, that are planned for the facility and describe relevant environmental monitoring data already collected.

D. Induced development.

1. Vehicular traffic. Estimate the amounts and types of vehicular traffic which would be generated by the facility.

2. Utility use. Indicate the extent to which the facility would create or add to the need for expanded utilities or public services.

3. Water use. Indicate the amount of water which would be appropriated and the amount which would be consumed by the facility, the expected source of the water, and how the water would be used.

§ 2.0871 Other data filed with the application. In addition to the information required by the director, the applicant may desire to file other data. If, in the opinion of the applicant, additional relevant data should be submitted for consideration, such data should be filed in a separate section of the application.

§ 2.0881 Certificate of need modifications.

A. Issuance of a certificate may be made contingent upon modifications required by the director. When the director denies an application, he shall state the reason(s) for the refusal and the changes, if any, which would make the facility certifiable.

B. The following changes in a facility previously certified by the director shall not require recertification:

1. oil storage capacity additions or subtractions of less than ten (10) percent of the capacity approved by the director; and

2. changes of less than two years in the in-service date.

C. If an applicant determines that a change greater than those specified in rule 6 MCAR § 2.0881 B. is necessary or desirable, it shall inform the director of the desired change, accompanied by a written statement detailing the reasons for the proposed change. The director shall evaluate these reasons and within 45 days of receipt of said statement notify the applicant whether the proposed change is acceptable without recertification.

RULES GOVERNING CONTENTS OF APPLICATIONS FOR CERTIFICATES OF NEED AND CRITERIA FOR ASSESSMENT OF NEED FOR LARGE COAL STORAGE FACILITIES FOR COAL SUPPLIERS AND COAL TRANSSHIPMENT FACILITIES

Chapter Nine: § § 2.0901 - 2.0981

§ 2.0901 Purpose of rules. The purpose of these rules is to specify the contents of application for certificates of need and to specify criteria for assessment of need for large coal storage facilities for coal suppliers and coal transshipment facilities. In accordance with Minn. Stat. § 116H.13 subd. 4, a coal supplier shall apply for a certificate of need to construct a new large energy facility.

§ 2.0902 Applicability of rules.

A. Each coal supplier applying for a certificate of need for a large coal storage facility or any person applying for a certificate of need for a coal transshipment facility shall provide all information required by these rules. A certificate of need is required for each new large coal storage facility, each new coal transshipment facility, and for each expansion of either such facility, which expansion is itself of sufficient size to come within the definition in either rule § 2.0904 E. or rule § 2.0904 L.

B. Exception. Any person who as of the effective date of these rules has begun or has completed construction of a large coal facility shall not be subject to these rules for that facility.

§ 2.0903 Application procedures and timing.

A. Each applicant for a certificate of need shall apply in a form prescribed by the director.

B. A minimum of seven (7) bound copies and one (1) unbound copy of the application must be filed with the director. The director may require additional bound copies. All documents, forms, and schedules filed with the application must be typed on 8½ inch x 11 inch paper except for blueprints, engineering drawings, maps, and similar materials. The date of preparation and the applicant's name shall appear on each page of the application, as well as on each document filed with the application. Each application shall contain a title page and a complete table of contents which includes the applicable rule by the titles and numbers given in these regulations.

C. Subsequent to the filing of an application, any changes or corrections to the application shall comply with rule § 2.0903 B. as to the number of copies and size of documents. In addition, each page of a change or correction to a previously filed page shall be marked with the word "REVISED"

and with the date the revision was made. The original copy of the changes or corrections shall be filed with the hearing examiner, and the remaining copies shall be submitted to the director.

D. Each application for a certificate of need shall be accompanied by a cover letter signed by an authorized officer or agent of the applicant. The cover letter shall specify the type of facility for which a certificate of need is requested, the number of copies filed, and the rules and subdivisions thereof to which the applicant has responded.

E. A hearing examiner shall be appointed and a public hearing shall be scheduled to commence no later than eighty days after the receipt of the application, in accordance with The Minnesota Energy Agency Rules of Procedure Governing Certificate of Need Program, Minnesota Code of Agency Rules EA 500 et seq. (6 MCAR §§ 2.500 et seq.), and the Hearing Examiner Rules for Contested Case Procedures, Minnesota Code of Agency Rules HE 201 et seq. (9 MCAR §§ 2.201 et seq.)

F. A decision on an application for a certificate of need shall be made by the director no later than six months from the receipt of the application, provided that the application as filed is substantially complete.

G. The director shall notify the applicant within 15 days of the receipt of an application if the application is not substantially complete. Upon such notification, the applicant may correct any deficiency and may resubmit the application. A decision shall be made upon the revised application within six months of the date of resubmission, assuming it is substantially complete.

H. Prior to the submission of an application, a person may be exempted from any data requirement of these rules upon a written request to the director for exemption from specified rules and a showing by that person in the request that the data requirement 1) is unnecessary to determine the need for the proposed facility or 2) may be satisfied by submission of another document. A request for exemption must be filed at least 20 days prior to submission of an application. The director shall respond in writing to each such request within 15 days of receipt including reasons for his decision. The director shall file a statement of exemptions granted and reasons therefor prior to commencement of the hearing.

§ 2.0904 Definitions. For purposes of these rules, the following definitions shall apply:

A. "Agency" means the Minnesota Energy Agency;

B. "Applicant" means the person or persons submitting a certificate of need application;

C. "Application" means a document, the contents of which are described in these rules, submitted by a person or persons to the director for the purpose of obtaining a certificate of need;

D. "Coal Supplier" means an entity engaged in this state in the wholesale distribution of coal or transportation into this state of any coal intended for use or distribution in the state or transshipment from the state;

E. "Coal Transshipment Facility" means a facility designed for or capable of transferring more than 300 tons of coal per hour or with an annual throughput of more than 500,000 tons of coal from one mode of transportation to a similar or different mode of transportation;

F. "Construction" means significant physical alteration of a site to install or enlarge a large energy facility, but not including activities incident to preliminary engineering or environmental studies;

G. "Demand" means that quantity of an energy product from the applicant's facilities for which there are willing and able purchasers;

H. "Director" means the director of the Agency;

I. "Energy Product" means a product which may be used to provide energy;

J. "Forecast" means a prediction of future demand for some specified time period;

K. "Joint Application" means an application submitted to the director by two or more persons;

L. "Large Coal Storage Facility" means a facility designed for or capable of storing more than 7500 tons of coal or with an annual throughput of more than 125,000 tons of coal;

M. "Minnesota Service Area" means that portion of the service area which is within Minnesota;

N. "Person" means an individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or a government or governmental subdivision, unit or agency, other than a court of law;

O. "Service Area" means that geographical area in which the applicant has customers;

P. "Substantially Complete Application" means an application which is deemed by the director to be in substantial compliance with the informational requirements of these rules; and

Q. "Ton" means 2000 pounds.

§ 2.0905 Filing fees and payment schedule. The fee for processing an application shall be:

A. $1,500 plus $10 per thousand tons of design annual throughput for a large coal storage facility; or

B. $10,000 plus $200 per one hundred thousand tons of design annual throughput for a coal transshipment facility;

plus such additional fees as are reasonably necessary for completion of the evaluation of need for the proposed facility. In no event shall the total fee required of any applicant exceed $50,000. Fifty percent of the fee set according to either item A or B of rule § 2.0905 shall accompany the application and the balance shall be paid 90 days after submission of the application. The applicant shall be notified when any additional fees are due and shall pay them within 30 days of notification. The billing for such additional fees shall be accompanied by an itemized statement. No certificate of need shall be issued unless all fees are paid in full.

§ 2.0911 Criteria for assessment of need.

A. Purpose of the criteria. The criteria for assessment of need will be used by the director in the determination of the need for a proposed large energy facility pursuant to Minn. Stat. §§ 116H.01 through 116H.15. The factors listed under each of the criteria below will be evaluated to the extent that the director deems them applicable and pertinent to each facility proposed pursuant to these rules.

B. A certificate of need shall be granted to the applicant if it is determined that:

1. the probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states. In making this determination, the director shall consider:

a. the accuracy of the applicant's forecast of demand for the type of energy that would be supplied by the proposed facility;

b. the effects of the applicant's existing or expected conservation programs and state and federal conservation programs;

c. the effects of promotional practices which may have given rise to the increase in the energy demand, particularly promotional practices which have occurred since 1974;

d. the ability of current facilities and planned facilities not requiring certificates of need to meet the future demand; and

e. the effect of the proposed facility in making more efficient use of resources;

2. a more reasonable and prudent alternative to the proposed facility

has not been demonstrated. In making this determination, the following factors shall be considered:

a. the appropriateness of the size, type, and the timing of the proposed facility compared to those of reasonable alternatives;

b. the cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;

c. the impact of the proposed facility upon the natural and socioeconomic environments compared to the impacts of reasonable alternatives; and

d. the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives;

3. the consequences of granting the certificate of need outweigh the consequences of denying the certificate, considering:

a. the relationship of the proposed facility to overall state energy needs;

b. the impact of the proposed facility upon the natural and socioeconomic environments compared to the impact of not building the facility;

c. the effects of the proposed facility in inducing future development; and

d. socially beneficial uses of the output of the proposed facility, including its uses to protect or enhance environmental quality;

and that

4. it has not been demonstrated on the record that the design, construction or operation of the proposed facility will fail to comply with those relevant policies, rules and regulations of other state and federal agencies and local governments which have been considered during the hearing process.

§ 2.0921 Contents of application.

A. Each application for a certificate of need for a large coal storage facility or a coal transshipment facility shall provide the information required by rules §§ 2.0931 - 2.0934 and §§ 2.0941 - 2.0945.

B. An application for a certificate of need may contain information in response to rule § 2.0971, if desired by the applicant.

C. Joint application. If the proposed application for a certificate of need

is jointly submitted by two or more persons, then, when specified in these rules, each such person shall submit the information required by these rules.

D. Multi-Party ownership and use. Each application for a certificate of need for a facility which is owned and used by two or more persons shall be considered as a joint application for purposes of these rules.

§ 2.0931 General information.

A. Each application shall contain a general information section which shall include the following information:

1. the applicant's complete name and address, telephone number, and standard industrial classification code(s);

2. the complete name, title, address, and telephone number of the official or agent to be contacted concerning the applicant's filing;

3. a brief description of the nature of the applicant's business and of the services rendered;

4. a brief description of the proposed facility, its complete address (if known) or general location, a brief description of its planned use, its estimated cost, its planned in-service date, its design capacity in tons of coal and its design annual throughput in tons;

5. the total fee for the application as prescribed by rule § 2.0905, and the amount of the fee submitted with the application; and

6. the signature(s) and title(s) of the applicant's officer(s) or executive(s) authorized to sign the application and the signature of the preparer of the application if prepared by an outside agent.

B. Each application shall contain a schedule in the general information section which shall list all known federal, state, and local agencies or authorities with which the applicant must file for the proposed facility. The following information shall be included on the schedule:

1. the names of all known federal, state, or local agencies or authorities with which the applicant must file;

2. the title of each required permit or certificate issued by each authority named in response to rule § 2.0931 B.1. and needed by the applicant;

3. for each permit or certificate listed in response to rule § 2.0931 B.2., the date an application was filed or the projected date of future applications;

4. for each permit or certificate listed in response to rule § 2.0931

B.2., the actual date a decision was made on the application, or the anticipated decision date; and

5. for each permit or certificate listed in response to rule § 2.0931 B.2., for which an application was filed, the disposition or status of the permit of certificate.

§ 2.0932 Need summary. Each application shall contain a section which summarizes the major factors which justify the need for the proposed facility. The summary shall not exceed, without the approval of the director, 15 pages in length, including text, tables, schedules, graphs, and figures.

§ 2.0933 Summary of additional considerations. Each application shall contain a section which discusses the socioeconomic considerations listed below. The applicant shall explain the relationship of the proposed facility to each of the following:

A. socially beneficial uses of the output of the facility, including its uses to protect or enhance environmental quality;

B. promotional activities which may have given rise to the demand for the facility; and

C. the effects of the facility in inducing future development.

§ 2.0934 Conservation programs. Each application shall contain a section which relates to conservation of energy. Separate responses are required from each person submitting a joint application.

A. Does the applicant have an energy committee or an individual responsible for determination of its energy needs?

B. Has the applicant defined energy or conservation goals or objectives?

C. What specific energy or conservation programs has the applicant considered?

D. Have any energy or conservation programs been implemented? If so, explain the program and the measured results achieved to date.

E. Has the applicant measured or studied the energy efficiency of its facilities? What were the results?

F. What major accomplishments in energy efficiency or conservation have been made by the applicant within the past five years?

§ 2.0941 Historical energy data.

A. Each applicant for a large coal storage facility or a coal transshipment facility who plans to expand or replace an existing facility shall provide the

following information. In a joint application separate responses shall be provided by each person. Applicants who have operated for less than five years shall provide data for each year of operation.

1. If there is an existing coal storage facility at the site where the proposed facility will be located, list the existing facility's capacity in tons, its maximum annual throughput in tons, the type(s) of coal normally stored, the year in which it was first placed in service and its use in the applicant's business.

2. For the facility listed in response to rule § 2.0941 A.1., describe the system for in-loading and out-loading or the transferring of coal, including a description of facilities for hopper cars, unit trains, trucks, barges, and the distribution system.

3. For the facility listed in response to rule § 2.0941 A.1., describe the normal inventory cycle, including the applicant's policies, if any, of building inventories of specific types of coal during certain seasons of the year, and the ways in which the mix of product or inventory cycle has been changing over the past five years.

4. For the facility listed in response to rule § 2.0941 A.1., provide the average percentage of use of its design capacity during the winter season and during the summer season for each of the five most recent calendar years.

5. For each type of coal stored in the facility, list the annual throughput in tons for the five most recent calendar years.

6. For each type of coal listed in response to rule § 2.0941 A.5., provide the following information for each of the five most recent calendar years:

a. the geographical location of each source of coal purchased or transshipped;

b. the annual tonnage from each geographical location; and

c. the mode(s) of transportation from each geographical location.

7. For each of the five most recent calendar years, list the percentage of the facility's annual coal throughput which has been distributed within the Minnesota service area.

B. Each applicant for a new coal transshipment facility or a new large coal storage facility shall provide to the best of its knowledge the following information on the historical use of coal in the geographic service area of the proposed facility.

1. Market. For each of the five most recent calendar years, describe the historical market for coal in the geographic service area of the proposed facility, including:

a. the types of coal used and the annual tonnage supplied; and

b. a description of the types of customers which used the coal and the annual usage in tons by type of customer. At a minimum, the types of customers shall include:

(1) electric utilities;

(2) other utilities;

(3) mining;

(4) industrial users; and

(5) other users.

2. Distribution channels. Describe the existing distribution of transshipment channels in the geographic service area of the proposed facility, including:

a. the names of the top ten distributors or transshipment facilities and the annual tonnage by type of coal distributed or transshipped by each during the five most recent calendar years; and

b. the modes of transportation which are used to distribute the coal and the percentage of coal volume transported by each.

3. Supply areas. Provide information regarding the general geographic location or source of the coal which was supplied to the geographic service area of the proposed facility, including:

a. the type of coal supplied from each geographic location;

b. the annual tonnage supplied for each year during the five most recent calendar years from each geographic location; and

c. the mode(s) of transportation from each geographic location.

§ 2.0942 **Forecast data.** Each applicant for a large coal storage or a coal transshipment facility shall provide the following information on the forecast of coal usage in the geographic service area of the proposed facility. Each answer shall include a discussion of the methods, assumptions and factors upon which the answer is based.

A. Market. For each of the first ten years of operation describe the forecast market for coal in the geographic service area of the proposed facility, including:

1. a list of the types of coal expected to be used and the annual tonnage for each type of coal;

2. a list of the types of customers which will use the coal and the annual usage in tons. At a minimum, the types of customers shall include:

a. electric utilities;

b. other utilities;

c. mining;

d. industrial users; and

e. other users; and

3. a description of the impact of the proposed facility upon users of other energy products who are considering coal as an alternate source of energy.

B. Distribution channels. For each of the first ten years of operation describe the channels of distribution for the geographic service area of the proposed facility, including:

1. the mode(s) of transportation used in the distribution or transshipment of coal from the proposed facility and the percentage of coal volume transported by each;

2. the expected annual percentage of coal from the proposed facility to be distributed within the state of Minnesota;

3. the impact of the proposed facility upon the throughput of existing channels of distribution; and

4. the ability of existing and planned transportation systems to accommodate the increase in usage, if any, caused by the proposed facility.

C. Supply areas. For each of the first ten years of operation provide information regarding the general geographic locations of the sources of coal to be used by the proposed facility, including:

1. the type(s) of coal to be supplied from each geographic location;

2. the annual tonnage by type of coal from each geographic location;

3. the mode(s) of transportation to the proposed facility from each geographic location; and

4. the effect of the proposed facility in ensuring a reliable and stable supply of coal to its geographic service area.

D. Operations. For the first ten years of operation provide the following information on the operations of the proposed facility:

1. a list of the expected annual tonnage of coal by type(s) to be stored in the proposed facility;

2. a description of the expected inventory cycle, including the policies, if any, of building inventories of specific types of coal during certain seasons of the year;

3. a discussion of the impact of the proposed facility upon the applicant's ability:

a. to maintain an adequate inventory;

b. to provide operating efficiencies or economies of scale to its users or customers; and

c. to supply its users or customers;

4. the expected cost of handling coal per ton at the proposed facility in comparison with the costs of handling coal for existing forms of coal distribution; and

5. the expected delivered cost of coal per ton for the proposed facility in comparison with the delivered costs of existing distribution sources.

§ 2.0943 Description of proposed facility.

A. Purpose. Each applicant shall explain the purpose and planned use of the proposed facility.

B. Design. Each applicant shall provide the following information on the design of the proposed facility:

1. the complete name and address, if known, of the engineer or firm which designed the facility;

2. the estimated cost of the proposed facility and its expected economic life; and

3. a description of the proposed facility, including:

a. its design throughput in tons and its design storage capacity in tons;

b. its dimensions;

c. preliminary drawings or blueprints which show the proposed facility and its basic components in relationship to one another and to the natural terrain;

d. a description of the facilities for the in-loading and out-loading of coal and the mode(s) of transportation which they may service; and

e. a description of planned roads, railroad trackage, landfill or dredging at the proposed facility.

C. Safeguards. Each applicant shall provide a description of the safeguard facilities which are planned to control emissions into the air or water during the construction and operation of the proposed coal facility, including:

1. a description of the dust control equipment;

2. a description of the equipment for the recovery of accidental coal spills; and

3. a description of the equipment or system for the collection and treatment of liquid contaminants.

D. Construction and operation. Each applicant shall provide the following information on the construction and operation of the proposed coal facility:

1. the complete name and address, if known, of the contractor(s) or firm(s) which would construct the coal facility;

2. the approximate planned date for starting construction and the approximate planned in-service date;

3. an appropriate schematic or drawing which shows the operations and flow of coal from its receipt through the facility and to its storage area or delivery vehicle; and

4. a description of the potential, if any, for future expansion of the proposed facility, including:

a. the maximum storage capacity and annual throughput in tons; and

b. the estimated additional cost to expand the proposed facility to its maximum capability.

§ 2.0944 **Alternatives.** Each applicant shall provide information about possible alternatives to the proposed facility.

A. What would be the impact upon the applicant, its employees, its prospective users or customers, and the people of Minnesota and neighboring states of not building the proposed coal facility, including:

1. the effect upon existing coal users or prospective coal users in the Minnesota service area of the proposed facility;

2. the effect upon the existing coal distribution system and prospective coal distribution system in the Minnesota service area and in neighboring states; and

3. the effect upon the coal storage and handling facilities of large coal users or prospective users in the Minnesota service area of the proposed facility?

B. Discuss alternative sizes which were considered for the proposed coal facility, including:

1. the storage capacity in tons;

2. the annual throughput in tons;

3. the dimensions and the amount of land and shoreline, if any, required; and

4. the estimated cost.

C. Discuss alternative sites which were considered for the proposed coal facility, including:

1. any known restrictions or limitations on the use of specific sites;

2. any known limitations on the distance from the proposed site to the major market area(s) or its proximity to waterways; and

3. the reason(s) each site considered was rejected.

§ 2.0945 **Environmental data.** Each applicant shall provide environmental data for the proposed facility and for each alternative discussed in response to rule § 2.0944 to the extent that such data is reasonably available. Environmental data for the proposed facility shall conform to the format given in subdivisions A. through D. of rule § 2.0945. Information for each of the alternatives considered shall include 1) a list of the natural and cultural resources, as given in items A.2.f. through i. of rule § 2.0945 that would be directly impacted and 2) a discussion of those applicable areas of environmental concern that are detailed in subdivisions B. through D. of rule § 2.0945.

A. Location.

1. If the specific location for the proposed facility is known, provide the county, township, range, and section(s) of that site. If a specific location has not been chosen, provide the county, township, range and section(s) for each parcel of land which in the opinion of the applicant could serve as the site for the facility.

2. For each site identified in response to rule § 2.0945 A.1. list:

a. the nature of the terrain at the site;

b. the general soil type at the site;

c. the depth to groundwater at the site;

d. the types of vegetation (including forest, brush, marsh, pasture, and cropland) on the site;

e. the predominant types of land use (such as residential, forest, agricultural, commercial, and industrial) within one mile of the site;

f. lakes, streams, wetlands or drainage ditches within one mile of the site and any other lakes, streams, wetlands, drainage ditches, wells or storm drains into which liquid contaminants could flow;

g. national natural landmarks, national wilderness areas, national wildlife refuges, national wild and scenic rivers, national parks, national forests, national trails and national waterfowl production areas within one mile of the site, as mapped on the Inventory of Significant Resources by the State Planning Agency;

h. state critical areas, state wildlife management areas, state scientific and natural areas, state wild, scenic and recreational rivers, state parks, state scenic wayside parks, state recreational areas, state forests, state trails, state canoe and boating rivers, state zoo, designated trout streams, and designated trout lakes within one mile of the site, as mapped on the Inventory of Significant Resources by the State Planning Agency; and

i. national historic sites and landmarks, national monuments, National Register Historic Districts, registered state historic or archaeological sites, state historic districts, sites listed on the National Register of Historic Places, and any other Cultural Resources within one mile of the site, as indicated by the Minnesota Historical Society.

B. Projected air emissions, wastewater, solid waste and noise sources.

1. Solid wastes. Indicate the types and estimated quantities of solid wastes that would be produced by or because of the facility. Also, indicate the intended method of recycling or disposing of these wastes.

2. Discharges to water.

a. Point discharges. Indicate the location, route and final receiving waters for any discharge points. For each discharge point indicate the source, the amount and the nature of the discharge. (Provide quantitative data if possible.)

b. Area runoff. Indicate the area from which runoff may occur, potential sources of contamination in the area, and receiving waters for any runoff.

3. Airborne emissions.

a. Point sources. Estimate the quantity of gaseous and particulate emissions that would occur during full operation from each emission source and indicate the location and nature of the release point.

b. Area sources. Indicate locations which may be sources of fugitive dust and indicate the nature of the source (including type of material, amount, and turnover rate).

4. Noise. Indicate the maximum noise levels (in decibels, A scale) expected at the property boundary. Also, indicate the expected maximum increase over ambient noise levels.

C. Pollution control and safeguards equipment.

1. Pollution control equipment and measures. Indicate any pollution control equipment and measures, in addition to those provided in response to rule § 2.0943 C., that would be used to reduce the impact of the facility.

2. Environmental monitoring. Indicate the types of environmental monitoring, if any, that are planned for the facility and describe relevant environmental monitoring data already collected.

D. Induced developments.

1. Vehicular traffic. Estimate the amounts and types of vehicular traffic which would be generated by the facility.

2. Utility use. Indicate the extent to which the facility would create or add to the need for expanded utilities or public services.

3. Water use. Indicate the amount of water which would be appropriated and the amount which would be consumed by the facility, the expected source of the water, and how the water would be used.

4. Agriculture. Estimate the amount of agricultural land, including pasture land, that would be removed from agricultural use if the facility were constructed. Indicate known circumstances with regard to the facility that could lead to reduced productivity of surrounding agricultural land.

5. Relocation of human beings. Estimate the number of people that would have to relocate if the facility were constructed.

§ 2.0971 Other data filed with the application. In addition to the information required by the director, the applicant may desire to file other data. If, in the opinion of the applicant, additional relevant data should be submitted for consideration in conjunction with its application, such data should be filed in a separate section of the application.

§ 2.0981 Certificate of need modifications.

A. Issuance of a certificate may be made contingent upon modifications

required by the director. When the director denies an application, he shall state the reason(s) for the refusal and the changes, if any, which would make the facility certifiable.

B. The following changes in a facility previously certified by the director shall not require recertification:

1. coal storage facility capacity or throughput additions or subtractions of less than ten (10) percent of the capacity or throughput approved by the director;

2. coal transshipment facility capacity or throughput additions or subtractions of less than ten (10) percent of the capacity or throughput approved by the director; and

3. changes of less than two years in the in-service date.

C. If an applicant determines that a change greater than those specified in rule § 2.0981 B. is necessary or desirable, it shall inform the director of the desired change, accompanied by a written statement detailing the reasons for the proposed change. The director shall evaluate these reasons and within 45 days of receipt of said statement notify the applicant whether the proposed change is acceptable without recertification.

RULES GOVERNING CONTENTS OF APPLICATIONS FOR CERTIFICATES OF NEED AND CRITERIA FOR ASSESSMENT OF NEED FOR LARGE LPG STORAGE FACILITIES, LARGE OIL STORAGE FACILITIES, LARGE PETROLEUM PIPELINES AND OIL REFINERIES FOR PETROLEUM SUPPLIERS

Chapter 10
6 MCAR §§ 2.1001-2.1091

§ 2.1001 Purpose of rules. The purpose of these rules is to specify the contents of applications for certificates of need and to specify criteria for assessment of need for large oil and LPG storage facilities, large petroleum pipelines and oil refineries for petroleum suppliers pursuant to Minn. Stat. § 116H.13.

§ 2.1002 Applicability of rules.

A. Each petroleum supplier applying for a certificate of need for one of the following types of large energy facilities shall provide all information required by these rules:

1. a new large oil or LPG storage facility;

2. a new large petroleum pipeline facility;

3. a new oil refinery;

4. any project which, within a period of one year, would expand the LPG storage capacity of an existing LPG storage facility in excess of either 20% of capacity of 100,000 gallons, whichever is greater;

5. any project which, within a period of one year, would expand the oil storage capacity of an existing oil storage facility in excess of either 20% of capacity or one million gallons, whichever is greater;

6. any project which, within a period of two years, would expand an existing large petroleum pipeline in excess of either 20% of its rated capacity or 10,000 barrels per day, whichever is greater; and

7. any project which, within a period of four years, would expand an existing oil refinery in excess of either 20% of its rated throughput or 10,000 barrels per day, whichever is greater.

B. Exception. Any person who as of the effective date of these rules has begun or has completed construction of a large energy facility shall not be subject to these rules for that facility.

§ 2.1003 Application procedures and timing.

A. Each applicant for a certificate of need shall apply in a form and manner prescribed by the director.

B. A minimum of seven (7) bound copies and one (1) unbound copy of the application shall be filed with the director. The director may require additional copies, not to exceed 50 copies total. All documents, forms, and schedules filed with the application shall be typed on 8½" x 11" paper except for blueprints, engineering drawings, maps, and similar materials. Each application shall contain a title page and a complete table of contents which includes references to the applicable rules by the titles and numbers given in these rules. The date of preparation and the applicant's name shall appear on the title page of the application, as well as on each document filed with the application.

C. Subsequent to the filing of an application, any changes or corrections to the application shall comply with 6 MCAR § 2.1003 B. as to the number of copies and size of documents. In addition, each page of a change or correction to a previously filed page shall be marked with the word "REVISED" and with the date the revision was made. The original copy of the changes or corrections shall be filed with the hearing examiner, and the remaining copies shall be submitted to the director.

D. Each application for a certificate of need shall be accompanied by a cover letter signed by an authorized officer or agent of the applicant. The cover letter shall specify the type of facility for which a certificate of need is requested and the number of copies of the application filed.

E. A hearing examiner shall be assigned, and a public hearing shall be scheduled to commence no later than eighty days after the receipt of the application, in accordance with the Minnesota Energy Agency Rules of Procedure Governing Certificate of Need Program, EA 500 et seq., and the Hearing Examiner Rules of Contested Case Procedures, 9 MCAR § 2.201 et seq.

F. A decision on an application for a certificate of need shall be made by the director no later than six months from the receipt of the application, provided that the application as filed is substantially complete. Upon an affirmative showing by the applicant that an urgent need exists for an early decision on the application, said application may be given priority consideration over other applications, except for other priority applications previously filed.

G. The director shall notify the applicant within 15 days of the receipt of an application if the application is not substantially complete. Upon such notification, the applicant may correct the deficiency and may resubmit the application. A decision shall be made upon the revised application within six months of the date of resubmission, assuming it is substantially complete.

H. Prior to the submission of an application, a person shall be exempted from any data requirement of these rules upon a written request to the direc-

tor for exemption from specified rules and a showing by that person in the request that the data requirement 1) is unnecessary to determine the need for the proposed facility or 2) may be satisfied by submission of another document. A request for exemption must be filed at least 20 days prior to submission of an application. The director shall respond in writing to each such request within 15 days of receipt including reasons for his decision. The director shall file a statement of exemptions granted and reasons therefor prior to commencement of the hearing.

I. When an application for a certificate of need is denied, the director shall state the reason(s) for the denial.

§ 2.1004 Definitions. For purposes of these rules, the following definitions shall apply:

A. "Agency" means the Minnesota Energy Agency;

B. "Applicant" means the person or persons submitting a certificate of need application;

C. "Application" means a document submitted by a person or persons to the director for the purpose of obtaining a certificate of need, the contents of which are described in these rules;

D. "Barrel" means that quantity of liquid which is equal to 42 gallons;

E. "BTU" means British thermal unit, a common unit of energy measurement which is used in these rules for comparative purposes;

F. "Construction" means significant physical alteration of a site to install or enlarge a large energy facility, but not including activities incident to preliminary engineering or environmental studies;

G. "Demand" means that quantity of a petroleum product from the applicant's facilities for which there are willing and able purchasers, or the burden placed upon the applicant's interim storage facilities and production processes resulting therefrom;

H. "Director" means the director of the Agency;

I. "Forecast" means a prediction of future demand for some specified time period;

J. "Forecast Years" means the sixteen-year period consisting of the year in which an application is filed plus the next fifteen years;

K. "Joint Application" means an application submitted to the director by two or more persons;

L. Large LPG Storage Facility" means a facility on a single site designed

for or capable of storing more than 100,000 gallons of liquefied petroleum gas (LPG);

M. "Large Oil Storage Facility" means a facility on a single site designed for or capable of storing more than one million gallons of crude petroleum or petroleum fuels or oil or their derivatives;

N. "Large Petroleum Pipeline" means a pipeline greater than six inches in diameter and having more than 50 miles of its length in Minnesota used for the transportation of crude petroleum or petroleum fuels or oil or their derivatives, or a pipeline for transporting synthetic gas at pressures in excess of 200 pounds per square inch with more than 50 miles of its length in Minnesota;

O. "Liquefied Petroleum Gas" means synthetic gas, consisting mostly of hydrocarbons, stored or transported as a liquid;

P. "Mbpd-mile" means a descriptive unit used as a measure of the size of a pipeline, the quantity of which is determined by multiplying 1) either the length in miles of the new (section of) pipeline in Minnesota, or 50 if the capacity expansion is achieved by adding power, and 2) the new or additional design capacity in thousand barrels per day (Mbpd), at a viscosity of 100 SSU/60°F. and a specific gravity of .88/60°F. If the pipeline capacity would be expanded by a combination of looping and adding power, the Mbpd-mile corresponding to each method of expansion shall be calculated and the sum of the two shall be the size of the pipeline;

Q. "Oil Refinery" means any facility on a single site which processes crude or synthetic crude oil for the purpose of separating it into marketable products;

R. "Peak Day" means that day during a calendar year when the throughput is the greatest;

S. "Peak Demand" means the highest demand for a petroleum product occurring within a designated period of time;

T. "Person" means an individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or a government or governmental subdivision, unit or agency, other than a court of law;

U. "Petroleum Supplier" means a petroleum refinery in the state and any entity engaged in transmission or wholesale distribution of more than 100,000 gallons of crude petroleum or petroleum fuels or oil or their derivatives or LPG annually in this state;

V. "Substantially Complete Application" means an application which is deemed by the director to be in substantial compliance with the informational requirements of these rules; and

W. "Synthetic Gas" means flammable gas created from gaseous liquid, or solid hydrocarbons or other organic or inorganic matter. Synthetic gas shall include ethane, propane, butane, or their mixtures, whether extracted from gas streams lifted from oil and gas wells, or produced at refineries or fuel conversion plants. It shall also include hydrogen or methane produced at conversion plants.

§ 2.1005 Filing fees and payment schedule. The fee for processing an application shall be:

A. $2,000 plus $10 per one hundred thousand gallons of design storage capacity for a large oil or LPG storage facility;

B. $5,000 plus $1 for each Mbpd-mile for a large petroleum pipeline;

C. $10,000 plus $200 per thousand barrels of design daily throughput for a new oil refinery; or

D. $5,000 plus $100 per thousand barrels of additional daily throughput for an expansion of an existing oil refinery;

plus such additional fees as are reasonably necessary for completion of the evaluation of need for the proposed facility. In no event shall the total fee required of any applicant exceed $50,000. Fifty percent of the fee set according to item A., B., C., or D. of 6 MCAR § 2.1005 shall accompany the application and the balance shall be paid ninety days after submission of the application. The applicant shall be notified when any additional fees are due and shall pay them within 30 days of notification. The billing for such additional fees shall be accompanied by an itemized statement. No certificate of need shall be issued unless all fees are paid in full.

§ 2.1011 Criteria for assessment of need.

A. Purpose of the criteria. The criteria for assessment of need will be used by the director in the determination of the need for a proposed large energy facility pursuant to Minn. Stat. §§ 116H.01 through 116H.15. The factors listed under each of the criteria set forth herein at 6 MCAR § 2.1011 C. shall be evaluated to the extent that the director deems them applicable and pertinent to each facility proposed pursuant to these rules. The director shall make a specific written finding with respect to each of the criteria.

B. Consideration of alternatives. The director shall consider only those alternatives proposed before the close of the public hearing and for which there exists substantial evidence on the record with respect to each of the criteria listed in 6 MCAR § 2.1011 C.

C. Criteria. A certificate of need shall be granted to the applicant if it is determined that:

1. the probable result of denial would adversely affect the future ade-

quacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states, considering:

a. the accuracy of the applicant's forecast of demand for the type of energy that would be supplied by the proposed facility;

b. the effects of the applicant's existing or expected conservation programs and state and federal conservation programs;

c. the effects of the applicant's promotional practices which may have given rise to the increase in the energy demand, particularly promotional practices which have occurred since 1974;

d. the ability of current facilities and planned facilities not requiring certificates of need, and to which the applicant has access, to meet the future demand; and

e. the effect of the proposed facility, or a suitable modification of it, in making efficient use of resources;

2. a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant, considering:

a. the appropriateness of the size, the type, and the timing of the proposed facility compared to those of reasonable alternatives;

b. the cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;

c. the effect of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives; and

d. the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives;

3. the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate, considering:

a. the relationship of the proposed facility, or a suitable modification of it, to overall state energy needs;

b. the effect of the proposed facility, or a suitable modification of it, upon the natural and socioeconomic environments compared to the effect of not building the facility;

c. the effects of the proposed facility or a suitable modification of it, in inducing future development; and

d. socially beneficial uses of the output of the proposed facility, or a suitable modification of it, including its uses to protect or enhance environmental quality; and that

4. it has not been demonstrated on the record that the design, construction or operation of the proposed facility will fail to comply with those relevant policies, rules and regulations of other state and federal agencies and local governments.

§ 2.1021 Contents of application.

A. Each application for a certificate of need shall provide all information required by 6 MCAR §§ 2.1031-2.1034, plus additional information for specific types of facilities as indicated in 6 MCAR § 2.1021 D.

B. Joint application. If the proposed application for a certificate of need is jointly submitted by two or more persons, then each such person, when specified in these rules, shall submit the information required by these rules.

C. Multi-party ownership and use. Each application for a certificate of need for a facility which is owned and used by two or more persons shall be considered as a joint application for purposes of these rules.

D. Additional information shall be provided for specific types of facilities as indicated below.

1. Large Oil or LPG Storage Facility. Refer to 6 MCAR § 2.1040.

2. Large Petroleum Pipeline Facility. Refer to 6 MCAR § 2.1050.

3. Oil Refinery. Refer to 6 MCAR § 2.1060.

§ 2.1031 General information.

A. Each application shall contain a general information section which shall include the following information:

1. the applicant's complete name and address, telephone number, and standard industrial classification code(s);

2. the complete name, title, address and telephone number of the official or agent to be contacted concerning the applicant's filing;

3. a brief description of the nature of the applicant's business and of the products which are manufactured, produced, or processed, or of the services rendered;

4. a brief description of the proposed facility, its complete address (if known) or general location, a brief description of its planned use, its estimated cost, its planned in-service date, and its design capacity in gallons (oil

or LPG storage), its maximum design throughput in barrels per day and its size in Mbpd-miles (petroleum pipeline), or its design throughput in barrels per day (oil refinery);

5. the total fee for the application as prescribed by 6 MCAR § 2.1005, and the amount of the fee submitted with the application; and

6. the signature(s) and title(s) of the applicant's officer(s) or executive(s) authorized to sign the application and the signature of the preparer of the application if prepared by an outside agent.

B. Each application shall contain a schedule in the general information section which shall list all known federal, state, and local agencies or authorities with which the applicant must file for the proposed facility. The following information shall be included on the schedule:

1. the names of all known federal, state, or local agencies or authorities with which the applicant must file;

2. the title of each required permit or certificate issued by the authorities named in response to 6 MCAR § 2.1031 B. 1. and needed by the applicant;

3. for each permit or certificate listed in response to 6 MCAR § 2.1031 B. 2., the date an application was filed or the projected date of future application;

4. for each permit or certificate listed in response to 6 MCAR § 2.1031 B. 2., the actual date a decision was made on the application, or the anticipated decision date; and

5. for each permit or certificate listed in response to 6 MCAR § 2.1031 B. 2. for which an application was filed, the disposition or status of the permit or certificate.

§ 2.1032 Need summary. Each application shall contain a section which summarizes the major factors which justify the need for the proposed facility. The summary shall not exceed, without the approval of the director, 15 pages in length, including text, tables, schedules, graphs, and figures.

§ 2.1033 Summary of additional considerations. Each application shall contain a section which discusses the socioeconomic considerations listed below. The applicant shall explain the relationship of the proposed facility to each of the following:

A. socially beneficial uses of the output of the facility, including its uses to protect or enhance environmental quality;

B. promotional activities which may have given rise to the demand for the facility; and

C. the effects of the facility in inducing future development.

§ 2.1034 Conservation programs. Each application shall contain a section which relates to the conservation of energy. Separate responses are required from each person submitting a joint application.

A. Does the applicant have an energy committee or an individual responsible for determination or coordination of its energy needs?

B. Has the applicant defined energy or conservation goals or objectives?

C. What major energy efficiency or conservation programs has the applicant considered?

D. What major accomplishments in energy efficiency or conservation have been made by the applicant within the past five years?

E. What major energy efficiency or conservation programs will be implemented within the next five years?

§ 2.1040 Large oil or LPG storage facility section. In addition to the data required by 6 MCAR §§ 2.1031-2.1034, each applicant for a large oil or LPG storage facility shall provide the information required by 6 MCAR §§ 2.1041-2.1045, and optionally, 6 MCAR § 2.1081.

In a joint application, separate responses are required from each person for information required by 6 MCAR §§ 2.1041-2.1042 and 2.1044.

§ 2.1041 Historical energy data. Each applicant for a large oil or LPG storage facility shall provide the following information:

A. the end-of-year total storage capacity at the site where the proposed facility will be located for each of the five years preceding the year of application;

B. identification of the specific facilities in 6 MCAR § 2.1041 A. which are normally used to store the type of petroleum product(s) which would be stored in the proposed facility; and

C. for the site where the proposed facility would be located, a list of the annual throughput in gallons for the five most recent calendar years for the type of petroleum product(s) which would be stored in the proposed facility.

§ 2.1042 Forecast data. Each applicant for a large oil or LPG storage facility shall provide answers to the questions below unless previously submitted to the Agency pursuant to EA 401 et seq., in which case a copy of such submission may be incorporated into the application to satisfy the requirements of this rule.

A. What are the applicant's projected storage capacity requirements, during the next five years, for the type of petroleum product(s) which would be stored in the proposed facility?

B. What impact, if any, would the proposed facility have upon the applicant's ability to manage its inventory and supply its customers during the next five years, compared to its current situation?

C. What impact, if any, would the proposed facility have upon the applicant's annual throughput or its ability to maintain current throughput levels during the next five years?

D. What specific assumptions are made by the applicant for the next five years concerning supply of the type(s) of petroleum products which would be stored in the proposed facility?

§ 2.1043 Description of proposed facility. Each application for a large oil or LPG storage facility shall include the following information:

A. the purpose and planned use of the proposed storage facility, including its relationship to the facility which requires it;

B. a description of the proposed storage facility, including:

1. its design capacity in gallons;

2. the type(s) of petroleum products to be stored;

3. the dimensions;

4. preliminary engineering drawings, blueprints, and specifications; and

5. the estimated cost of the proposed storage facility and its expected economic life;

C. the complete name and address of the engineer, if known, or (if designed by an outside agent) the firm, which designed the proposed storage facility;

D. the complete name and address, if known, of the contractor or firm which would construct the storage facility; and

E. the approximate planned date for starting construction and the approximate planned in-service date.

§ 2.1044 Alternatives. Each applicant for a large oil or LPG storage facility shall respond to the following questions.

A. Are there any known restrictions or limitations on the availability of alternatives to the applicant's proposed storage facility?

B. Specifically, what other alternatives were examined? For each alternative examined provide the following information:

1. a description of the alternative;

2. when it was studied;

3. who performed the study;

4. why it was rejected; and

5. whether economics were considered and to what extent.

§ 2.1045 Environmental data. The director may, upon a showing by the applicant, exempt the applicant from any or all of the requirements of this section. Such a showing shall conform to 6 MCAR § 2.1003 H. with respect to timing and content.

When a certificate of need application is submitted for a large oil storage facility on an existing oil storage site, which site already has storage capacity of at least one million gallons, or for a large LPG storage facility on an existing LPG storage site, which site already has storage capacity of at least 100,000 gallons, a copy of an Environmental Assessment Worksheet (EAW) may be submitted in lieu of specific answers to the requirements below. If permits for construction of said facility are required by other state agencies, a copy of each permit application, or the informational equivalent, shall also be submitted.

In all other cases the applicant for a certificate of need for a large oil or LPG storage facility shall provide environmental information for the proposed facility and for each alternative facility discussed in response to 6 MCAR § 2.1044. Such information shall be provided in the format given below, to the extent that such data is applicable and reasonably available.

A. Location.

1. If the specific location for the proposed (or alternative) facility is known, provide the county, township, range, and section(s) of that site. If a specific location has not been chosen, provide the county, township, range and section(s) for each parcel of land which in the opinion of the applicant could serve as the site for the facility.

2. For each site identified in response to 6 MCAR § 2.1045 A. 1. list:

a. the nature of the terrain at the site;

b. the general soil type at the site;

c. depth of groundwater at the site;

d. the types of vegetation (including forest, brush, marsh, pasture, and cropland) on the site;

e. the predominant types of land use (such as residential, forest, agricultural, commercial, and industrial) within one mile of the site;

f. trunk highways, railroads and airports within one mile of the site;

g. lakes, streams, wetlands or drainage ditches within one mile of the site and any other lakes, streams, wetlands, drainage ditches, wells or storm drains into which liquid contaminants could flow;

h. national natural landmarks, national wilderness areas, national wildlife refuges, national wild and scenic rivers, national parks, national forests, national trails and national waterfowl production areas within one mile of the site, as mapped on the Inventory of Significant Resources by the State Planning Agency;

i. state critical areas, state wildlife management areas, state scientific and natural areas, state wild, scenic and recreational rivers, state parks, state scenic wayside parks, state recreational areas, state forests, state trails, state canoe and boating rivers, state zoo, designated trout streams, and designated trout lakes within one mile of the site, as mapped on the Inventory of Significant Resources by the State Planning Agency; and

j. national historic sites and landmarks, national monuments, National Register Historic Districts, registered state historic or archeological sites, state historical districts, sites listed on the National Register of Historic Places, and any other Cultural Resources within one mile of the site, as indicated by the Minnesota Historical Society.

B. Wastewater, projected air emissions and noise sources.

1. Discharges to water.

a. Point discharges. Indicate the location, route and final receiving waters for any discharge points. For each discharge point indicate the source, the amount and the nature of the discharge. (Provide quantitative data if possible.)

b. Area runoff. Indicate the area from which runoff may occur, potential sources of contamination in the area, and receiving waters for any runoff.

2. Point sources of airborne emissions. Estimate the quantity of gaseous and particulate emissions that would occur during full operation from each emission source and indicate the location and nature of the release point.

3. Noise. Indicate the maximum noise levels (in decibels, A scale) expected at the property boundary. Also indicate the expected maximum increase over ambient noise levels.

C. Pollution control and safeguards equipment.

1. Air pollution controls. Indicate types of emission control devices and measures that would be used.

2. Water pollution controls. Indicate types of water pollution control equipment and runoff control measures that would be used to comply with applicable state and federal regulations and statutes.

3. Oil spill, fire and explosion safeguards. Describe measures that would be taken to prevent oil spills, fires and explosions or to minimize the environmental impact of a spill, a fire or an explosion.

4. Other safeguards and control. Indicate any other equipment or measures, including erosion control, that would be used to reduce impact of the facility. Indicate the types of environmental monitoring, if any, that are planned for the facility and describe relevant environmental monitoring data already collected.

D. Induced developments.

1. Vehicular traffic. Estimate the amounts and types of vehicular traffic which would be generated by the facility due to construction activity and, later, operational needs.

2. Water use. Indicate the amount of water which would be appropriated and the amount which would be consumed by the facility, the expected source of the water, and how the water would be used.

3. Agriculture. Estimate the amount of agricultural land, including pasture land, that would be removed from agricultural use if the facility were constructed. Indicate known circumstances with regard to the facility that could lead to reduced productivity of surrounding agricultural land.

4. Relocation of human beings. Estimate the number of people that would have to relocate if the facility were constructed.

§ 2.1050 Large petroleum pipeline facility section. In addition to the data required by 6 MCAR §§ 2.1031-2.1034, each applicant for a certificate of need for a large petroleum pipeline facility shall provide the information required by 6 MCAR §§ 2.1051-2.1055.

In a joint application, separate responses are required from each person for information required by 6 MCAR §§ 2.1051-2.1052 and 2.1054.

§ 2.1051 Historical energy data.

A. For the geographical area to be served by the proposed facility, the applicant shall provide the following:

1. a list of the petroleum products by major categories (such as crude oil; gasoline, fuel oil, and so forth) transported or distributed by the applicant in that geographical area during the five most recent calendar years;

2. for each category listed in response to 6 MCAR § 2.1051 A. 1. and for each of the five most recent calendar years, a list of the annual and peak day quantities transported or distributed in the appropriate units of measure;

3. a list of sources of supply of petroleum products for transportation or distribution during the five most recent calendar years, designated as either in-state or as out-of-state, the dates and durations of the contracts with the 25 largest suppliers or shippers, the categories of petroleum products and quantities involved and, for sources of crude oil, the geographical areas of origin of the crude oil; and

4. for each of the five most recent calendar years and for each category of petroleum product, the percentage of in-state delivery of the annual amounts given in response to 6 MCAR § 2.1051 A. 2.

B. List each large oil or LPG storage facility location, gas plant, large pipeline facility, and oil refinery associated with the transportation or distribution of the categories of petroleum products named in response to 6 MCAR § 2.1051 A. 1. Provide maps which represent the locations and interconnections of these facilities.

C. For each large energy facility or location listed in response to 6 MCAR § 2.1051 B., located in Minnesota and owned or operated by the applicant, provide the average percentage of use of its full design capacity during the summer season and during the winter season.

§ 2.1052 Forecast data. For the geographical area to be served by the proposed facility, the applicant shall provide the following:

A. a list of the categories of petroleum products the applicant expects to transport or distribute in that geographical area during the first six forecast years, the eleventh forecast year (the tenth year after the year of the application), and the sixteenth forecast year;

B. for each category of petroleum product listed in response to 6 MCAR § 2.1052 A. and for each of the first six forecast years, the eleventh forecast year, and the sixteenth forecast year, a list of the annual and peak day quantities expected, using the appropriate units of measure;

C. a discussion of the methods, assumptions and factors employed for purposes of estimation in response to 6 MCAR § 2.1052 A. and B.;

D. a discussion of the effect on the forecast of possible changes in the key assumptions and key factors requested in 6 MCAR § 2.1052 C.; and

E. considering the forecast, a discussion of other facilities, if any, planned by the applicant to supply the forecast demand.

§ 2.1053 Description of proposed facility.

A. Design. The applicant shall provide the following information pertaining to the design of the proposed construction of a large petroleum pipeline:

1. if known, the complete name and address of the engineer and firm to be responsible for the design;

2. the estimated tariffs, capital cost, annual operating and maintenance costs and economic life;

3. a list of the categories of petroleum products the large pipeline is intended to transport;

4. its initial and ultimate design capacities in barrels per day and its diameter, length in Minnesota, and maximum number of pumping stations in Minnesota and nominal station spacing; and

5. engineering data, including the following:

a. a pipeline system map showing the route, mileage, location of pumping stations, mainline valves, petroleum storage facilities, and interconnections;

b. specifications for pipe (diameter, length, wall thickness, grade) and valves (diameter and American National Standards Institute rating) with the maximum allowable operating pressure for each;

c. for the pumps, representative specifications including diameter, allowable maximum operating pressures and maximum capacities; and

d. for the prime movers, representative specifications, including type, allowable maximum power capacity in horsepower, efficiency, allowable maximum and minimum operating temperatures, and energy requirement in BTU per barrel per mile of petroleum product pumped.

B. Construction. The applicant shall provide the following information pertaining to the proposed construction of the facility:

1. if known, the complete name and address of the company to be responsible for the construction;

2. the proposed date for commencement of construction and the proposed in-service date; and

3. an estimate of the in-service date if the construction were to be on a fully-expedited basis.

C. Operation. The applicant shall provide the following information pertaining to the operation of the proposed facility:

1. the expected average percentage of use of the full design capacity of the proposed facility during each of the first five years of operation;

2. the expected maximum operating pressure and capacity of the proposed facility at peak demand;

3. the expected power requirement from the prime movers at each station at peak demand (in kilowatts, thousands of cubic feet per hour, or gallons per hour);

4. a list of expected sources of supply or shippers of petroleum products for transportation during the first five calendar years of operation, designated either as in-state or as out-of-state, the expected dates and durations of the contracts with the 25 largest suppliers or shippers, the categories of petroleum products and quantities expected to be involved and, for sources of crude oil, the expected geographical areas of origin of the crude oil; and

5. a list of expected recipients of transported petroleum products during the first five calendar years of operation, designated either as in-state or as out-of-state, the expected dates and durations of the contracts with the 25 largest recipients, and the categories of petroleum products and quantities expected to be involved.

§ 2.1054 Alternatives. The applicant shall provide information pertaining to the alternatives that have been considered, and the information shall be presented in the following format:

A. a description of the alternative, including:

1. a discussion of the design and the geographical area affected;

2. an estimate of the in-service date;

3. a discussion of the method of operation;

4. its cost;

5. its economic life; and

6. its reliability; and

B. a summary of the conclusions reached with respect to the alternative and the reasons for its rejection.

§ 2.1055 Environmental data. Each applicant shall provide environmental data for the proposed facility and for each alternative discussed in response to 6 MCAR § 2.1054, to the extent that such data is reasonably available. Environmental data for each pipeline considered shall conform to the format given in subdivisions 6 MCAR § 2.1055 A.-D. Information for each of the other types of alternatives considered shall include 1) a list of the natural and

cultural resources, as given in items 6 MCAR § 2.1055 A. 2. g. - k, that would be directly impacted and 2) a discussion of those applicable areas of environmental concern that are detailed in subdivisions 6 MCAR § 2.1055 B. - D.

A. Location.

1. If a particular route has been selected for the new (sections of) pipeline, indicate that route on an appropriate map. If no particular route has been selected, indicate on an appropriate map each possible route that has been given serious consideration.

2. For each route identified in response to 6 MCAR § 2.1055 A. 1., list:

a. the names of cities or population centers through which the route passes;

b. the number of miles of the route which passes through, respectively, federal lands, state lands, county or tax-forfeit lands, incorporated areas, and private land outside incorporated areas;

c. the general soil types along the route and the approximate percentage of each;

d. the general terrain along the route;

e. the types of vegetation along the route (including forest, brush, marsh, pasture, and cropland) and the approximate percentage of each;

f. the predominant types of land use along the route (such as residential, forest, agricultural, commercial, and industrial) and the approximate percentages of each;

g. the names of major lakes or streams and the number of wetlands of five acres or more through which the route passes, as well as any others into which liquid contaminant from the pipeline could flow;

h. trunk highways, railroads and airports along the route;

i. national natural landmarks, national wilderness areas, national wildlife refuges, national wild and scenic rivers, national parks, national forests, national trails, and national waterfowl production areas through which the route passes, as mapped on the Inventory of Significant Resources by the State Planning Agency;

j. state critical areas, state wildlife management areas, state scientific and natural areas, state wild, scenic and recreational rivers, state parks, state scenic wayside parks, state recreational areas, state forests, state trails, state canoe and boating rivers, state zoo, designated trout lakes through which

the route passes, as mapped on the Inventory of Significant Resources by the State Planning Agency; and

k. national historic sites and landmarks, national monuments, National Register Historic Districts, registered state historic or archeological sites, state historical districts, sites listed on the National Register of Historic Places, and any other Cultural Resources through which the route passes, as indicated by the Minnesota Historical Society.

B. Wastewater, projected air emissions and noise sources.

1. Discharges to water.

a. Point discharges. Indicate the location, route and final receiving waters for any discharge points. For each discharge point indicate the source, the amount and the nature of the discharge. (Provide quantitative data if possible.)

b. Area runoff. Indicate the area from which runoff may occur, potential sources of contamination in the area, and receiving waters for any runoff.

2. Point sources of airborne emissions. Estimate the quantity of gaseous and particulate emissions that would occur during full operation of the pipeline from each emission source and indicate the location and nature of the release point.

3. Noise. Indicate the maximum noise levels (in decibels, A scale) expected along the route. Also, indicate the expected maximum increase over ambient noise levels.

C. Pollution control and safeguards equipment.

1. Air pollution controls. Indicate types of emission control devices and dust control measures that would be used.

2. Water pollution controls. Indicate types of pollution control equipment and runoff control measures that would be used to comply with applicable state and federal regulations and statutes.

3. Oil spill, fire and explosion safeguards. Describe measures that would be taken to prevent oil spills, fires and explosions or to minimize the environmental impact of a spill, a fire or of an explosion.

4. Other safeguards and controls. Indicate any other equipment or measures, including erosion control, that would be used to reduce the impact of the pipeline. Indicate the types of environmental monitoring, if any, that are planned for the facility and describe relevant environmental monitoring data already collected.

D. Induced developments.

1. Utility use. Indicate the extent to which the facility would create or add to the need for expanded utilities or public services.

2. Water use. Indicate the amount of water which would be appropriated for use in connection with the pipeline, the expected source of water, and the manner in which the water would be used.

3. Vehicular traffic. Estimate the amounts and types of vehicular traffic which would be generated by the facility due to construction activity and, later, operational needs.

4. Agriculture. Estimate the number of farms and the number of acres of cropland and pasture land that would be affected by construction of the pipeline. Indicate known circumstances with regard to the pipeline that would tend to reduce agricultural productivity along the route. Estimate the amount of excavation, back-filling, grading, soil compaction and soil mixture, and ditching to be done in farm fields. Estimate the number of drainage ditches to be impacted by the pipeline.

5. Relocation of human beings. Estimate the number of people that would have to relocate if the pipeline were constructed.

§ 2.1060 Oil refinery facility section. In addition to the data required by 6 MCAR §§ 2.1031-2.1034, each applicant for a certificate of need for an oil refinery facility shall provide the information required by rules 6 MCAR §§ 2.1061-2.1065.

In a joint application, separate responses are required from each person for information required by rules 6 MCAR §§ 2.1061-2.1062 and 2.1064.

§ 2.1061 Historical energy data.

A. For the geographical area to be served by the proposed facility, the applicant shall provide the following:

1. a list of the petroleum products by major categories (such as crude oil, gasoline, fuel oil, and so forth) associated with the refining process, or, if not associated with the refining process, distributed by the applicant in that geographical area during the five most recent calendar years;

2. for each category listed in response to 6 MCAR § 2.1061 A. 1. and for each of the five most recent calendar years, a list of the annual quantities refined or distributed in the appropriate unit of measure; and

3. for each category listed in response to 6 MCAR § 2.1061 A. 1. and for each of the five most recent calendar years, the percentage delivered within Minnesota.

B. List each large oil or LPG storage facility location, large pipeline facility and oil refinery associated with the refining or distribution of the categories named in response to 6 MCAR § 2.1061 A. 1. Provide map(s) which represent the locations and interconnections of these facilities.

C. For each storage facility location, pipeline and refinery described in response to 6 MCAR § 2.1061 B., located in Minnesota and owned or operated by the applicant, provide the average percentage (or, where applicable, the maximum percentage) of use of its full design capacity during the summer season and during the winter season.

§ 2.1062 Forecast data. Each applicant for an oil refinery facility shall provide forecast data in the format given below unless such data has been previously submitted to the Agency pursuant to Minn. Reg. EA 401 et seq., in which case a copy of such submission may be incorporated into the application to satisfy the requirements of this rule. For the geographical area to be served by the proposed facility, the applicant shall provide the following:

A. a list of the categories of petroleum products the applicant expects to refine or distribute in that geographical area during the first six forecast years, the eleventh forecast year (the tenth year after the year of the application), and the sixteenth forecast year;

B. for each category listed in response to 6 MCAR § 2.1062 A. and for each of the first six forecast years, the eleventh forecast year, and the sixteenth forecast year, a list of the annual quantities expected, using the appropriate units of measure;

C. a discussion of the methods, assumptions and factors employed for purposes of estimation in response to items 6 MCAR § 2.1062 A. and B.;

D. a discussion of the effect on the forecast of possible changes in the key assumptions and key factors requested in 6 MCAR § 2.1062 C.; and

E. considering the forecast, a discussion of other facilities, if any, planned by the applicant to supply the forecast demand.

§ 2.1063 Description of proposed facility.

A. Design. The applicant shall provide the following information pertaining to the design of the proposed oil refinery or refinery expansion:

1. if known, the complete name and address of the engineer and firm to be responsible for the design;

2. the estimated cost and economic life;

3. a list of the crude oils (or equivalent) the oil refinery is intended to process, identifying each crude oil by general type, and a list of each refined petroleum end product intended;

4. for each petroleum product listed in response to 6 MCAR § 2.1061 A. 3., the design capacity in barrels per day;

5. a simplified flow diagram of the refinery showing major products and process components; and

6. a map showing the likely location(s) for the proposed facility and its interconnections with major pipeline facilities.

B. Construction. The applicant shall provide the following information pertaining to the construction of the proposed facility:

1. if known, the complete name and address of the company to be responsible for the construction;

2. the proposed date for commencement of construction and the proposed in-service date; and

3. an estimate of the in-service date if the construction were to be on a fully-expedited basis.

C. Operation. The applicant shall provide the following information pertaining to the operation of the proposed facility:

1. the expected average percentage of use of the full design capacity of the proposed facility during the first five years of operation; and

2. for each of the first five calendar years of operation, the percentage of each refined petroleum end product expected to be delivered in-state.

§ 2.1064 Alternatives. The applicant shall provide information pertaining to the alternatives that have been considered, and the information shall be presented in the following format:

A. a description of the alternative, including:

1. a discussion of the design and the geographical area affected;

2. an estimate of the in-service date;

3. a discussion of the method of operation;

4. its cost;

5. its economic life; and

6. its reliability; and

B. a summary of the conclusions reached with respect to the alternative and the reasons for its rejection.

§ 2.1065 **Environmental data.** Each applicant shall provide environmental data for the proposed facility and for each alternative facility described in response to 6 MCAR § 2.1064. Information relating to construction and operation of each of these facilities shall be provided as indicated below, to the extent that such information is reasonably available to the applicant and applicable to the particular alternative.

A. Location.

1. If the specific location for the proposed (or alternative) facility is known, provide the county, township, range and section(s) of that site. If a specific location has not been chosen, provide the county, township, range and section(s) for each parcel of land which in the opinion of the applicant could serve as the site for the facility.

2. For each site identified in response to rule 6 MCAR § 2.1065 A. 1., list:

a. the nature of the terrain at the site;

b. the general soil type at the site;

c. the depth to groundwater at the site;

d. the types of vegetation (including forest, brush, marsh, pasture, and cropland) on the site;

e. the predominant types of land use (such as residential, forest, agricultural, commercial, and industrial) within five miles of the site;

f. trunk highways, railroads, and airports within one mile of the site;

g. lakes, streams, wetlands or drainage ditches within five miles of the site and any other lakes, streams, wetlands, drainage ditches, wells or storm drains into which liquid contaminants could flow;

h. national natural landmarks, national wilderness areas, national wildlife refuges, national wild and scenic rivers, national parks, national forests, national trails and national waterfowl production areas within five miles of the site, as mapped on the Inventory of Significant Resources by the State Planning Agency;

i. state critical areas, state wildlife management areas, state scientific and natural areas, state wild, scenic and recreational rivers, state parks, state scenic wayside parks, state recreational areas, state forests, state trails, state canoe and boating rivers, state zoo, designated trout streams, and designated trout lakes within five miles of the site, as mapped on the Inventory of Significant Resources by the State Planning Agency; and

j. national historic sites and landmarks, national monuments, National Register Historic Districts, registered state historic or archeological sites, state historical districts, sites listed on the National Register of Historic Places, and any other Cultural Resources within five miles of the site, as indicated by the Minnesota Historical Society.

B. Solid wastes, wastewater, projected air emissions, and noise sources.

1. Solid wastes. Indicate the types and estimated quantities of solid wastes that would be produced by or because of the facility. Also indicate the intended method of recycling or disposing of these wastes.

2. Discharges to water.

a. Point discharges. Indicate the location, route and final receiving waters for any discharge points. For each discharge point indicate the source, the amount and the nature of the discharge. (Provide quantitative data if possible.)

b. Area runoff. Indicate the area from which runoff may occur, potential sources of contamination in the area, and receiving waters for any runoff.

3. Airborne emissions.

a. Point sources. Estimate the quantity of gaseous and particulate emissions that would occur during full operation from each emission source and indicate the location and nature of the release point.

b. Area sources. Indicate locations which may be sources of fugitive dust and indicate the nature of the source (including type of material, amount, and turnover rate).

4. Noise. Indicate the maximum noise levels (in decibels, A scale) expected at the property boundary. Also, indicate the expected maximum increase over ambient noise levels.

C. Pollution control and safeguards equipment.

1. Air pollution controls. Indicate types of emission control devices and dust control measures that would be used.

2. Water pollution controls. Indicate types of water pollution control equipment and runoff control measures that would be used to comply with applicable state and federal regulations and statutes.

3. Oil spill safeguards. Describe measures that would be taken to prevent oil spills or to minimize the environmental impact of a spill on surface waters and groundwaters of the state.

4. Other safeguards and controls. Indicate any other equipment or measures, including erosion control, that would be used to reduce impact of the facility. Indicate the types of environmental monitoring, if any, that are planned for the facility and describe relevant environmental monitoring data already collected.

D. Induced developments.

1. Vehicular traffic. Estimate the amounts and types of vehicular traffic which would be generated by the facility due to construction activity and, later, operational needs.

2. Utility use. Indicate the extent to which the facility would create or add to the need for expanded utilities or public services.

3. Water use. Indicate the amount of water which would be appropriated and the amount which would be consumed by the facility, the expected source of the water, and how the water would be used.

4. Agriculture. Estimate the amount of agricultural land, including pasture land, that would be removed from agricultural use if the facility were constructed. Indicate known circumstances with regard to the facility that could lead to reduced productivity of surrounding agricultural land.

5. Relocation of human beings. Estimate the number of people that would have to relocate if the facility were constructed.

§ 2.1081 Other data filed with the application. In addition to the information required by the director, the applicant may desire to file other data. If, in the opinion of the applicant, additional relevant data should be submitted for consideration, such data should be filed in a separate section of the application.

§ 2.1091 Certificate of need modifications.

A. Issuance of a certificate may be made contingent upon modifications required by the director.

B. The following changes in a facility previously certified by the director shall not require recertification:

1. capacity additions or subtractions of less than ten (10) percent of the capacity approved by the director;

2. pipeline length additions or subtractions of less than ten (10) percent of the length approved by the director; and

3. changes of less than two years in the in-service date.

C. If an applicant determines that a change greater or other than those

specified in 6 MCAR § 2.1091 B. is necessary or desirable, it shall inform the director of the desired change, accompanied by a written statement detailing the reasons for the proposed change. The director shall evaluate these reasons and within 45 days of receipt of said application notify the applicant whether the proposed change is acceptable without recertification.

RULES GOVERNING CONTENTS OF APPLICATIONS FOR CERTIFICATES OF NEED AND CRITERIA FOR ASSESSMENT OF NEED FOR FUEL CONVERSION FACILITIES, COAL SLURRY OR COAL LIQUIDS PIPELINES, NUCLEAR FUEL PROCESSING FACILITIES, AND NUCLEAR WASTE STORAGE OR DISPOSAL FACILITIES

Chapter 11: 6 MCAR §§ 2.1101 - 2.1186

§ 2.1101 Purpose of rules. The purpose of these rules is to specify the contents of applications for certificates of need and to specify criteria for assessment of need pursuant to Minn. Stat. § 116H.13 for fuel conversion facilities, coal slurry or coal liquids pipelines, nuclear fuel processing facilities, and nuclear waste storage or disposal facilities.

§ 2.1102 Applicability of rules.

A. Each person applying for a certificate of need to construct one of the following types of large energy facilities pursuant to these rules shall provide all information required by these rules:

1. a new fuel conversion facility;

2. expansion of an existing fuel conversion facility by at least 25 tons per hour of input material over the base capacity of the facility;

3. a new coal slurry or coal liquids pipeline;

4. expansion of an existing coal slurry pipeline by at least 1000 tons of coal or coal derivatives per day over the base capacity of the facility;

5. expansion of an existing coal liquids pipeline by at least 15,000 barrels per day over the base capacity of the facility;

6. a new nuclear fuel processing facility;

7. expansion of an existing nuclear fuel processing facility by at least 20 percent of the base capacity of the facility;

8. a new nuclear waste storage or disposal facility; and

9. expansion of an existing nuclear waste storage or disposal facility by at least 20 percent of the base capacity of the facility.

B. Exception. The following types of facilities shall not be subject to these rules:

1. any large energy facility on which construction has begun or has been completed by the effective date of these rules;

2. any nuclear waste storage or disposal facility to be constructed in conjunction with a large generating facility which itself requires a certificate of need, unless the total capacity of that storage facility is not covered by the certificate of need issued for the large electric generating facility and associated facilities; and

3. any facility covered by Minn. Stat. §§ 116C.71-.74 (Supp. 1977), unless expressly authorized by the legislature.

§ 2.1103 Application procedures and timing.

A. Each application for a certificate of need pursuant to these rules shall be submitted in the form and manner prescribed by these rules.

B. A minimum of seven (7) bound copies and one (1) unbound copy of the application shall be filed with the director for use by the director and the Agency staff. The director shall require additional copies, not to exceed one hundred (100) copies total, to supply other governmental authorities, potential intervenors, and libraries designated as distribution points for public use. The director shall provide for the record at the hearing a list indicating the distribution of the additional copies. All documents, forms, and schedules filed with the application shall be typed on 8½" x 11" paper except for drawings, maps, and similar materials. Each application shall contain a title page and a complete table of contents which includes the applicable rule by the titles and numbers given in these rules. The date of preparation and the applicant's name shall appear on the title page, as well as on each document filed with the application.

C. Subsequent to the filing of an application, any changes or corrections to the application shall comply with rule 6 MCAR § 2.1103 B. as to the number of copies and size of documents. In addition, each page of a change or correction to a previously filed page shall be marked with the word "REVISED" and with the date the revision was made. The original copy of the changes or corrections shall be filed with the hearing examiner, and the remaining copies shall be submitted to the director.

D. Each application for a certificate of need shall be accompanied by a cover letter signed by an authorized officer or agent of the applicant. The cover letter shall specify the type of facility for which a certificate of need is requested and the number of copies of the application filed.

E. A hearing examiner shall be assigned, and a public hearing shall be scheduled to commence no later than eighty days after the receipt of the application, in accordance with Minnesota Energy Agency Rules Governing Certificate of Need Program, 6 MCAR § 2.0500 et seq., and the Hearing Examiner Rules for Contested Case Procedures, 9 MCAR § 2.201 et seq.

F. A decision on an application for a certificate of need shall be made by the director no later than six months from the receipt of the application, provided that the application as received is substantially complete.

G. The director shall notify the applicant within 15 days of the receipt of an application if the application is not substantially complete. Upon such notification, the applicant may correct any deficiency and may resubmit the application. A decision shall be made upon the revised application within six months of the date of resubmission, assuming it is then substantially complete.

H. Prior to the submission of an applicant, a person shall be exempted from any data requirement of these rules upon a written request to the director for exemption from specified rules and a showing by that person in the request that the data requirement (1) is unnecessary to determine the need for the proposed facility or (2) may be satisfied by submission of another document. A request for exemption shall be filed at least 20 days prior to submission of an application. The director shall respond in writing to each such request within 15 days of receipt, including reasons for the decision. The director shall file a statement of exemptions granted and reasons therefor prior to commencement of the hearings.

I. When an application for a certificate of need is denied, the director shall state the reason(s) for the denial.

§ 2.1104 Definitions. For purposes of these rules, the following definitions shall apply:

A. "Agency" means the Minnesota Energy Agency;

B. "Applicant" means the person or persons submitting a certificate of need application;

C. "Application" means a document, the contents of which are described in these rules, submitted to the director for the purpose of obtaining a certificate of need;

D. "Barrel" means the quantity of liquid equaling 42 gallons (159.0 litres);

E. "Btu" means British thermal unit, a common unit of energy measurement which is used in these rules for comparative purposes;

F. "Coal liquids pipeline" means any pipeline greater than six inches (15.2 centimetres) in diameter and having more than 50 miles (80.4 kilometres) of its length in Minnesota used for the transportation of liquids derived from coal;

G. "Coal slurry pipeline" means any pipeline greater than six inches (15.2 centimetres) in diameter and have more than 50 miles (80.4 kilometres) of its

length in Minnesota used for the transportation of coal or any solid derivative thereof;

H. "Demand" means that quantity of products or services from the applicant's facilities for which there are willing and able purchasers;

I. "Director" means the director of the Agency;

J. "Energy product" means any fuel or other natural resource that may be used to provide energy;

K. "Expansion" means an increase in the capacity of an existing large energy facility, accomplished by one or more methods, including, but not limited to, increasing the size of the facility, using new or different technology, or adding pumping stations;

L. "Firm contract customers" means customers served under schedules or contracts which neither anticipate nor permit interruption unless a state of emergency exists;

M. "Forecast" means a projection of future demand for some specified time period;

N. "Forecast years" means the sixteen-year period consisting of the year of application plus the next fifteen years;

O. "Fuel conversion facility" means any facility intended to convert coal peat, wood, or any other material, excepting fissile, fertile, or fissionable nuclear material, into another combustible fuel and having the capacity to process 25 tons (22.7 metric tons) of the material per hour at its peak capacity. A fuel conversion facility shall include any storage facility needed for operation of the facility at the design capacity. A coal-cleaning or coal-agglomerating facility shall not be considered a fuel conversion facility unless its operation causes a change in the molecular structure of the input coal;

P. "Interruptible contract customers" means customers served under schedules or contracts which anticipate or permit interruption of service during the term of the contract;

Q. "Joint application" means an application submitted to the director by two or more persons;

R. "Mbpd-mile" means a descriptive unit used as a measure of the size of a coal liquids pipeline, the quantity of which is determined by multiplying (1) either the length in miles of the new (section of) pipeline in Minnesota, or 50 if the capacity expansion is achieved by adding power, and (2) the new or additional design capacity in thousand barrels per day (Mbpd). If the pipeline capacity would be expanded by a combination of looping and adding power, the Mbpd-miles corresponding to each method of expansion shall be calculated and the sum of the two shall be the size of the pipeline;

S. "Mcf" means thousand cubic feet, a common unit of volume measurement for natural gas;

T. "Minnesota service area" means that part of an applicant's service area which is in Minnesota;

U. "Mton-mile" means a descriptive unit used as a measure of the size of a coal slurry pipeline, the quantity of which is determined by multiplying (1) either the length in miles of new (section of) pipeline in Minnesota, or 50 if the capacity expansion is achieved by adding power, and (2) the new or additional design capacity in thousands of tons per day (Mton). If the pipeline capacity would be expanded by a combination of looping and adding power, the Mton-miles corresponding to each expansion shall be calculated and the sum of the two shall be the size of the pipeline;

V. "Nuclear fuel processing facility" means any facility designed for or capable of processing or reprocessing any material for use as a fuel in a nuclear reactor. A nuclear fuel processing facility shall include any radioactive or nonradioactive waste storage or disposal facility on the site needed for operation of the facility at the design capacity;

W. "Nuclear waste storage or disposal facility" means any facility designed for or capable of serving as a temporary or permanent depository for radioactive or associated nonradioactive wastes produced by a nuclear reactor or a nuclear fuel processing facility, including any burial ground for low-level radioactive wastes;

X. "Peak day" means that day during a calendar year when demand is the greatest;

Y. "Peak demand" means the highest demand placed upon a facility within a designated period of time;

Z. "Person" means an individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or a government or governmental subdivision, unit or agency, other than a court of law;

AA. "Promotional practices" means any actions or policies by an applicant, an applicant's customers, or other persons which directly or indirectly give rise to the demand for the facility, including, but not limited to, advertising, billing practices, and other marketing activities;

BB. "Service area" means that geographical area in which the applicant has customers;

CC. "Substantially complete application" means an application which is deemed by the director to be in substantial compliance with the information requirements of these rules;

DD. "Ton" means 2000 pounds (907.2 kilograms); and

EE. "Base capacity" means either (1) the capacity or throughput of a large energy facility as of the effective date of these rules, (2) the capacity or throughput of a certified new large energy facility, or (3) if a large energy facility has been expanded since the effective date of these rules, the capacity or throughput of the facility following the most recent certified expansion.

§ 2.1105 Filing fees and payment schedule.

A. The fee for processing an application shall be:

1. $5,000 plus $50 per ton of hourly design input for a new or expanded fuel conversion facility;

2. $5,000 plus $10 per Mton-mile for a new or expanded coal slurry pipeline;

3. $5,000 plus $1 per Mbpd-mile for a new or expanded coal liquids pipeline;

4. $20,000 plus $50 per ton of yearly design input for a nuclear fuel processing facility; or

5. $20,000 for a nuclear waste storage or disposal facility;

plus such additional fees as are reasonably necessary for completion of the evaluation of need for the proposed facility.

B. Fifty percent of the fee set according to 6 MCAR § 2.1105 A. 1., 2., 3. or 4. shall accompany the application, and the balance shall be paid 90 days after submission of the application. The applicant shall be notified prior to the time the application is acted upon by the director of any additional fees, which fees shall be paid within 30 days of notification. The billing of such additional fees shall be accompanied by an itemized document showing the necessity for the additional assessment.

C. No certificate shall be issued until all fees are paid in full.

§ 2.1111 Criteria for assessment of need.

A. Purpose of the criteria. The criteria for assessment of need shall be used by the director in the determination of need for each proposed large energy facility which is subject to these rules. The factors listed under each of the criteria set forth herein at 6 MCAR § 2.1111 C. shall be evaluated to the extent that the director deems them applicable and pertinent to each facility proposed pursuant to these rules. The director shall make a specific written finding with respect to each of the criteria. In the case of an application for a certificate of need for an expansion of a nuclear waste storage or disposal

facility serving an existing large electric generating facility, the director shall not make a decision which could reasonably be expected to result in a forced shutdown of the generating facility.

B. Consideration of alternatives. The director shall consider only those alternatives proposed before the close of the public hearing and for which there exists substantial evidence on the record with respect to each of the criteria listed in 6 MCAR § 2.1111 C.

C. Criteria. A certificate of need shall be granted to the applicant if it is determined that:

1. the probable direct or indirect result of denial would be an adverse effect upon the future adequacy, reliability, safety, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states, considering:

a. the accuracy of the applicant's forecast of demand for the energy or service that would be supplied by the proposed facility;

b. the effects of existing or expected conservation programs of the applicant, the state government, or the federal government;

c. the effects of promotional practices in creating a need for the proposed facility, particularly promotional practices which have occurred since 1974;

d. the ability of current facilities and planned facilities not requiring certificates of need to meet the future demand; and

e. the effect of the proposed facility, or a suitable modification thereof, in making efficient use of resources;

2. a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant, considering:

a. the appropriateness of the size, the type, and the timing of the proposed facility compared to those of reasonable alternatives;

b. the cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;

c. the effects of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives; and

d. the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives;

3. it has been demonstrated by a preponderance of the evidence on the record that the consequences of granting the certificate of need for the proposed facility, or a suitable modification thereof, are more favorable to society than the consequences of denying the certificate, considering:

a. the relationship of the proposed facility, or a suitable modification thereof, to overall state energy needs;

b. the effects of the proposed facility, or a suitable modification thereof, upon the natural and socioeconomic environments compared to the effects of not building the facility;

c. the effects of the proposed facility, or a suitable modification thereof, in inducing future development; and

d. the socially beneficial uses of the output of the proposed facility, or a suitable modification thereof, including its uses to protect or enhance environmental quality; and that

4. it has not been demonstrated on the record that the design, construction, operation or retirement of the proposed facility will fail to comply with those relevant policies, rules and regulations of other state and federal agencies and local governments.

§ 2.1121 Contents of application.

A. An application for a certificate of need shall provide all information required by 6 MCAR §§ 2.1131 through 2.1135 and, optionally, 2.1186. An application shall also provide information for specific types of facilities as indicated below.

1. An applicant for a fuel conversion facility shall refer to 6 MCAR §§ 2.1141 through 2.1144 for the additional information required.

2. An applicant for a coal slurry or coal liquids pipeline shall refer to 6 MCAR §§ 2.1146 through 2.1149 for the additional information required.

3. An applicant for a nuclear fuel processing facility shall refer to 6 MCAR §§ 2.1151 through 2.1154 for the additional information required.

4. An applicant for a nuclear waste storage or disposal facility shall refer to 6 MCAR §§ 2.1156 through 2.1159 for additional information required.

B. Joint application. If an application for a certificate of need is jointly submitted by two or more persons, then each such person shall submit separate information in response to the general information section (6 MCAR § 2.1131), the conservation programs section (6 MCAR § 2.1135), and the

appropriate historical data and forecast section (6 MCAR §§ 2.1143, 2.1148, 2.1153, or 2.1158).

C. Multi-party ownership and use. An application for a certificate of need for a facility which would be owned and used by two or more persons shall be considered as a joint application for purposes of these rules.

§ 2.1131 General information. Each application shall include the following general information:

A. the applicant's complete name and address, telephone number, and standard industrial classification code(s);

B. the complete name, title, address and telephone number of the official or agent to be contacted concerning the applicant's filing;

C. a brief description of the nature of the applicant's business and of the products which are manufactured, produced, or processed, or of the services rendered;

D. a brief description of the proposed facility and its planned use;

E. the total fee for the application as prescribed by 6 MCAR § 2.1105 and the amount of the fee submitted with the application; and

F. the signature(s) and title(s) of the applicant's officer(s) or executive(s) authorized to sign the application and the signature of the preparer of the application if prepared by an outside agent.

§ 2.1132 Schedule of other filings. Each application shall contain a schedule listing all known federal, state, and local agencies or authorities with which the applicant must file for the proposed facility. The following information shall be included on the schedule:

A. the names of all known federal, state, or local authorities with which the applicant must file;

B. the title of each required permit or certificate issued by the authorities named in response to 6 MCAR § 2.1132 A. and needed by the applicant;

C. for each permit or certificate listed in response to 6 MCAR § 2.1132 B., the date an application was filed or the projected date of future application;

D. for each permit or certificate listed in response to 6 MCAR § 2.1132 B., the actual date a decision was made on the application, or the anticipated decision date; and

E. for each permit or certificate listed in response to 6 MCAR § 2.1132

B. for which an application was filed, the disposition or status of the permit or certificate.

§ 2.1133 Need summary. Each application shall contain a summary of the major factors which justify the need for the proposed facility. Except upon prior approval of the director, this summary shall not exceed 15 pages, including text, tables, graphs and figures.

§ 2.1134 Additional considerations. Each application shall contain an explanation of the relationship of the proposed facility to each of the following socioeconomic considerations:

A. socially beneficial uses of the output of the facility, including its uses to protect or enhance environmental quality;

B. promotional activities which may have given rise to the demand for the facility; and

C. the effects of the facility in inducing future development.

§ 2.1135 Conservation programs. Each application shall include the following information:

A. the name of the committee, department or individual responsible for the applicant's energy conservation and efficiency programs;

B. a list of the applicant's energy conservation and efficiency goals and objectives;

C. a description of the specific energy conservation and efficiency programs the applicant has considered, a list of those which have been implemented, and the reasons why the other programs have not been implemented;

D. a description of the major accomplishments which have been made with respect to energy conservation and efficiency;

E. a description of the applicant's future plans through the forecast years with respect to energy conservation and efficiency; and

F. a quantification of the manner by which these programs affect or help determine the applicant's forecast of demand, a list of the total costs by program, and a discussion of the expected effects in reducing the need for new large energy facilities.

§ 2.1141 Description of proposed fuel conversion facility. Each application for a fuel conversion facility shall contain the following information:

A. a physical description of the facility, including:

1. its location, to the fullest extent known;

2. an estimate of the required land area and the height of the tallest structures;

3. its design capacity in tons per hour of input material;

4. a schematic drawing showing major components of the facility; and

5. a map showing the planned location of the facility and its interconnections with energy transportation systems;

B. data regarding design and construction of the facility, including:

1. if known, the complete name and business address of the engineer and firm that would be responsible for the design of the facility;

2. if known, the complete name and business address of the company which would construct the facility;

3. the proposed date for commencing construction and the proposed in-service date;

4. the estimated installed cost of the facility in current dollars; and

5. the estimated economic life of the facility; and

C. data regarding operation of the facility, including:

1. a narrative description of the steps of the process;

2. the types and sources of input materials that would be processed by the facility and the estimated energy content of each in Btu per appropriate unit of measure;

3. the types of output products, the amount of each, and the estimated energy content of each in Btu per appropriate unit of measure;

4. the projected annual operating and maintenance costs in current dollars for each of the first five calendar years of operation;

5. a description of the methods that would be used to transport input and output materials to and from the facility;

6. the estimated amounts and types of energy products that would be consumed during operation at the design capacity;

7. the expected average percentage of use of the full design capacity for each of the first five calendar years of operation; and

8. a discussion of the maintenance requirements of the facility, including the estimated impact on production.

§ 2.1142 Alternatives. Each application for a fuel conversion facility shall contain a description of alternatives available to the applicant which differ significantly from the proposed facility with respect to location, size, timing, or design. The description of each alternative shall include the following information, if applicable:

A. the location of the facility, to the fullest extent known;

B. the design capacity of the facility;

C. a schematic drawing showing major components of the facility;

D. a map showing the planned location of the facility and its interconnections with energy transportation systems;

E. the probable date for commencing construction and the probable in-service date;

F. the estimated installed cost of the alternative in current dollars;

G. the estimated economic life of the facility;

H. the input materials that would be processed by the facility and the products that would be produced;

I. the projected annual operating and maintenance costs in current dollars for each of the first five calendar years of operation;

J. a description of the methods that would be used to transport input and output materials to and from the facility;

K. the estimated amounts and types of energy products that would be consumed during operation of the facility at the design capacity;

L. the expected average percentage of use of the full design capacity for each of the first five calendar years of operation;

M. a discussion of the maintenance requirements of the facility, including the estimated impact on production; and

N. the reason(s) why the alternative was rejected.

§ 2.1143 Historical and forecast data. Each applicant for a fuel conversion facility shall provide five years of historical energy data, as well as a forecast of demand through the forecast years. If the fuel conversion facility is designed primarily to provide energy for the applicant's own use, data shall be submitted in response to 6 MCAR § 2.1143 A. If the facility is designed to produce pipeline quality gas for sale by either a utility or a pipeline company, data shall be submitted in response to 6 MCAR § 2.1143 B. In all other cases, data shall be submitted in response to 6 MCAR § 2.1143 C.

A. The applicant shall submit the following information about its historical and projected use of energy products:

1. for each of the energy products which would be produced by the proposed facility, the amount of that product consumed by the applicant during each of the five preceding calendar years;

2. the amounts of any other energy products consumed by the applicant during each of the five preceding calendar years;

3. the amounts of those energy products listed in response to 6 MCAR § 2.1143 A. 1. and 2. which were consumed at the applicant's Minnesota location(s);

4. for the first six forecast years, the eleventh forecast year (the tenth year after the year of application), and the sixteenth forecast year, the projected demand by the applicant for each of the energy products named in response to 6 MCAR § 2.1143 A. 1. and 2. and the projected demand for each at the applicant's Minnesota location(s);

5. a discussion of the methodology, statistical techniques, and data bases used in providing the forecast data required by 6 MCAR § 2.1143 A. 4.;

6. any major assumptions made in providing the forecast data required by 6 MCAR § 2.1143 A. 4., and a discussion of the sensitivity of the projections to changes in the assumptions; and

7. any other known large energy facilities which may be constructed during the forecast years for use by the applicant.

B. A gas utility or pipeline company shall submit the following information:

1. for each of the ten preceding calendar years, the first six forecast years, the eleventh forecast year (the tenth year after the year of application), and the sixteenth forecast year, annual gas consumption by ultimate consumers and the number of such customers within the applicant's system in each of the following categories:

a. residential firm (when gas is supplied through a single meter for both residential and commercial uses, it should be reported according to its principal use, and apartment buildings shall be reported as residential even if not metered separately);

b. commercial firm who use less than 200 Mcf on peak day;

c. commercial firm with a peak day requirement equal to or greater than 200 Mcf;

d. industrial firm who use less than 200 Mcf on peak day;

e. industrial firm with a peak day requirement equal to or greater than 200 Mcf;

f. commercial and industrial interruptible;

g. other (this category shall include storage gas and other sales or deliveries not covered in categories a. through f.);

h. unaccounted for; and

i. the sum of categories a. through h.;

2. if the applicant's service area includes consumers outside of Minnesota, annual gas consumption by ultimate consumers within the applicant's Minnesota service area for each of the years given in 6 MCAR § 2.1143 B. 1.;

3. for each of the years given in 6 MCAR § 2.1143 B. 1. and for each of the categories listed in 6 MCAR § 2.1143 B. 1. a. through i., an estimate of the daily demand for gas by ultimate consumers in the applicant's system at the time of system peak demand;

4. for each of the years given in 6 MCAR § 2.1143 B. 1., the applicant's system peak demand by month;

5. a discussion of methodology, statistical techniques, and data bases used in providing the forecast data required by 6 MCAR § 2.1143 B. 1. through 4.;

6. a discussion of the assumptions made by the applicant with respect to the availability of alternate sources of energy, the expected conversion from other fuels to gas or vice versa, the future prices of gas for customers in the applicant's system and the effect that such prices will likely have on the applicant's system demand, the effect of existing energy conservation programs under federal or state legislation on long-term gas demand, and any other factor considered important by the applicant;

7. a discussion of the sensitivity of the forecast to changes in the assumptions;

8. for a gas utility only, for the last calendar year, the current calendar year, the first full calendar year before the proposed facility is expected to be in operation, and the first full calendar year of operation of the proposed facility, an annual supply curve consisting of a single graph for each year and showing the contributions from:

a. pipeline contract demand;

b. gas from storage;

c. synthetic gas other than propane;

d. liquefied natural gas;

e. propane peak-shaving gas; and

f. the proposed facility;

9. for a gas pipeline company only, for the last calendar year, the current calendar year, the first full calendar year before the proposed facility is expected to be in operation, and the first full calendar year of operation of the proposed facility, an annual supply curve consisting of a single graph for each year and showing the contributions from:

a. own production;

b. committed purchases from other gas producers;

c. gas from storage;

d. emergency purchases (historical year only);

e. other sources; and

f. the proposed facility; and

10. any other known large energy facilities which may be constructed during the forecast years for use by the applicant.

C. The applicant shall submit the following information about its consumption and sales of energy products:

1. for each of the energy products which would be produced by the proposed facility, the amount sold or transported by the applicant during each of the five preceding calendar years;

2. the amounts of those energy products listed in response to 6 MCAR § 2.1143 C. 1. that were sold or transported by the applicant in its Minnesota service area;

3. for each of the energy products consumed by the applicant and for each of the five preceding calendar years, the total amount consumed and the amount consumed at the applicant's Minnesota locations;

4. for the first six forecast years, the eleventh forecast year (the tenth year after the year of application), and the sixteenth forecast year, the projected total demand for products produced by the proposed facility within the applicant's service area and the projected demand within its Minnesota service area;

5. a discussion of the methodology, statistical techniques, and data bases used in providing the forecast data required by 6 MCAR § 2.1143 C. 4.;

6. any assumptions made in supplying the projections made in response to 6 MCAR § 2.1143 C. 4., and a discussion of the sensitivity of the projections to changes in the assumptions; and

7. any other known large energy facilities which may be constructed during the forecast years for use by the applicant.

§ 2.1144 Environmental data. Each applicant shall provide environmental data for the proposed facility and for each alternative facility described in response to 6 MCAR § 2.1142. The following information relating to construction and operation of each of these facilities shall be provided, to the extent that such information is reasonably available to the applicant and applicable to the particular alternative:

A. a description of each alternative site, including:

1. the nature of the terrain at the site;

2. the general soil and bedrock type(s) at the site;

3. the depth to groundwater at the site;

4. the types of vegetation (forest, brush, marsh, pasture, and cropland) on the site, and the approximate percentage of each;

5. the predominant types of land use (such as residential, forest, agricultural, commercial, and industrial) within five miles of the site, and the approximate percentage of each;

6. lakes, streams, wetlands or drainage ditches within five miles of the site and any other lakes, streams, wetlands, drainage ditches, wells or storm drains into which liquid contaminants could flow;

7. trunk highways and airports within five miles of the site;

8. national natural landmarks, national wilderness areas, national wildlife refuges, national wild and scenic rivers, national parks, national forests, national trails, and national waterfowl production areas within five miles of the site, as mapped on the Inventory of Significant Resources by the State Planning Agency;

9. state critical areas, state wildlife management areas, state scientific and natural areas, state wild, scenic and recreational rivers, state parks, state scenic wayside parks, state recreational areas, state forests, state trails, state canoe and boating rivers, state zoo, designated trout streams, and designated trout lakes within five miles of the site, as mapped on the Inventory of Significant Resources by the State Planning Agency;

10. national historic sites and landmarks, national monuments, National Register Historic Districts, registered state historic or archaeological sites,

state historical districts, sites listed on the National Register of Historical Places, and any other Cultural Resources within five miles of the site, as indicated by the Minnesota Historical Society; and

11. areas within five miles of the site designated by regional or local authorities as having recreational, cultural, historical, or scientific significance, as indicated by local units of government;

B. data on wastes and emissions associated with construction or operation of the facility, including:

1. the types and estimated amounts of solid and liquid wastes, including aromatic compounds, that would be produced by the facility;

2. the types and estimated amounts of gaseous and particulate emissions into the air that would occur during full operation from each emission source, and the location and nature of the release point;

3. locations which may be sources of fugitive dust and the nature of each source;

4. the locations, routes and final receiving waters for any discharge points, and for each discharge point the source, the amount and the nature of the discharge;

5. any area from which runoff may occur, potential sources of contamination in the area, and receiving waters for any runoff;

6. the sources and estimated amounts of heat rejected from the facility; and

7. the maximum noise levels (in decibels, A scale) expected at the property boundary and the expected maximum increase over ambient noise levels;

C. data regarding pollution control and safeguards equipment, including:

1. the methods that would be used to recycle or dispose of solid or liquid wastes;

2. the types of emission control devices and dust control measures that would be used;

3. the types of water pollution control equipment and runoff control measures that would be used;

4. the measures that would be taken to prevent spills of pollutants or to minimize the environmental effect of a spill on surface waters and groundwaters;

5. the methods that would be used to reduce the effects of heat rejected by the facility;

6. any other equipment or measures, including noise control or erosion control, that would be used to reduce the impact of the facility; and

7. the types of environmental monitoring that are planned for the facility, if any, and a description of any relevant environmental monitoring data already collected; and

D. estimates of induced developments, including:

1. the types and amounts of vehicular traffic that would be generated by the facility due to construction activity and, later, to operational needs;

2. the work forces required for construction and for operation of the facility;

3. the extent to which the facility would create or add to the need for expanded utility or public services, including high voltage transmission lines, access roads, and the like;

4. the amount of water which would be appropriated and the amount which would be consumed by the facility, the expected source of the water, and the uses for the water;

5. the amount of agricultural land, including pasture land, that would be removed from agricultural use if the facility were constructed, and known circumstances associated with the facility that could lead to reduced productivity of surrounding agricultural land; and

6. the number of people that would have to relocate if the facility were constructed.

§ 2.1146 Description of proposed coal slurry or coal liquids pipeline. Each application for a coal slurry or coal liquids pipeline shall contain the following information:

A. a physical description of the facility, including:

1. a pipeline system map showing the planned route, mileages, and locations of pumping stations, mainline valves, dump basins or storage facilities, and interconnections with other energy transportation systems;

2. the diameter and the expected length within Minnesota;

3. the design throughput in tons per day of coal (coal slurry pipeline) or in barrels per day (coal liquids pipeline);

4. to the extent known, specifications for the pipe (diameter, length, wall thickness, and grade) and the valves (diameter and American National Standards Institute rating) with the maximum allowable operating pressure for each;

5. to the extent known, specifications for the pumps (diameter, maximum allowable operating pressures, and maximum capabilities); and

6. to the extent known, specifications for the prime movers (type, maximum power capacity in horsepower, efficiency, allowable maximum and minimum operating temperatures, and energy requirement in Btu per ton of coal or barrel of coal liquids pumped);

B. data regarding design and construction of the facility, including:

1. if known, the complete name and business address of the engineer and firm that would be responsible for the design;

2. if known, the complete name and business address of the company which would construct the facility;

3. the proposed date for commencing construction and the proposed in-service date;

4. the estimated installed cost of the facility in current dollars; and

5. the estimated economic life of the facility; and

C. data regarding operation of the facility, including:

1. a list of expected sources of supply for transportation during the first five calendar years of operation, designated as in-state or as out-of-state, the expected dates and durations of the contracts with the suppliers, and the quantities expected to be involved;

2. a list of expected recipients of the transported slurry or coal liquids during the first five calendar years of operation, designated either as in-state or as out-of-state, the expected dates and durations of the contracts with the 25 largest recipients, and the quantities expected to be involved;

3. the expected maximum operating pressure and capacity of the facility at the time of peak demand;

4. the expected power requirement from the prime movers at each station at the time of peak demand (in kilowatts, thousands of cubic feet per hour, or gallons per hour);

5. the expected average percentage of use of the full design capacity for each of the first five calendar years of operation;

6. the estimated tariffs or transportation costs for the pipeline for each of the first five calendar years of operation; and

7. for a coal slurry pipeline, a description of what would be done with the slurry water or other carrier after it had been used to transport coal.

§ 2.1147 Alternatives. Each application for a coal slurry or coal liquids pipeline shall contain a description of alternatives available to the applicant which differ significantly from the proposed facility with respect to location, size, timing, or design.

A. If the alternative is another pipeline, all of the information required by 6 MCAR § 2.1146 A. through C. shall be submitted for the alternative. The applicant shall also indicate the reason(s) for rejecting the alternative.

B. If the alternative is not a pipeline, the description of the alternative shall include the following information, if applicable:

1. the location of the alternative, to the fullest extent known;

2. the dimensions and design capacity of the alternative;

3. a schematic drawing showing major components of the alternative;

4. a map showing the planned location of the facility and its interconnections with energy transportation systems;

5. the probable date for commencing construction and the probable in-service date;

6. the estimated installed cost of the alternative in current dollars;

7. the estimated maintenance requirements of the alternative;

8. the estimated economic life of the alternative; and

9. the reason(s) why the alternative was rejected.

§ 2.1148 Historical and forecast data. Each applicant for a coal slurry or coal liquids pipeline shall provide five years of historical energy data, as well as a forecast of demand through the forecast years. If the proposed pipeline is designed primarily to provide energy for the applicant's own use, data shall be submitted in response to 6 MCAR § 2.1148 A. If the proposed pipeline is designed primarily to transport or distribute energy to be used by others, data shall be submitted in response to 6 MCAR § 2.1148 B.

A. The applicant shall submit the following information about its historical and projected use of energy products:

1. for each of the energy products which would be transported by the proposed facility, the amount of that product consumed by the applicant during each of the five preceding calendar years;

2. the amounts of any other energy products consumed by the applicant during each of the five preceding calendar years;

3. the amounts of those energy products named in response to 6 MCAR § 2.1148 A. 1. and 2. which were consumed at the applicant's Minnesota locations;

4. for the first six forecast years, the eleventh forecast year (the tenth year after the year of application), and the sixteenth forecast year, the projected demand by the applicant for each of the energy products named in response to 6 MCAR § 2.1148 A. 1. and 2. and the projected demand for each at the applicant's Minnesota locations;

5. a discussion of the methodology, statistical techniques, and data bases used in providing the forecast data required by 6 MCAR § 2.1148 A. 4.;

6. any major assumptions made in providing the forecast data required by 6 MCAR § 2.1148 A. 4., and a discussion of the sensitivity of the projections to changes in the assumptions; and

7. any other known large energy facilities which may be constructed during the forecast years for use by the applicant.

B. The applicant shall submit the following information about its transportation and distribution of energy products:

1. a list of the energy products transported or distributed in its service area during each of the five preceding calendar years;

2. for each energy product listed in response to 6 MCAR § 2.1148 B. 1., the annual and peak-day quantities transported or distributed for each of the five preceding calendar years in the appropriate units of measure;

3. a list of sources of supply of energy products for transportation or distribution during the five preceding calendar years, designated as either in-state or out-of-state, the dates and durations of the contracts with the suppliers or shippers, and the quantities of each energy product involved;

4. for each of the five preceding calendar years and for each energy product, the percentage of in-state delivery of the annual amounts given in response to 6 MCAR § 2.1148 B. 2.;

5. a list of each storage facility, pipeline, or other major facility owned or operated by the applicant and associated with the transportation and distribution of the energy products given in response to 6 MCAR § 2.1148 B. 1., and the average percentage of use of each such facility during the summer season and during the winter season;

6. a list of the energy products the applicant expects to transport or distribute in its service area during the first six forecast years, the eleventh forecast year (the tenth year after the year of application), and the sixteenth forecast year, and the annual and peak-day quantities expected in the appropriate units of measure;

7. a discussion of the methodology, statistical techniques, and data bases used in providing the forecast data required by 6 MCAR § 2.1148 B. 6.;

8. a discussion of the methods, assumptions and factors employed for purposes of estimation in response to 6 MCAR § 2.1148 B. 6.;

9. a discussion of the sensitivity of the forecast to changes in the assumptions; and

10. any other known large energy facilities which may be constructed during the forecast years for use by the applicant.

§ 2.1149 **Environmental data.** Each applicant shall provide environmental data for the proposed facility and for each alternative facility described in response to 6 MCAR § 2.1147. Environmental data for each pipeline considered shall conform to the format given in subdivisions A. through D. of 6 MCAR § 2.1149. Environmental data for any other alternative shall include a list of the natural and cultural resources, as given in items 7 through 12 of 6 MCAR § 2.1149 A., that would be directly affected, and a discussion of those applicable areas of environmental concern that are detailed in subdivisions B. through D. of 6 MCAR § 2.1149. The applicant shall provide:

A. a description of each alternative route, including:

1. the names of cities or population centers through which the route passes;

2. the number of miles of the route which passes through, respectively, federal lands, state lands, county or tax-forfeit lands, incorporated areas, and private land outside corporate areas;

3. the general soil types along the route and the approximate percentage of each;

4. the general bedrock types along the route and the approximate percentage of each;

5. the general terrain along the route;

6. the types of vegetation along the route (forest, brush, marsh, pasture, and cropland) and the approximate percentage of each;

7. the predominant types of land use along the route (such as residential, forest, agricultural, commercial, and industrial) and the approximate percentage of each;

8. the names of major lakes or streams and the number of wetlands of five acres or more through which the route passes, as well as any others into which liquid contaminant from the pipeline could flow;

9. trunk highways, airports, or railroad lines under which the route passes;

10. national natural landmarks, national wilderness areas, national wildlife refuges, national wild and scenic rivers, national parks, national forests, national trails, and national waterfowl production areas through which the route passes, as mapped on the Inventory of Significant Resources by the State Planning Agency;

11. state critical areas, state wildlife management areas, state scientific and natural areas, state wild, scenic and recreational rivers, state parks, state scenic wayside parks, state recreational areas, state forests, state trails, state canoe and boating rivers, state zoo, designated trout streams, and designated trout lakes through which the route passes, as mapped on the Inventory of Significant Resources by the State Planning Agency; and

12. national historic sites and landmarks, national monuments, National Register Historic Districts, registered state historic or archaeological sites, state historical districts, sites listed on the National Register of Historic Places, and any other Cultural Resources through which the route passes, as indicated by the Minnesota Historical Society;

B. data on wastes and emissions associated with construction or operation of the facility, including:

1. the types and estimated amounts of solid and liquid wastes that would be produced;

2. the types and estimated amounts of gaseous and particulate emissions into the air that would occur during full operation of the pipeline from each emission source, and the location and nature of the release point;

3. locations which may be sources of fugitive dust and the nature of each source;

4. the locations, routes and final receiving waters for any discharge points, and for each discharge point the source, the amount and the nature of the discharge;

5. any area from which runoff may occur, potential sources of contamination in the area, and receiving waters for any runoff; and

6. the maximum noise levels (in decibels, A scale) expected along the route and the expected maximum increase over ambient noise levels;

C. data regarding pollution control and safeguards equipment, including:

1. the types of emission control devices and dust control measures that would be used, including provisions for controlling coal dust left in evaporated dump basins;

2. the types of water pollution control equipment and runoff control measures that would be used, including methods to treat any residual slurry water that may enter freshwater bodies;

3. the measures that would be taken to prevent slurry or coal liquids spills or to minimize the environmental effect of a spill on surface waters and groundwaters;

4. for a coal slurry pipeline, a description of the procedure in case of electrical outage at one or more pump stations or cessation of slurry movement for any reason;

5. any other equipment or measures, including noise control, that would be used to reduce the impact of the facility; and

6. the types of environmental monitoring that are planned for the facility, if any, and a description of any relevant environmental monitoring data already collected; and

D. estimates of induced developments, including:

1. the extent to which the facility would create or add to the need for expanded utility or public services;

2. the work force required for construction and for operation of the facility;

3. the amount of water which would be appropriated and the amount which would be consumed by the facility, the expected source of the water, and the use(s) for the water;

4. a discussion of the effects on agricultural operations, including the number of farms and the number of acres of cropland and pasture land that would be affected by construction of the pipeline, the number of drainage ditches that would be affected, and the efforts that would be used to mitigate effects on production (e.g., segregating topsoil, avoiding soil compaction, providing adequate depth of cover); and

5. the number of people who would have to relocate if the facility were constructed.

§ 2.1151 Description of proposed nuclear fuel processing facility. Each application for a nuclear fuel processing facility shall contain the following information:

A. a physical description of the facility, including:

1. its location, to the fullest extent known;

2. the required land area, the height of the tallest structures, and, if applicable, the depth and size of any underground caverns;

3. its design capacity in tons per year of input material; and

4. a schematic drawing showing major components of the facility;

B. data regarding design and construction of the facility, including:

1. if known, the complete name and business address of the engineer and firm that would be responsible for the design of the facility;

2. if known, the complete name and business address of the company which would construct the facility;

3. the proposed date for commencing construction and the proposed in-service date;

4. the estimated installed cost of the facility in current dollars; and

5. the estimated economic life of the facility;

C. data regarding operation of the facility, including:

1. a narrative description of the steps of the process;

2. the sources and amounts of input materials that would be processed by the facility during operation at the design capacity, including uranium, plutonium and structural metals in tons per year and fission product nuclides in curies per year;

3. the types and amounts of output materials from the processing facility during operation at the design capacity;

4. the projected annual operating and maintenance costs in current dollars for each of the first five calendar years of operation;

5. the methods that would be used to transport materials to and from the facility;

6. the projected types and amounts of energy products that would be consumed during operation at the design capacity;

7. the expected average percentage of use of the full design capacity for each of the first five calendar years of operation; and

8. a discussion of the maintenance requirements of the facility, including the estimated impact on production.

§ 2.1152 Alternatives. Each application for a nuclear fuel processing facility shall contain a description of alternatives available to the applicant which differ significantly from the proposed facility with respect to location, size, timing, or design. The description of each alternative shall include the following information, if applicable:

A. the location of the facility, to the fullest extent known;

B. the required land area, the height of the tallest structures and, if applicable, the depth and size of any underground caverns;

C. its design capacity in the appropriate units of measure;

D. a schematic drawing showing major components of the facility;

E. the probable date for commencing construction and the probable in-service date;

F. the estimated installed cost of the alternative in current dollars;

G. the estimated economic life of the facility;

H. the sources and amounts of input materials that would be processed by the facility, including uranium, plutonium, structural metals and fission products, and the products that would be produced;

I. the projected annual operating and maintenance costs in current dollars for each of the first five calendar years of operation;

J. the methods that would be used to transport materials to and from the facility;

K. the projected types and amounts of energy products that would be consumed during operation at the design capacity;

L. the estimated average percentage of use of the full design capacity for each of the first five years of operation;

M. a discussion of the maintenance requirements of the facility, including the estimated impact on production; and

N. the reason(s) why the alternative was rejected.

§ 2.1153 Historical and forecast data. Each applicant for a nuclear fuel processing facility shall provide five years of historical data, as well as a forecast of demand through the forecast years. The following information shall be included:

A. the amount of each input material, in tons per year, produced nationally and the amount produced within Minnesota during each of the last five calendar years preceding the year of application;

B. for each of the last five calendar years preceding the year of application, the year-end capacity within Minnesota and within the United States, in tons of input material per year, to process the materials listed in response to 6 MCAR § 2.1153 A.;

C. an estimate of the amount of each input material expected to be produced nationally (including, if applicable, spent fuel from foreign reactors which use uranium supplied by the United States) and within Minnesota during the first six forecast years, the eleventh forecast year (the tenth year after the year of application), and the sixteenth forecast year;

D. a discussion of the methodology, statistical techniques, and data bases used in providing the forecast data required by 6 MCAR § 2.1153 C.;

E. a list of known facilities to be added in the United States during the forecast years, including locations, in-service dates, and design capacities, for processing the same types of materials that would be processed by the proposed facility; and

F. any major assumptions made in supplying the information required by 6 MCAR § 2.1153 A. through D., and a discussion of the sensitivity of the information to changes in the assumptions.

§ 2.1154 Environmental data. Each applicant shall provide environmental data for the proposed facility and for each alternative facility described in response to 6 MCAR § 2.1152. The following information relating to construction and operation of each of these facilities shall be provided, to the extent that such information is reasonably available to the applicant and applicable to the particular alternative:

A. a description of each alternative site, including:

1. the nature of the terrain at the site;

2. the general soil type(s) at the site;

3. the type(s) and depth(s) of bedrock underlying the site;

4. the depth to groundwater at the site;

5. the types of vegetation (forest, brush, marsh, pasture, and cropland) on the site, and the approximate percentage of each;

6. the predominant types of land use (such as residential, forest, agriculture, commercial, and industrial) within five miles of the site, and the approximate percentage of each;

7. lakes, streams, wetlands or drainage ditches within five miles of the site and any other lakes, streams, wetlands, drainage ditches, wells or storm drains into which liquid contaminants from the site could flow;

8. trunk highways, airports, and air traffic corridors within five miles of the site;

9. national natural landmarks, national wilderness areas, national wild-

life refuges, national wild and scenic rivers, national parks, national forests, national trails, and national waterfowl production areas within five miles of the site, as mapped on the Inventory of Significant Resources by the State Planning Agency;

10. state critical areas, state wildlife management areas, state scientific and natural areas, state wild, scenic and recreational rivers, state parks, state scenic wayside parks, state recreational areas, state forests, state trails, state canoe and boating rivers, state zoo, designated trout streams, and designated trout lakes within five miles of the site, as mapped on the Inventory of Significant Resources by the State Planning Agency;

11. national historic sites and landmarks, national monuments, National Register Historic Districts, registered state historic or archaeological sites, state historical districts, sites listed on the National Register of Historic Places, and any other Cultural Resources within five miles of the site, as indicated by the Minnesota Historical Society;

12. areas within five miles of the site designated by regional or local authorities as having recreational, cultural, historical, or scientific significance, as indicated by local units of government; and

13. the estimated total population within fifty miles of the site, and a map showing the distribution of the population within fifty miles of the site;

B. data on wastes and emissions associated with construction or operation of the facility, including:

1. the types and estimated amounts of solid, liquid, and gaseous radioactive wastes that would be produced by the facility, and the level of radioactivity of each in curies per year;

2. an analysis of human exposure to ionizing radiation attributable to operation of the facility, taking account of the pathways of radioactive releases to man;

3. the types and estimated amounts of nonradioactive solid and liquid wastes that would be produced;

4. the types and estimated amounts of nonradioactive gaseous and particulate emissions into the air that would occur during full operation from each emission source, and the location and nature of the release point;

5. locations which may be sources of fugitive dust and the nature of each source;

6. the nature and estimated amount of nonradioactive discharges to water, and the locations, routes and final receiving waters for any discharge points;

7. any area from which runoff may occur, potential sources of contamination in the area, and receiving waters for any runoff;

8. the sources and estimated amounts of heat rejected by the facility; and

9. the maximum noise levels (in decibels, A scale) expected at the property boundary and the expected maximum increase over ambient noise levels;

C. data regarding pollution control and safeguards equipment, including:

1. the provisions that would be made for management of radioactive materials;

2. a description of contingency plans to reduce the effects of an accidental release to radioactive materials;

3. the methods that would be used to recycle or dispose of solid or liquid wastes;

4. the types of emission control devices and dust control measures that would be used;

5. the types of water pollution control equipment and runoff control measures that would be used;

6. the measures that would be taken to prevent spills or leaks of pollutants, or to minimize the effects of spills or leaks on the environment;

7. the methods that would be used to reduce the effects of heat rejected by the facility;

8. any other equipment or measures, including noise control or erosion control, that would be used to reduce the effects of the facility on the environment; and

9. the types of environmental monitoring, if any, that are planned for the facility and a description of any relevant environmental monitoring data already collected; and

D. estimates of induced developments, including:

1. the types and amounts of vehicular traffic that would be generated by the facility due to construction activity and, later, to operational needs;

2. the work forces required for construction and for operation of the facility;

3. the extent to which the facility would create or add to the need for expanded utility or public services, including high voltage transmission lines, access roads, and the like;

4. the amount of water which would be appropriated and the amount which would be consumed by the facility, the expected source of the water and the use(s) for the water;

5. the amount of agricultural land, including pasture land, that would be removed from agricultural use if the facility were constructed, and known circumstances associated with the facility that could lead to reduced productivity of surrounding agricultural land; and

6. the number of people that would have to relocate if the facility were constructed.

§ 2.1156 Description of proposed nuclear waste or disposal facility. Each application for a nuclear waste storage or disposal facility shall contain the following information;

A. a physical description of the facility, including:

1. its location, to the fullest extent known;

2. the required land area, the height of the tallest structures and, if applicable, the depth and size of any underground caverns;

3. its design capacity in cubic metres; and

4. a schematic drawing showing major components of the facility;

B. data regarding design and construction of the facility, including:

1. if known, the complete name and business address of the engineer and firm that would be responsible for the design of the facility;

2. if known, the complete name and business address of the company which would construct the facility;

3. the proposed date for commencing construction and the proposed in-service date;

4. a description of the construction techniques;

5. the estimated installed cost of the facility in current dollars; and

6. the estimated economic life of the facility; and

C. data regarding operation and retirement of the facility, including:

1. a narrative description of the steps of the storage or disposal process, starting at the point the nuclear wastes are produced;

2. the sources, types, and amounts of nuclear waste products that

would be stored, the method(s) of transporting these materials to the facility, and the level of radioactivity of each in curies per year;

3. if the facility is only for temporary storage, the length of time material would be stored there and the method of transporting the material to its disposal site; and

4. the expected maintenance requirements of the facility, if any.

§ 2.1157 **Alternatives.** Each application for a nuclear waste storage or disposal facility shall contain a description of alternatives available to the applicant which differ significantly from the proposed facility with respect to location, size, timing or design. The description of each alternative shall include the following information, if applicable:

A. the location of the facility, to the fullest extent known;

B. the required land area, the height of the tallest structures and, if applicable, the depth and size of any underground caverns;

C. its design capacity in the appropriate units of measure;

D. a schematic drawing showing major components of the facility;

E. the probable date for commencing construction and the probable in-service date;

F. the estimated installed cost of the alternative in current dollars;

G. the sources, types, and amounts of nuclear waste products that would be involved in the alternative, the method(s) of transporting these materials, and the level of radioactivity of each in curies per year;

H. the estimated maintenance requirements of the alternative;

I. the estimated economic life of the facilities involved in the alternative; and

J. the reason(s) why the alternative was rejected.

§ 2.1158 **Historical and forecast data.** Each applicant for a nuclear waste storage or disposal facility shall provide five years of historical data, as well as a forecast of demand through the forecast years. The following information shall be included:

A. for each material that would be stored in the proposed facility, the amount (in cubic metres) produced nationally and within Minnesota during each of the last five calendar years preceding the year of application;

B. for each of the last five calendar years preceding the year of application,

the year-end capacity (in cubic metres) within Minnesota and within the United States to store the materials listed in response to 6 MCAR § 2.1158 A.;

C. an estimate of the amount (in cubic metres) of each material listed in response to 6 MCAR § 2.1158 A. expected to be produced nationally and within Minnesota during the first six forecast years, the eleventh forecast year (the tenth year after the year of application), and the sixteenth forecast year;

D. a list of known facilities to be added in the United States during the forecast years, including locations, design capacities (in cubic metres), and in-service dates, for storing the same types of materials that would be stored in the proposed facility;

E. the expected years during which the material stored in the proposed facility would reach 10 percent, 25 percent, 50 percent, and 100 percent of the capacity of the facility;

F. a discussion of the methodology, statistical techniques, and data bases used in providing the forecast data required by 6 MCAR § 2.1158 C. and E.; and

G. any major assumptions made in supplying the information required by 6 MCAR § 2.1158 A. through E., and a discussion of the sensitivity of the information to changes in the assumptions.

§ 2.1159 Environmental data. Each applicant shall provide environmental data for the proposed facility and for each alternative facility described in response to 6 MCAR § 2.1157. The following information relating to construction and operation of each of these facilities shall be provided to the extent that such information is reasonably available to the applicant and applicable to the particular alternative:

A. a description of each alternative site, including:

1. the nature of the terrain at the site;

2. the general soil type(s) at the site;

3. the type(s) and depth(s) of bedrock underlying the site;

4. the depth to groundwater at the site;

5. the types of vegetation (forest, brush, marsh, pasture, and cropland) on the site, and the approximate percentage of each;

6. the predominant types of land use (such as residential, forest, agricultural, commercial, and industrial) within five miles of the site, and the approximate percentage of each;

7. lakes, streams, wetlands or drainage ditches within five miles of the site and any other lakes, streams, wetlands, drainage ditches, wells or storm drains into which liquid contaminants from the site could flow;

8. trunk highways, airports, and air traffic corridors within five miles of the site;

9. national natural landmarks, national wilderness areas, national wildlife refuges, national wild and scenic rivers, national parks, national forests, national trails, and national waterfowl production areas within five miles of the site, as mapped on the Inventory of Significant Resources by the State Planning Agency;

10. state critical areas, state wildlife management areas, state scientific and natural areas, state wild, scenic and recreational rivers, state parks, state scenic wayside parks, state recreational areas, state forests, state trails, state canoe and boating rivers, state zoo, designated trout streams, and designated trout lakes within five miles of the site, as mapped on the Inventory of Significant Resources by the State Planning Agency;

11. national historic sites and landmarks, national monuments, National Register Historic Districts, registered state historic or archaeological sites, state historical districts, sites listed on the National Register of Historic Places, and any other cultural resources within five miles of the site, as indicated by the Minnesota Historical Society;

12. areas within five miles of the site designated by regional or local authorities as having recreational, cultural, historical, or scientific significance, as indicated by local units of government; and

13. the estimated total population within fifty miles of the site, and a map showing the distribution of the population within fifty miles of the site;

B. data on wastes and emissions associated with construction or operation of the facility, including:

1. the types and estimated amounts of solid, liquid, and gaseous radioactive wastes that would be produced by the facility, and the level of radioactivity of each in curies per year;

2. an analysis of human exposure to ionizing radiation attributable to operation of the facility, taking account of the pathways of radioactive releases to man;

3. the types and estimated amounts of nonradioactive solid and liquid wastes that would be produced;

4. the types and estimated amounts of nonradioactive gaseous and particulate emissions into the air that would occur during full operation from each emission source, and the location and nature of the release point;

5. locations which may be sources of fugitive dust and the nature of each source;

6. the nature and estimated amount of nonradioactive discharges to water, and the locations, routes and final receiving waters for any discharge points;

7. any area from which runoff may occur, potential sources of contamination in the area, and receiving waters for any runoff;

8. the sources and estimated amounts of heat rejected by the facility; and

9. the maximum noise levels (in decibels, A scale) expected at the property boundary and the expected maximum increase over ambient noise levels;

C. data regarding pollution control and safeguards equipment, including:

1. the provisions that would be made for management of radioactive materials;

2. a description of contingency plans to reduce the effects of an accidental release of radioactive materials;

3. the methods that would be used to recycle or dispose of solid or liquid wastes;

4. the types of emission control devices and dust control measures that would be used;

5. the types of water pollution control equipment and runoff control measures that would be used;

6. the measures that would be taken to prevent spills or leaks of pollutants, or to minimize the effects of spills or leaks on the environment;

7. the methods that would be used to reduce the effects of heat rejected by the facility;

8. any other equipment or measures, including noise control or erosion control, that would be used to reduce the effects of the facility on the environment; and

9. the types of environmental monitoring, if any, that are planned for the facility and a description of any relevant environmental monitoring data already collected; and

D. estimates of induced developments, including:

1. the types and amounts of vehicular traffic that would be generated by the facility due to construction activity and, later, to operational needs;

2. the work forces required for construction and for operation of the facility;

3. the extent to which the facility would create or add to the need for expanded utility or public services, including high voltage transmission lines, access roads, and the like;

4. the amount of water which would be appropriated and the amount which would be consumed by the facility, the expected source of the water and the use(s) for the water;

5. the amount of agricultural land, including pasture land, that would be removed from agricultural use if the facility were constructed, and known circumstances associated with the facility that could lead to reduced productivity of surrounding agricultural land; and

6. the number of people that would have to relocate if the facility were constructed.

§ 2.1186 Other data filed with the application. In addition to the information required by these rules, an applicant may file additional data if it believes that such data is relevant to the director's decision.

See ARD 16/15T for new rules →

GOVERNING THE GRANT OF DECORATIVE GAS LAMP PROHIBITION VARIANCES

Chapter 20

§ 2.2001 Purpose of rules. The purpose of these rules is to specify the contents of applications for variances to the statutory prohibition on use of decorative gas lamps and to specify the criteria according to which variances shall be granted pursuant to Laws of 1976, ch. 333, § 6 (codified as Minn. Stat. § 116H.12, subd. 3.b.).

§ 2.2002 Applicability of rules.

A. Beginning April 21, 1977, no person shall use any device installed for the purpose of producing illumination by burning natural, mixed, or LP gas and utilizing either a mantle or an open flame, unless a variance has been granted pursuant to these rules.

B. Beginning April 21, 1977, no person shall provide replacement parts or service intended to maintain the operation of a decorative gas lamp unless the owner of such lamp has been granted a variance pursuant to these rules.

C. Exception. These rules shall not apply to portable camp lanterns utilizing fuel oil, white gas, or LP gas.

§ 2.2003 Application procedures and timing.

A. Each applicant for a variance shall apply in the form prescribed by the director. See 6 MCAR § 2.2021.

B. The director shall make a decision on the variance application within 30 days of receipt of the application, provided the application as filed is complete.

C. The director shall notify an applicant within 15 days of the receipt of an application if the application is not complete. Upon such notification, the applicant may correct the deficiencies and resubmit the application. A decision shall be made on the revised application within 30 days of the date of resubmission.

D. Upon making his decision, the director shall notify the applicant, the applicant's natural or LP gas supplier, and appropriate local law enforcement agencies.

E. Each variance granted by the director shall be valid for a period of four years, commencing from the date of the variance grant, provided, however, that a variance granted pursuant to 6 MCAR § 2.2011 B.1. shall be valid for the lifetime of the recipient.

§ 2.2004 Definitions. For purposes of these rules, the following definitions shall apply:

A. "Agency" means the Minnesota Energy Agency;

B. "Applicant" means the person submitting an application for a variance to the prohibition on use of decorative gas lamps;

C. "AMC per GLPG" means average marginal cost per gallon of LP gas. It is the annual cost to a person purchasing one additional gallon of LP gas per month for one year divided by 12;

D. "AMC per KWH" means average marginal cost per kilowatt hour. It is the annual cost to a person purchasing one additional kilowatt hour of electricity each month for one year divided by 12;

E. "AMC per MCF" means average marginal cost per thousand cubic feet of natural or mixed gas. It is the annual cost to a person purchasing one additional MCF of natural or mixed gas each month for one year divided by 12;

F. "BTU" means British thermal unit, a common unit of energy measurement which is used in these rules for comparative purposes. For purposes of these rules one MCF of natural or mixed gas shall be considered to contain one million BTU's and one gallon of LP gas shall be considered to contain 93,000 BTU's;

G. "Complete Application" means an application which satisfies all of the requirements of these rules;

H. "Conversion Cost" means the dollar cost of 1) adapting a decorative gas lamp to one producing light by electrical energy or 2) replacing a gas lamp with an electrical fixture that will provide an equivalent amount of light for the same location;

I. "Director" means the director of the Minnesota Energy Agency;

J. "Decorative Gas Lamp" means any device installed for the purpose of illumination by burning natural, mixed, or LP gas and utilizing either a mantle or an open flame, but does not include a portable gas camp lantern or lamp;

K. "Home Owner" means one or more persons, jointly or severally, in whom is vested a legal or beneficial interest in a dwelling no more than one half the square footage of which is occupied by tenants;

L. "KWH" means kilowatt hour (1,000 watt hours), a common unit of measurement for electrical energy. One kilowatt hour of electricity is equivalent to 3,412 BTU's;

M. "LP Gas" means liquefied petroleum gas or propane;

N. "MCF" means 1,000 cubic feet, a common quantity for measurement of natural gas;

O. "Person" means any individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation or any government or governmental subdivision, unit or agency, other than a court of law;

P. "Tenant" means any person who is occupying a dwelling under any agreement, lease, or contract, whether oral or written, and for whatever period of time, which requires the payment of moneys as rent for the use of the dwelling unit, and all other regular occupants of such dwelling unit;

Q. "Utility" means any entity engaged in the generation, transmission, or distribution of electric energy and any entity engaged in the transmission or distribution of natural or synthetic natural gas, including, but not limited to, a private investor-owned utility or a public or municipally owned utility.

§ 2.2011 Variance criteria.

A. Open-flame decorative gas lamps. No variance shall be granted for open-flame decorative gas lamps.

B. Decorative gas lamps with incandescent mantles. The director shall grant a variance to an applicant who owns decorative gas lamps with incandescent mantles if the applicant satisfies either of the following criteria:

1. Any home owner who is at least 65 years of age as of the effective date of these rules and who resides at the location listed in response to 6 MCAR § 2.2021 A.2. shall receive a variance upon filing a complete application. In the case of joint ownership, the age of only the older owner shall be considered.

2. Any person who does not meet the criteria in 6 MCAR § 2.2011 B.1. above shall receive a variance only if the lamp(s) for which the variance is sought cannot be economically converted to electricity; however, that person shall receive, without application therefor, a construction season variance valid until September 30, 1977. A lamp (lamps) cannot be economically converted to electricity if the total conversion cost (see 6 MCAR § 2.2031) exceeds the total economic benefit of conversion (see 6 MCAR § 2.2032).

3. Any person whose dwelling is illuminated by decorative gas lamps because it is not served by an electric utility is deemed unable to economically convert such lamps to electricity and to have been granted a variance pursuant to these rules, which variance shall be effective only so long as that dwelling is not served by an electric utility.

§ 2.2021 Form of application.

A. Each applicant requesting a variance pursuant to 6 MCAR § 2.2011 B.1. shall submit the following information:

1. the name of the owner of the decorative gas lamp(s) for which a variance is requested;

2. the complete address of the property where the lamp(s) is located;

3. the number of gas lamps at the location listed in response to 6 MCAR § 2.2021 A.2. above for which the applicant is seeking a variance;

4. the complete name of the utility that provides gas burned by the gas lamp(s); and

5. the birth date of the owner requesting the variance.

B. Each applicant requesting a variance pursuant to 6 MCAR § 2.2011 B.2. shall supply the following information:

1. the name of the owner of the decorative gas lamp(s) for which a variance is requested;

2. the complete address of the owner of the lamp(s) and of the property where the lamp(s) is located. If decorative gas lamps are identified by different street addresses but are at physically continguous locations one application shall suffice. However, where lamps are located on properties which are not physically contiguous, separate applications must be submitted;

3. the number of gas lamps at the location listed in response to 6 MCAR § 2.2021 B.2. above for which the applicant is seeking a variance;

4. for each gas lamp considered in the response to 6 MCAR § 2.2021 B.3. above, the number of mantles and whether the mantles are inverted or upright;

5. for each gas lamp considered in the response to 6 MCAR § 2.2021 B.3. above, the manufacturer and the model number, if available;

6. the complete name of the utility that supplies the gas burned by the gas lamp(s);

7. the complete name of the utility that supplies the applicant with electricity;

8. the total conversion cost for lamps considered in the response to 6 MCAR § 2.2021 B.3. above (see 6 MCAR § 2.2031); and

9. the total economic benefit of conversion for lamps considered in the response to 6 MCAR § 2.2021 B.3. above (see 6 MCAR § 2.2032).

C. Each application for a variance shall be verified, signed, and notarized.

§ 2.2031 Conversion cost. The total conversion cost can be established only

by submitting with the application for variance complete copies of two independent, signed bids from licensed electricians for converting the gas lamps to electricity. The bids must be detailed—simple dollar figures are not sufficient. If the applicant owns 10 or more decorative gas lamps which primarily provide security lighting, the applicant shall also provide with the application two independent, signed bids from licensed electricians for replacing the gas lamps with high efficiency electric lighting, such as fluorescent, mercury vapor, or high or low pressure sodium lamps.

§ 2.2032 Economic benefit of conversion.

A. The total economic benefit of conversion will be the sum of the economic benefits of conversion of all gas lamps for which the applicant is requesting a variance. Economic benefit varies with the number of mantles, the placement of the mantles—inverted or upright, and the fuel used—natural or LP gas. Alternative methods of determining the economic benefit of conversion are provided below. The applicant may accept and use the figure provided in the appropriate sub-paragraph lettered a or c, or the applicant may choose the alternative form provided in the appropriate sub-paragraph lettered b. If the applicant chooses to follow the latter alternative, the formula may be used in any of three ways. First, the applicant may make the necessary calculations. In that case, all the calculations and all figures used must be shown and included with the application with the source of all figures indicated. Second, the applicant may use the formula with the AMC figures obtained from the applicant's utilities. In that case, the applicant must attach to the application the written statements from the applicant's electric utility and gas utility or supplier by which the applicant obtained the AMC figures. Third, the applicant may provide to the Energy Agency the applicant's total gas bill and total electric bill for the past 12 months expressed in dollars. The Agency staff will estimate the economic benefit of conversion for applicant's lamp(s) by using the bill totals provided and the current rates per unit of energy assessed by applicant's utilities for an average house with the same total electric and gas bills.

B. Gas lamps with one mantle.

1. Gas lamps burning natural gas. An applicant whose gas lamp burns natural gas may use as the economic benefit of conversion for each gas lamp, any of the following numbers:

a. $255,

b. the quantity determined from the formula:
(168 X AMC per MCF for natural gas)
- (1460 X AMC per KWH for electricity), or

c. $170, if equipped with an automatic turndown device installed before 1975.

2. Gas lamps burning LP gas. An applicant whose gas lamp burns LP

gas may use as the economic benefit of conversion for each gas lamp, either of the following numbers:

a. $550, or

b. the quantity determined from the formula:
(1805 X AMC per GLPG)
- (1460 X AMC per KWH for electricity).

C. Gas lamps with two inverted mantles.

1. Gas lamps burning gas. An applicant whose gas lamp burns natural gas may use as the economic benefit of conversion for each gas lamp, either of the following numbers:

a. $230, or

b. the quantity determined from the formula:
(168 X AMC per MCF of natural gas)
- (2190 X AMC per KWH for electricity).

2. Gas lamps burning LP gas. An applicant whose gas lamp burns LP gas may use as the economic benefit of conversion for each gas lamp, either of the following numbers:

a. $525, or

b. the quantity determined from the formula:
(1805 X AMC per GLPG)
- (2190 X AMC per KWH for electricity).

D. Gas lamps with three inverted mantles.

1. Gas lamps burning natural gas. An applicant whose gas lamp burns natural gas may use as the economic benefit of conversion for each gas lamp, either of the following numbers:

a. $345, or

b. the quantity determined from the formula:
(241 X AMC per MCF for natural gas)
- (2738 X AMC per KWH for electricity).

2. Gas lamps burning LP gas. An applicant whose gas lamp burns LP gas may use as the economic benefit of conversion for each gas lamp either of the following numbers:

a. $765, or

b. the quantity determined from the formula:

(2590 X AMC per GLPG)
- (2738 X AMC per KWH for electricity).

E. Gas lamps with more than one upright mantle.

1. Gas lamps burning natural gas. An applicant whose gas lamp burns natural gas may use as the economic benefit of conversion for each gas lamp, either of the following numbers:

a. $255 times the number of mantles in each gas lamp, or

b. the quantity determined from the formula:
[(168 X AMC per MCF for natural gas)
- (1460 X AMC per KWH for electricity)]
X (the number of mantles in each gas lamp).

2. Gas lamps burning LP gas. An applicant whose gas lamp burns LP gas may use as the economic benefit of conversion for each gas lamp, either of the following numbers:

a. $550 times the number of mantles in each gas lamp, or

b. the quantity determined from the formula:

[(1805 X AMC per GLPG)
- (1460 X AMC per KWH for electricity)]
X (the number of mantles in each gas lamp).

F. Gas lamps with more than three inverted mantles.

1. Gas lamps burning natural gas. An applicant whose gas lamp burns natural gas may use as the economic benefit of conversion for each gas lamp, either of the following numbers:

a. $115 times the number of mantles in each gas lamp, or

b. the quantity determined from the formula:
[(84 X AMC per MCF for natural gas)
- (1095 X AMC per KWH for electricity)]
X (the number of mantles in each gas lamp).

2. Gas lamps burning LP gas. An applicant whose gas lamp burns LP gas may use as the economic benefit of conversion for each gas lamp, either of the following numbers:

a. $263 times the number of mantles in each gas lamp, or

b. the quantity determined from the formula:
[(903 X AMC per GLPG)
- (1095 X AMC per KWH for electricity)]
X (the number of mantles in each gas lamp).

ENERGY AGENCY RULES GOVERNING THE PERMISSIBLE HOURS OF OPERATION, THE QUANTITY AND THE EFFICIENCY OF OUTDOOR DISPLAY LIGHTING

Chapter 21
6 MCAR §§ 2.2101-2.2120
(Adopted September 5, 1979)

6 MCAR § 2.2101 Purpose of rules. The purpose of these rules is to define outdoor display lighting, to specify permissible hours of operation of outdoor display lighting, and to establish quantity and efficiency standards for outdoor display lighting pursuant to Minn. Stat. § 116H.12, subd. 1b.

6 MCAR § 2.2102 Applicability of rules.

A. Beginning July 1, 1980, no person shall operate outdoor display lighting during hours other than those specified by these rules.

B. Beginning July 1, 1981, no person shall install outdoor display lighting in a quantity that exceeds, or at an efficiency less than, that provided by these rules.

C. Beginning July 1, 1985, no person shall operate outdoor display lighting which does not comply with 6 MCAR § 2.2115 (efficiency) and 6 MCAR § 2.2120 B. (quantity).

D. Exceptions.

1. These rules shall not apply to temporary or seasonal outdoor display lighting;

2. These rules shall not apply to outdoor display lighting which provides information as to the time of day, temperature, weather conditions, or other matters concerning the public health, safety and welfare;

3. These rules shall not apply to penal institutions; and

4. These rules shall not apply to airplane obstruction lighting as defined by the Federal Aviation Administration nor to any other lighting that is required by federal, state, or local governmental law or regulation.

6 MCAR § 2.2104 Definitions. For purposes of these rules, the following definitions shall apply:

A. "Business day" means that portion of a 24-hour period when an establishment is open for business;

B. "Ballast" means a device used with an electric discharge lamp to obtain the necessary circuit conditions for starting and operating;

C. "Daytime hours" means the time between one-half hour after sunrise and one-half hour before sunset, or when the ambient light level is greater than two footcandles;

D. "Establishment" means a place of business or a public or private institution;

E. "Footcandle" means a standard measure of light intensity;

F. "Luminous sign tubing" means lights commonly known as neon lights;

G. "Lumens per watt" means a standard unit of measure of light efficiency;

H. "Outdoor display lighting" means any outdoor building facade lighting, any outdoor decorative lighting, any illuminated off-premise advertising, and any on-premise outdoor lighting including security lighting;

I. "Security lighting" means a type of outdoor display lighting located on, or around the exterior or perimeter of, a building, structure, fence, lot, or other outdoor area, the purpose of which is to protect persons or property against the threat or occurrence of harm;

J. "Standardized outdoor display signs" means off-premise outdoor display advertising commonly known as billboards; and

K. "Temporary or seasonal display lighting" means display lighting that, on at least 300 consecutive days in any 12-month period, is not illuminated.

6 MCAR § 2.2110 Permissible hours of outdoor display lighting operation.

A. Standardized outdoor display signs may not be artificially illuminated during daytime hours.

B. Standardized outdoor display signs may not be artificially illuminated during the period between midnight and 6:00 a.m. or one half hour after sunrise, whichever is earlier, except for the hours during that period when the establishment(s) being advertised is (are) normally open for business.

C. Outdoor display lighting that is used to illuminate an historic landmark as defined in Minn. Stat. ch. 138 or § 4.077 may be operated between one-half hour before sunset and 10 p.m.

D. All other outdoor display lighting except security lighting may be operated from one-half hour before sunset until one hour after the close of a business day, when the ambient light level is less than two footcandles and from the beginning of a business day until one-half hour after sunrise. In addition, on-premises outdoor display lighting which has a demand of 1500 watts or less may be operated after the close of a business day until midnight even though the establishment closes prior to midnight.

E. Security lighting may not be operated during daytime hours.

6 MCAR § 2.2115 Permissible efficiency.

A. No person shall install or use outdoor display lighting in which the light source produces light at an initial efficiency, including ballast, of less than 40 lumens per watt.

B. Exceptions.

1. Rule 6 MCAR § 2.2115 shall not apply to luminous sign tubing; and

2. Rule 6 MCAR § 2.2115 A. shall not apply to any establishment whose total outdoor display lighting system has a demand of 1500 watts or less.

REP#4031

6 MCAR § 2.2120 Permissible quantity.

A. Beginning July 1, 1980, the provisions of 6 MCAR S 2.2102 B. and C. notwithstanding, no person shall operate security lighting that exceeds .05 watts per square foot for the area lighted for security purposes, except that security lighting installed and placed in operation prior to July 1, 1981, may continue to operate at levels not exceeding .10 watts per square foot.

B. No person shall operate any other outdoor display lighting that exceeds the recommended minimum standards set forth in the "IES Lighting Handbook" (5th edition), published by the Illuminating Engineering Society, by more than 20 percent.

C. Rule 6 MCAR § 2.2120 A. shall not apply to an establishment whose total security lighting system has a demand of 1500 watts or less.

4031A-N

6 MCAR S 2.2300 Authority and purpose.

A. Authority. The agency's authority to promulgate these rules is contained in Minnesota Laws of 1980, chapter 579, section 12 (to be codified as Minnesota Statutes, section 116H.17), as well as Minnesota Statutes, sections 116H.08, clause (a) (1978), and 116H.07, clause (i) (1978).

B. Purpose. The purpose of these rules is to establish a program requiring major regulated utilities to offer their residential utility customers services related to the promotion of energy conservation. The most important of these services include: conducting home energy audits to determine areas of major heat loss and other energy inefficiencies in the home; distributing lists of approved contractors, suppliers and lenders from whom home energy improvements and financing services may be obtained; arranging for the installation of home energy improvements; and arranging for the financing of supply and installation of home energy improvements. The rules establish requirements for the inclusion in the lists, and training and certification procedures, procedures for the billing of energy improvement loans on customer utility bills, and post-installation inspection and consumer grievance procedures. The program also includes provisions for voluntary participation of home heating suppliers and non-regulated utilities.

6 MCAR S 2.2301 Definitions.

For the purpose of these rules, the following definitions apply:

A. Agency. The Minnesota Energy Agency.

B. Arranged installation. Any installation of MECS program measures, coordinated pursuant to 6 MCAR S 2.2304 by a participating utility or heating supplier, which is initiated using a standardized MECS bid form.

C. City of the first class. A city, pursuant to Minnesota Statutes, section 410.01 (1978), which has a population of 100,000 inhabitants or more.

D. Covered utility. Covered utilities shall be determined on a yearly basis. The definition includes all public utilities which during the second preceding calendar year had either:

1. Sales of natural gas for purposes other than resale which exceed ten billion cubic feet; or

2. Sales of electric energy for purposes other than resale which exceed 750 million kilowatt-hours.

E. Customer. For the purposes of this rule, a customer is

any person who:

1. Owns or occupies a residential building; and

2. Receives a fuel bill from a participating utility or home heating supplier for fuel used in such residential building.

F. DOE. Department of Energy.

G. Energy conservation measures. Energy conservation measures means any of the following measures in a residential building:

1. Caulking. Pliable materials used to reduce the passage of air and moisture by filling small gaps located at fixed joints on a building, underneath baseboards inside a building, in exterior walls at electric outlets, around pipes and wires entering a building, and around dryer vents and exhaust fans in exterior walls. Caulking includes, but is not limited to, materials commonly known as "sealants," "putty," and "glazing compounds."

2. Weatherstripping. Narrow strips of material placed over or in movable joints of windows and doors to reduce the passage of air and moisture.

3. Furnace efficiency modifications.

a. Replacement furnace or boiler. A furnace or boiler, including a heat pump, which replaces an existing furnace or boiler of the same fuel type and which reduces the amount of fuel consumed due to an increase in combustion efficiency, improved heat generation or reduced heat losses.

b. Furnace replacement burner (oil). A device which atomizes the fuel oil, mixes it with air, and ignites the fuel-air mixture, and is an integral part of an oil-fired furnace or boiler including the combustion chamber, and uses less oil than the device it replaces.

c. Flue opening modification. An automatically operated damper installed in a gas-fired furnace (often called a vent damper) which:

(1) Is installed downstream from the drafthood; and

(2) Conserves energy by substantially reducing the flow of heated air through the chimney when the furnace is not in operation.

d. Electrical or mechanical ignition system. A device which, when installed in a gas-fired furnace or boiler, automatically ignites the gas burner and replaces a gas pilot light.

4. Replacement central air conditioner. A central air

conditioner which replaces an existing central air conditioner of the same fuel type and which reduces the amount of fuel consumed due to an increase in efficiency.

5. Ceiling insulation. A material primarily designed to resist heat flow which is installed between the conditioned area of a building and an unconditioned attic. Where the conditioned area of a building extends to the roofs, the term "ceiling insulation" also applies to such material used between the underside and upperside of the roof.

6. Wall insulation. A material primarily designed to resist heat flow which is installed within or on the walls between conditioned areas of a building and unconditioned areas of a building or the outside.

7. Floor insulation. A material primarily designed to resist heat flow which is installed between the first level conditioned area of a building and an unconditioned basement, a crawl space, or the ground beneath it. Where the first level conditioned area of a building is on a ground level concrete slab, the term "floor insulation" also means such material installed around the perimeter of or on the slab. In the case of mobile homes, the term "floor insulation" also means skirting to enclose the space between the building and the ground.

8. Duct insulation. A material primarily designed to resist heat flow which is installed on a heating or cooling duct in an unconditioned area of a building.

9. Pipe insulation. A material primarily designed to resist heat flow which is installed on a heating, cooling, or hot water pipe in an unconditioned area of a building.

10. Water heater insulation. A material primarily designed to resist heat flow which is suitable for wrapping around the exterior surface of the water heater casing.

11. Storm or thermal window:

a. A window or glazing material placed outside or inside an ordinary or prime window, creating an air space, to provide greater resistance to heat flow than the prime window alone; or

b. A window unit with improved thermal performance through the use of two or more sheets of glazing material affixed to a window frame to create one or more insulated air spaces. It may also have an insulating frame and sash.

12. Storm or thermal door:

a. A second door, installed outside or inside a prime door, creating an insulating air space; or

b. A door with enhanced resistance to heat flow

through the glass area created by affixing two or more sheets or glazing materials; or

c. A primary exterior door with an R-value of at least two.

13. Heat reflective and heat absorbing window or door material. A window or door glazing material with exceptional heat-absorbing or heat-reflecting properties; or reflective or absorptive films and coatings applied to an existing window or door which thereby result in exceptional heat-absorbing or heat-reflecting properties.

14. Devices associated with electric load management techniques. Customer-owned or leased devices that reduce the maximum kilowatt demand on an electric utility and which are any of the following:

a. Part of a radio, ripple or other utility controlled load switching system located on the customer's premises;

b. Clock-controlled load switching devices;

c. Interlocks, and other load-actuated, load-limiting devices;

d. Energy storage devices with control systems.

15. Clock thermostat. A device which is designed to reduce energy consumption by regulating the demand on the heating or cooling system in which it is installed, and uses:

a. A temperature control device for interior spaces incorporating more than one temperature control level, and

b. A clock or other automatic mechanism for switching from one control level to another.

H. Energy conserving practices. Energy conserving practices means any of the following measures in a residential building:

1. Furnace efficiency maintenance and adjustments, which means cleaning and combustion efficiency adjustment of gas or oil furnaces, periodic cleaning or replacement of air filters on forced-air heating or cooling systems, lowering the bonnet or plenum thermostats to 80 degrees Fahrenheit on a gas or oil forced-air furnace, and turning off the pilot light on a gas furnace during the summer.

2. Nighttime temperature setback, which means manually lowering the thermostat control setting for the furnace during the heating season to a maximum of 55 degrees Fahrenheit during sleeping hours.

3. Reducing thermostat settings in winter, which means limiting the maximum thermostat control setting for the furnace

to 68 degrees Fahrenheit during the heating season.

4. Raising thermostat setting in summer, which means setting the thermostat control for an air conditioner to 78 degrees Fahrenheit or higher during the cooling season.

5. Water flow reduction in showers and faucets, which means placing a device in a shower head or faucet to limit the maximum flow to three gallons per minute, or replacing existing shower heads or faucets with those having built-in provisions for limiting the maximum flow to three gallons per minute.

6. Reducing hot water temperature, which means manually setting back the water heater thermostat setting to 120 degrees Fahrenheit; and reducing the use of heated water for clothes washing.

7. Reducing energy use when a home is unoccupied, which means reducing the thermostat setting to 55 degrees Fahrenheit when a home is empty for four hours or longer in the heating season, turning an air conditioner off in the cooling season when no one is home, and lowering the thermostat setting of the water heater when a home is vacant for two days or longer.

8. Plugging leaks in attics, basements, and fireplaces, which means installing scrap insulation or other pliable materials in gap around pipes, ducts, fans, or other items which enter the attic or basement from a heated space, installing fireproof material to plug any holes around any damper in a fireplace, and adding insulation to an attic or basement door.

9. Sealing leaks in pipes and ducts, which means installing caulking in any leak in a heating or cooling duct, tightening or plugging any leaking joints in hot water or steam pipes, and replacement of washers in leaking water valves.

10. Efficient use of shading, which means using shades or drapes to block sunlight from entering a building in the cooling season, to allow sunlight to enter during the heating season, and to cover windows tightly at night during the heating season.

I. Heating supplier. A person who sells or supplies home heating fuel (including and not limited to, No. 2 heating oil, kerosene, butane, and propane) to a customer for consumption in a residential building and who has elected to participate in MECS, pursuant to 6 MCAR S 2.2312.

J. Installation standards. DOE installation standards pursuant to 10 Code of Federal Regulations, section 456, subparts G and I (1979).

K. Material standards. DOE material standards pursuant to 10 Code of Federal Regulations, section 456, subparts G and H (1979).

L. Measures warranty. A warranty in writing, by the

manufacturer of the program measure, that the residential customer for whom the measure is installed, the contractor who installs the measure, and the supplier of the measure shall at a minimum be entitled to obtain, at no charge, appropriate replacement parts and materials for those measures found within one year from the date of installation or purchase to be defective due to materials, manufacture or design. The warranty shall also provide that the defect shall be corrected, within two weeks after it is reported to the manufacturer.

M. MECS. Minnesota Energy Conservation Service.

N. New customer. A person who first becomes a customer after initial distribution of the program announcement but before January 1, 1985.

O. Non-regulated utility. A public utility whose rates are not within the jurisdiction of the Minnesota Public Utilities Commission's ratemaking authority.

P. OCS. Minnesota Office of Consumer Service.

Q. Participating utility. A covered utility or a non-regulated utility which voluntarily participates in the Minnesota Energy Conservation Service.

R. Program announcement. The MECS program information bulletin and utility offer of service to each customer.

S. Program measures. All energy conservation measures and renewable resource measures to be included in an MECS audit.

T. Regulated utility. A public utility whose rates are within the jurisdiction of the Minnesota Public Utilities Commission's ratemaking authority.

U. Renewable resource measures. Renewable resource measures means the following measures installed in or connected to a residential building:

1. Solar domestic hot water systems (DHW). Equipment designed to absorb the sun's energy and to use this energy to heat water for use in a residential building other than for space heating, including thermosiphon hot water heaters.

2. Passive solar space heating and cooling system. Systems that make efficient use of, or enhance the use of, natural forces -- including solar insulation, winds, nighttime coolness and opportunity to lose heat by radiation to the night sky -- to heat or cool living space by the use of conductive, convective or radiant energy transfer. Passive solar systems include only:

a. Direct gain glazing systems. The use of south-facing (+ or -45 degrees of true south) panels of insulated glass, fiberglass, or other similar transparent

substances that admit the sun's rays into the living space where the heat is retained. Glazing is either double-paned, or single-paned equipped with movable insulation.

b. Indirect gain systems. The use of panels of insulated glass, fiberglass or other transparent substances that direct the sun's rays onto specially constructed thermal walls, ceilings, rockbeds, or containers of water or other fluids where heat is stored and radiated.

c. Solaria/sunspace systems. A structure of glass, fiberglass or similar transparent material which is attached to the south-facing (+ or -45 degrees of true south) wall of a structure which allows for air circulation to bring heat into the residence, and which is able to be closed off from the residential structure during periods of low solar insolation.

d. Window heat gain and/or loss. Those mechanisms which significantly reduce summer heat gain or wintertime heat loss through windows by the use of devices such as awnings, insulated rollup shades (external or internal), metal or plastic solar screens, or movable rigid insulation.

3. Wind energy devices. Equipment that uses wind energy to produce energy in any form for personal residential purposes.

4. Replacement solar swimming pool heaters. Devices which are used solely for the purposes of using the sun energy to heat swimming pool water and which replace a swimming pool heater using electricity, gas or another fossil fuel.

5. Active solar space heating. Equipment designed to absorb the sun's energy and to use this energy to heat living space by use of mechanically forced energy transfer such as fans or pumps.

V. Residential building. Any structure used for residential occupancy including any building containing at least one, but not more than four, dwelling units, and, has a system for either heating or cooling living spaces. However, this definition does not include: new buildings to which final standards under sections 304(a) and 305 of the Energy Conservation and Production Act (42 United States Code, section 6801 et seq) apply.

4031A-N

6 MCAR S 2.2302 Program promotion.

A. Program announcements.

1. Distribution.

a. Each covered utility shall send to all their customers a program announcement by June 15, 1981, and thereafter at least once every two years until January 1, 1985.

b. Each covered utility shall send a program announcement to each of its new customers within sixty (60) days after the date that the new customer first receives service.

c. Program announcements shall be submitted to the agency for approval one month prior to the date that the utility intends to print the announcement. The agency shall approve the distribution of program announcements only if:

(1) The criteria of 6 MCAR S 2.2302 A.2. have been met; and

(2) The information contained in the program announcement is presented in simple language.

2. Content.

a. The program announcement shall contain the following elements, at a minimum:

(1) A list of all program measures with an estimate of the savings in energy costs, expressed in percentages, which are likely to be produced by each measure in one year.

(2) A list of all energy conserving practices with an estimate of the savings in energy costs, expressed in percentages, which are likely to be produced by each practice in one year, and a statement that the practices are of low or no cost;

(3) An offer by the covered utility to provide the following services with a description of each:

(a) A program audit, in accordance with 6 MCAR S 2.2303.

(b) Installation arrangement services, in accordance with 6 MCAR S 2.2304 B.

(c) Financing arrangement services, in accordance with 6 MCAR S 2.2304 A.

(d) Contractor, lender and supplier lists in accordance with 6 MCAR S 2.2305.

The description of each service shall include information on how a customer may obtain these services, and the direct cost to the customer of obtaining these services;

(4) An offer to provide to each new customer upon request a copy of any program audit performed previously on the customer's present residence;

(5) The following disclosure: "Energy savings depend on many factors. The estimates contained in the announcement are based on estimates for typical houses. Your

costs and savings will be different if your house is a different size or if your energy using habits are different from those we assumed. The energy audit which we offer will provide more specific estimates for your house.";

(6) An explanation of the benefits of applicable federal and state energy tax credits;

(7) A description of the benefits and eligibility requirements of the Weatherization Assistance Program for Low Income Persons, 10 Code of Federal Regulations, section 440 (1980) including the following statement: "Landlords may be eligible for these benefits under certain circumstances.";

(8) The following statement: "The results of this audit may be used by renters to see if their residence complies with existing state standards for rental property. Call the Minnesota Energy Agency at 296-5175 or toll-free 800-652-9747 for more information and what you can do to get your residence brought up to these standards."

b. The program announcement shall not contain:

(1) Advertising for sale, installation, or financing of any program measure or energy conserving practice by a particular person or company, listed or not; or

(2) Information regarding any product which is not a program measure or an energy conserving practice.

c. If a covered utility or participating heating supplier finances the sale or installation of program measures and energy conserving practices, it may describe its financial services.

d. The covered utility or participating heating supplier shall use the calculation procedures in Appendix A for the estimates contained in the program announcement. All estimates shall be based upon recent prices and appropriate climatological data for the customer's location. The price data will be taken from the survey conducted pursuant to 6 MCAR S 2.2303 A.2.

4031A-N

6 MCAR S 2.2303 Energy audits.

A. Validation of audit procedures.

1. Alternative audits. The agency shall develop a model program audit based on the calculation procedures in Appendix A for use by participating utilities and heating suppliers in the MECS. A participating utility or heating supplier may use an alternative audit if the alternative has been approved by the agency. The alternative audit will be approved if its results are within 20 percent of the results provided by the MECS audit. To determine this, the agency shall conduct five field

tests of the alternative audit on five representative residences of different sizes and ages. The results of these audits shall be reviewed by the agency andcompared to the results achieved by the MECS audit. If the alternative audit does not meet this test, any necessary changes may be made in the audits procedures and five additional audits may be conducted and reviewed.

2. Price information. On a semi-annual basis each covered utility shall survey local fuel prices and prices for materials and installation of program measures for use in audit calculations on a form provided by the agency. The results shall be sent to the agency for verification on the 15th day of January and July, starting on July 15, 1981.

3. Subcontracting audits.

a. Participating utilities and heating suppliers may subcontract with any auditor who has passed the certification exam pursuant to 6 MCAR S 2.2307, to perform the audits required by these rules. The subcontract may include an idemnification clause concerning liability incurred by the utility from the subcontractor's actions or the audit performed.

b. Whenever possible covered utilities shall, instead of performing the required audits with their own employees, subcontract with local auditors who:

(1) have passed the certification exam pursuant to 6 MCAR S 2.2307; and

(2) have (or whose sponsoring organization has) a demonstrated community involvement, or capacity to generate customer participation, in the area where the audits are to be performed. The criteria used to determine whether an auditor (or his or her sponsoring organization) has a demonstrated community involvement shall be whether the person, organization or group has a history of energy or related community service in the area where the audits are to be performed.

Notwithstanding the above, no covered utility shall be required to enter into a subcontract with an auditor if it reasonably believes that the quality of the auditor's work would not be equivalent to what the covered utility could perform or if the charge for performance by the auditor is not competitive with other auditors in the area, or comparable areas, with whom the utility has subcontracted, or with the cost of performance by the covered utility itself.

c. An auditor proposing to subcontract pursuant to 6 MCAR S 2.2303 A.3.b. may dispute a covered utility's refusal to subcontract by filing a complaint with the agency. After reviewing the complaint and receiving comments from both parties, the agency shall determine whether the refusal was proper under the criteria and requirements of 6 MCAR S 2.2303 A.3.b.

d. Any customer of a covered utility may request to have an audit performed by any auditor with whom the covered utility has subcontracted toperform audit services in the area in which the customer lives, pursuant to 6 MCAR S 2.2303 A.3.b. The covered utility may refuse the request only if:

1. the auditor refuses to accept the work; or

2. the covered utility has reason to believe that the auditor would be unable to complete the audit in accordance with the MECS rules or subcontract terms.

B. Scheduling of program audits.

1. Upon prior approval by the agency, a program audit may be offered in the program announcement by a participating utility or heating supplier on a geographically limited but otherwise nondiscriminating basis. Approval will be granted if the audit offer schedule allows every customer within the respective utility or heating supplier's service area an equal opportunity to receive a program audit, and if the audit offer schedule is consistent with 6 MCAR S 2.2303. In no case shall an expiration date be attached to a participating utility's audit offer. However, any covered utility which serves a city of the first class and offers audits on a geographic basis in that city must first offer the audits to customers in those neighborhoods that contain the largest number of people below the federal poverty guideline. If two or more covered utilities provide service to the same city of the first class, upon approval by the agency those utilities may enter into an agreement which provides that only one utility will offer the audits on the above priority basis. This agreement will not relieve either utility from responsibilities of offering audits to all eligible customers.

2. Each covered utility shall provide a program audit to a customer:

a. Within thirty (30) days of the customer's request if the audit offer is made on a geographically limited basis;

b. Within sixty (60) days of the customer's request if the audit offer is not made on a geographically limited basis.

3. Each participating utility and heating supplier shall submit to the agency, 45 days prior to the first offer of a program audit, a schedule which states when program audits will be offered and completed throughout the state.

4. Participating utilities and heating suppliers are prohibited from preconditioning a program audit upon the purchase or performance of any other audit.

C. Conducting the audit.

1. Each participating utility and heating supplier shall

upon request, provide to each customer a program audit which covers all energy conserving practices and all program measures. In each program audit, a state certified auditor shall determine which of the energy conserving practices would save energy in the residence, explain and emphasize the importance of such practices and recommend that they be performed before the installation of any program measure. The auditor shall then determine the applicability of each program measure pursuant to 6 MCAR S 2.2303 D.2. in that residence.

2. The auditor shall estimate energy savings and installation costs of each program measure using the calculation procedures in Appendix A or procedures approved pursuant to 6 MCAR S 2.2303. Furthermore, the auditor shall perform each of the following:

a. Take actual measurements or inspections of the building shell and of the space heating, space cooling, and water heating equipment;

b. Base economic calculations on the survey conducted pursuant to 6 MCAR S 2.2303 A.2. for local fuel prices, and local prices for materials and installation of program measures, and also, include in the calculations typical local climate data for the customer's location;

c. Base calculation procedures for active solar domestic hot water and space heating systems on those contained in the HUD Intermediate Minimum Property Standards Supplement, Solar Heating and Domestic Hot Water Systems 4930.2, 1977 Edition; and

d. Base any cost and savings estimate for any applicable furnace efficiency modification to a gas or oil furnace or boiler on an evaluation of the seasonal efficiency of such furnace or boiler. This seasonal efficiency shall be calculated on an estimated peak (tuned-up) steady state efficiency corrected for cycling losses. This shall be done as follows:

(1) For oil furnaces or boilers, the steady state efficiency shall be derived by a flue gas analysis of measured flue gas temperature and carbon dioxide content.

(2) For gas furnaces or boilers, the steady state efficiency shall be derived from manufacturer's design data. If the manufacturer's design data does not exist, then a flue gas analysis, as described in 6 MCAR S 2.2303 C.2.d. shall be done.

3. The auditor shall calculate the energy index for the residence using the procedures in Appendix A.

4. Each customer shall be required to sign a release form prior to an audit of a furnace which uses as its primary source of energy any fuel other than the fuel source sold by the participating utility or heating supplier which employs the

auditor. The release shall include the following statement:

"Since your home is heated by a source of fuel other than (identify the type of fuel supplier), you must sign this release form to allow us to audit your furnace. It will allow us to give you estimates of energy savings that may be available from making your heating appliances more efficient."

D. Technical criteria for calculating energy savings.

1. The following R-values shall be recommended during the program audit and be used during the calculation procedure:

a. Ceiling insulation R-44
b. (1) Wall insulation R-11
(2) Foundation insulation R-11
c. (1) Floor insulation R-19
(2) Rim joist insulation R-19

2. The following criteria shall be used to determine if an estimate of cost and savings must be given for the particular program measure:

Measure = Criteria

a. Replacement furnaces or boilers - The furnace is five (5) years or older and has a seasonal efficiency of less than 80 percent.

b. Flue opening modifications - The furnace combustion air is taken from a conditioned space.

c. Replacement central air conditioner - The building has a central air conditioner that is five (5) years or older.

d. Ceiling insulation - The present level of ceiling insulation is R-30 or less.

e. Wall insulation - There is no insulation in a substantial portion of the exterior walls and the building is not a mobile home.

f. Floor insulation.

(1) Floor - There is no insulation in the floor over an unconditioned space.

(2) Rim joist insulation - The rim joist is accessible.

g. Water heater insulation - The remaining useful life of the heater appears to be three years or greater and space is available around the water heater to install insulation.

h. Electric load management devices - The electric utility offers a residential rate which reflects any differences

in the utility cost of service between peak and off peak periods.

i. Clock thermostat - The residence has a thermostat or the existing furnace or central air conditioner is compatible with a clock thermostat.

j. Solar domestic hot water system - A site exists on or near the residence, which is free of major obstruction to solar radiation.

k. Passive solar direct or indirect gain glazing systems - The living space of the residence has either a south facing (+ or -45 degrees of true south) wall or an integral south facing (+ or -45 degrees of true south) roof, which is free of a major obstruction to solar radiation.

l. Heat reflecting and heat absorbing window or door material - The affected rooms of the residence are air conditioned and the cooling degree days for the region exceed 700.

m. Passive solar solaria/sunspace systems - The living space of the residence has a south-facing ground level wall, which is free of major obstruction to solar radiation.

n. Passive solar window heat gain retardants - The living space of the residence has south-facing (+ or -45 degrees of true south) window that is not shaded from summer sunshine.

o. Wind energy systems - The site has an estimated wind speed of greater than 10 mph and there is sufficient unrestricted access to the wind.

p. Active solar space heating - A site exists on or near the residence which is free of major construction to solar radiation.

3. Every program audit addressing solar domestic hot water and active solar space heating systems shall include the following information:

a. The square feet of the solar collector;

b. The solar collector characteristics, including glazing materials and other solar collector materials;

c. Any storage system needed, including the capacity of storage;

d. Any freeze protection needed;

e. The estimated percent of the water heating load to be met by solar energy;

f. Any physical connections needed with existing heating system;

g. Any site preparation needed; and

h. If the results are based on a simulation, the following disclosure or its equivalent:

"The energy cost savings estimates you receive are based on systems which may be different from the ones you purchase. Also, these estimates were not determined using actual conditions but by using simulated measurements. Therefore, the cost savings we have estimated may be different from the savings which actually occur."

4. Every program audit addressing passive solar space heating systems shall include the following information:

a. A general description and an illustration of the system;

b. The estimated percent of the maximum heating requirements of the residence that could be met by the system;

c. The approximate dimensions of the system;

d. The method employed by the system to store heat, including the heat capacity for heat storage; and

e. The disclosure provided in 6 MCAR S 2.2303 D.3.h.

5. Every program audit addressing wind energy device shall include the following information:

a. Installation cost estimates, based on the installation costs of a commercially available device with kilowatt ratings appropriate to the level of electricity consumed in the customer's residence;

b. The auditor's estimate of the average windspeed at the residence based on data available at the nearest wind measurement station;

c. The specifications of the device under consideration; and

d. Estimates of energy cost savings, based on average yearly wind speeds and the specification of the selected wind device.

E. Presentation of audit results.

1. Upon completion of the program audit the auditor shall provide all the following information on-site, in person, in writing to each customer:

a. An estimate of the total cost (materials and labor) of installation by a contractor expressed in a range of dollars, with a twenty (20) percent maximum range, of each applicable

program measure addressed in the program audit;

b. An estimate of the total cost of installation by the customer expressed in a range of dollars, with a twenty (20) percent maximum range, of each applicable program measure, addressed in the program audit. However, the auditor shall not provide an estimate to a customer of the cost of installation by the customer of replacement central air conditioners, wall insulation, furnace efficiency modifications, devices associated with load management techniques, or wind energy devices;

c. An estimate of the savings in energy costs expressed in a range of dollars, with a twenty (20) percent maximum range, which occur during the first year from installation of each applicable program measures addressed by the program audit;

d. An estimate of the payback period, measured in years, for the cost savings of each of the measures installed individually;

f. The following disclosure:

"The procedures used to make these estimates are consistent with the Minnesota Energy Agency criteria for residential energy audits. However, the actual installation costs you incur and energy savings you realize from installing these measures may be different from the estimates contained in this audit report. Although the estimates are based on measurements of your house, they are also based on assumptions which may not be totally correct for your household.";

g. An estimate of the annual normal maintenance costs, if any, of each applicable program measure; and

h. Sample calculations of the effect of the federal and state energy tax incentives on the cost to the customer of installing one applicable energy conservation program measure and one applicable renewable resource program measure.

2. The auditor shall also present the following information to the customer during, or upon completion of, the program audit:

a. An explanation of the arrangement services, post-installation inspection requirement and consumer grievance procedures as established in 6 MCAR SS 2.2304, 2.2306, and 2.2308, with a brief description of how the customer can qualify for and use such services;

b. A copy of the most recent master list of contractors, lenders and suppliers for the region, as issued by the agency;

c. An explanation of the benefits of and eligibility requirements for the Weatherization Assistance Program for Low

Income Person, 10 Code of Federal Regulations, section 440 (1980);

d. If the audit is of a rental property, a separate list of those improvements necessary to bring the residence in compliance with Minnesota Statutes, section 116H.129, subdivision 3 (1978) and a statement describing remedies available to tenants for violations of those standards. If the presentation is not made to the tenant, the auditor shall give or mail a copy of this information to the tenant.

3. If the eligible customer is not at his or her residence at the time scheduled for presentation of the audit results or otherwise declines an in person presentation, the auditor is relieved of any obligation to deliver the results in person. In this case, the results shall be mailed to the customer.

F. Prohibitions.

1. An auditor shall not recommend or discuss any supplier, contractor or lender to any customer. The auditor may state whether the participating utility or heating supplier by whom he or she is employed installs or finances the sale or installation of the program measures, but shall not recommend that service.

2. The auditor shall not exclude any applicable program measures in the presentation of the audit to the customer.

3. An auditor shall not estimate or discuss with the customer the costs or energy cost savings of installing any product which is not defined as an energy conserving practice or a program measure.

4. The auditor shall not recommend fuel switching.

G. Required disclosure. The auditor shall provide the customer with a written statement of any substantial interest which the auditor or the auditor's employer has, directly or indirectly, in the sale or installation of any program measure.

4031A-N

6 MCAR S 2.2304 Arrangement services.

A. Financing arrangement service. Each participating utility and heating supplier shall provide an arrangement service for financing the supply or installation of any program measure, upon request of a customer. This financing arrangement service shall consist of all the following:

1. Providing the customer with the most recent master list of lenders, and an agency compiled list of other financial programs offered by federal, state or local governments, and explaining these financing programs to the customer;

2. Providing the customer with a standard credit application and offering to assist the customer with a standard credit application; and

3. Providing a service in order to further assist and answer any additional questions of the customer.

B. Installation arrangement service. Each covered utility shall provide an arrangement service for the installation of any program measure, upon request of a customer.

1. For audited homes this installation arrangement service shall consist of:

a. Providing a choice to the customer of either the most recent master list of contractors willing to install measures within the price range that the auditor specifies, or providing the most recent master list of contractors; and

b. All the following:

(1) Providing up to three (3) standard bid forms per measure recommended by the auditor and providing the customer with a choice of having the form filled in by either the customer or the auditor.

(2) Supplying the customer with written information on recommended measures to be installed; and

(3) Providing a service in order to further assist and answer any additional questions of the customer regarding the arrangement process or the actual bids, when received.

2. For non-audited homes, this installation arrangement service shall consist of all the following:

a. Providing the master list of contractors;

b. Providing up to three (3) standard bid forms to the customer;

c. An offer to supply the customer with written information on various measures; and

d. Providing a service in order to further assist and answer any additional questions of the customer regarding the arrangement process or actual bids, when received.

C. Response time for services. The participating utilities and heating suppliers shall provide the services described in 6 MCAR S 2.2304 A. and B. at the time of the energy audit, for a customer requesting an energy audit. If an audit is not performed, the service shall be provided within twenty (20) days of a customer's request.

D. Prohibitions.

1. Participating utilities, heating suppliers and audit subcontractors shall not recommend any particular contractor, lender, supplier or program measure although participating utilities, heating suppliers and audit subcontractors may inform customers of their own installation and supply services if they are on the most recent master list.

2. Participating utilities and heating suppliers shall not arrange for financing or installation with any contractor, lender or supplier not on the most recent master list.

3. Participating utilities and heating suppliers shall not provide arrangement services for measures which are not approved program measures.

E. Standardized bid forms. The agency shall develop a standardized bid form for use pursuant to 6 MCAR S 2.2304. This form shall be the only one used by the participating utilities and heating suppliers for arranging installation under MECS.

4031A-N

6 MCAR S 2.2305 Master list of contractors, lenders and suppliers.

A. Issuance of lists.

1. The agency shall prepare and maintain the master list of the MECS suppliers, contractors and lenders. The agency shall provide notice through trade organizations to suppliers, contractors and lenders of the procedures for inclusion on the master list for the MECS program.

2. Application forms and listing criteria for businesses wishing to be on the master list shall be available from the agency, participating utilities, and heating suppliers. These forms and listing criteria shall be made available at the time of publication of notice of procedures for inclusion on the master list.

3. Within sixty (60) days following the receipt of an application for inclusion on the master list, the agency shall evaluate the application pursuant to 6 MCAR S 2.2305 B. and either place the business on the master list or inform the business, in writing, of the reasons for its exclusion from the list.

4. Every thirty (30) days after the publication of the first master list, the agency shall issue revisions to the master list which include any additions, deletions or information changes. These revisions shall be issued to all participating utilities and heating suppliers. Every six (6) months, a new master list shall be published.

B. Eligibility requirements.

1. To be eligible for listing, contractors, lenders and

suppliers must enter into a written agreement with the agency.

a. Contractors shall agree in writing with the agency to meet the following requirements for each arranged installation:

(1) Comply with the applicable DOE installation standards found in 10 Code of Federal Regulations, section 456, subparts G, I and install only measures that are labeled as meeting DOE material standards;

(2) Install only measures that are covered by the measures warranty (except for caulking and weatherstripping);

(3) Enter into a written contract with each customer detailing the job to be performed, its costs and a statement that the installation will be in compliance with all applicable DOE material and installation standards. This contract shall be in simple language;

(4) Warrant in the contract that any defect in design or manufacture of materials or installation found within one year from the date of installation shall be remedied without charge and within two (2) weeks, except that where the defect is in a manufactured item a remedy shall be within two (2) weeks after the manufactured item is available to the contractor or supplier;

(5) Maintain comprehensive general liability insurance covering:

(a) bodily injury:	$100,000 per person
	$300,000 per occurrence
(b) Property damage:	$ 50,000 each occurrence
	$100,000 aggregate; and

(6) Comply with all applicable federal, state and local laws;

(7) Participate in good faith in the conciliation conference when a complaint is made by a customer;

(8) Hold harmless from liability the participating utility or heating supplier in any contract between contractor and customer when the contractor is not a participating utility or a heating supplier. However, this hold harmless agreement shall apply only where any loss occurs due to the negligence of the contractor or supplier and/or materials supplied by the contractor or supplier and shall not apply to any loss resulting from the negligence of or the materials supplied by the participating utility or heating supplier; and

(9) Agree to notify the MECS inspection agency at the completion of the installation pursuant to 6 MCAR S 2.2306.

b. Suppliers shall agree in writing with the agency to meet the following requirements for each customer:

(1) Supply program measures which meet applicable DOE material standards;

(2) Provide, at a minimum, to any person who purchases a measure from the supplier, a warranty in writing that the person shall be entitled to obtain, within a two-week period after notice by the customer to the supplier and at no charge, appropriate replacement parts or materials for those measures found to be defective within one year from the date of purchase due to a defect in materials, manufacture or design.

(3) Comply with all applicable federal, state and local laws;

(4) Have a method for informing customers that the supplier carries products which are program measures, that these products have a measures warranty and are labeled as meeting the DOE material standards;

(5) Participate in good faith in the conciliation conference when a complaint is made by a customer.

c. Lenders shall agree in writing to meet the following requirements for each arranged financing.

(1) Not to take a security interest in real property that is used as a residence unless the customer acknowledges in writing that he or she is aware of the consequence of default on the loan;

(2) Permit a rebate on unearned finance charges and impose no penalities if a customer prepays a loan (either voluntarily or as a result of default). When prepayment is the result of default, the rebate shall be computed from the day of acceleration;

(3) Comply with all applicable federal, state and local laws; and

(4) Participate in good faith in the conciliation conference when a complaint is made by a customer.

2. Disclosure of unresolved complaints. All businesses must inform the agency in their application for listing of the existence of any unresolved complaints against that business on file with the Consumer Division of the Minnesota Attorney General's Office or the Office of Consumer Services. Failure to report this information will result in exclusion from the master list. The existence of three or more unresolved complaints against an applicant on file with the above agencies involving, but not limited to, the following subject matter shall result in exclusion from the master list;

a. Misrepresentation of materials used in installation;

b. Improper installation of materials, based on manufacturer's or other standard installation procedure; or

c. False or misleading claims concerning energy savings to be produced by the measure.

C. Removal from the master list.

1. Any supplier, lender or contractor shall be removed from the master list for violation of either the eligibility requirements in 6 MCAR S 2.2305 B. or the contract between the lender, contractor or supplier and agency as required in the same section.

a. Violations shall be reported to the agency by the post-installation inspectors and the mediators of consumer complaints. The post-installation inspectors and mediators shall also report to the agency whether the violation has been corrected or not, two weeks after the initial report of this violation.

b. Within one (1) week after the agency receives a report of violation, the agency shall send written notice to the contractor, lender, or supplier notifying the business of the reported violation. The contractor, lender, and supplier shall correct the violation within two weeks of mailing of the notice or within one week, send to the agency a written explanation as to why it is not a violation. The agency shall review the letter and the report of the inspector and will notify the contractor of its decision.

c. If the contractor, lender or supplier fails to correct the violation within two weeks after it has received notice of the agency's decision that a violation exists, it shall be temporarily delisted. This temporary delisting shall be in effect for thirty (30) days. The agency shall then send a second notice to the contractor, lender, or supplier explaining the temporary and permanent delisting procedures and invite a written response from the business prior to the end of the thirty (30) day period. A copy of this notice shall be sent to all participating utilities and heating suppliers. If the violation concerns a contractor, the contractor may see the records of the reported violation. If no resolution is made within thirty (30) days of mailing of the notice the contractor, lender or supplier will be permanently delisted.

2. Any supplier, lender or contractor permanently removed from the master list shall not be relisted for a least six (6) months after being so delisted. To be relisted, all violations under the program must be corrected and inspected and all other listing requirements must be met.

403AN

6 MCAR S 2.2306 Post-installation inspections.

A. Inspection procedures.

1. Each covered utility shall arrange to conduct the post-installation inspections of its customers required in this section. By June 15, 1981 each covered utility shall submit to the agency, for approval, its plans for conducting the inspections and for coordinating these inspections with the agency and the Office of Consumer Services.

2. No person shall conduct or perform an inspection unless he or she has been qualified by the agency, pursuant to 6 MCAR S 2.2307 C.

3. No inspector shall conduct an inspection if he or she has financial interest in the contractor whose work is to be inspected.

4. During the inspection, the inspector shall determine whether:

a. The installation conforms with DOE installation standards:

b. In the case of a consumer complaint, the complaint is justified.

5. An inspection report shall be developed by the agency. The inspector shall use this report to certify that the installation meets all DOE installation standards. Within five (5) days of the inspection, the inspector shall report to the customer, the contractor and the agency whether or not any violations of the installation standards were found. If the agency determines that a violation exists the contractor shall correct any violation within two (2) weeks of receipt of the report and shall arrange for a reinspection of the installation within one week after correction.

B. Mandatory inspections. All installations of the following arranged measures shall be inspected within one week of installation:

1. Flue opening modifications;

2. Electric or mechanical ignition systems;

3. Wind energy devices;

4. Solar domestic hot water systems; and

5. Active solar space heating systems.

C. Random inspections.

1. Four of the first ten arranged installations made by each contractor of each of the following program measures shall be inspected:

a. Ceiling insulation;

b. Floor insulation; and

c. Wall insulation.

2. Ten percent of all utility arranged installations of each program measure listed in 6 MCAR S 2.2306 C.1. shall be inspected each year. The inspections required in 6 MCAR S 2.2306 C.1. shall count toward the fulfillment of this requirement.

3. At least one inspection shall be conducted each year of the arranged installations of the following measures for each contractor on the master list:

a. Ceiling insulation;

b. Floor insulation;

c. Wall insulation;

d. Water heater insulation;

e. Storm or thermal windows;

f. Storm or thermal doors;

g. Replacement burner (oil); and

h. Replacement solar swimming pool heaters.

Before April 1, 1982, the utility, or its designated inspection agency, shall determine whether all listed contractors have been inspected at least once by that date. Any contractor whose work has not been inspected by that time shall then be inspected. An additional inspection shall be required for any contractor whose installation has been found in violation of these rules. This review shall be done annually thereafter.

D. Inspections as a result of consumer complaints.

1. Within two (2) weeks of the receipt by the Office of Consumer Services of any customer complaint concerning arranged installation of the measures listed in 6 MCAR S 2.2306 B. and C.3., an inspection shall be conducted to determine the existence of any violations of these rules. Within five (5) days after the inspection, a copy of the inspection report shall be sent to the Office of Consumer Services.

2. All inspections conducted as a result of a consumer complaint shall be counted toward the fulfillment of the inspection requirement in 6 MCAR S 2.2306 C.1., 2. and 3.

4031A-N

6 MCAR S 2.2307 Qualification procedures for auditors and inspectors.

A. Prohibition of discrimination. No person shall be denied the right to become an auditor or inspector on the basis of race, religion, nationality, creed, sex, age or sexual preference.

B. Auditors.

1. Training.

a. No person shall be eligible for certification pursuant to 6 MCAR S 2.2307 B.2., unless he or she has first participated in a training course which has been approved by the agency and which covers the subject matter tested in the auditors' certification examination.

b. Any present auditor with six (6) months experience who has completed twenty-five (25) audits, or any registered engineer or any architect shall be permitted to take an agency approved orientation session, in lieu of the requirements of 6 MCAR S 2.2307 B.1.a.

c. Two months prior to the first public offer of the audit, the participating utility and heating supplier shall submit to the agency for approval a plan to develop and administer a program of in-service training for the continuing education of certified auditors. The agency shall approve a plan if it reviews and updates the material listed in 6 MCAR S 2.2307 B.2.b., provides the auditors with additional technical information and the program measures and audit techniques and reviews the communications skills needed for the interaction with the customer.

2. Certification.

a. No person shall participate in the MECS program as an auditor, unless he or she has first passed a certification examination conducted by the agency.

b. The certification examination shall test for the following qualifications:

(1) A general understanding of the three types of heat transfer and the effects of temperature and humidity on heat transfer;

(2) A general understanding of residential construction terminology and components;

(3) A general knowledge of the operation of the heating and cooling systems used in residential buildings, including the need and provision for combustion air;

(4) A general knowledge of the different types of

each applicable program measure, of the advantages and disadvantages and applications of each, and of the DOE installation standards;

(5) The capability to conduct the MECS energy audit including

(a) A working knowledge of the energy conserving practices defined in this plan,

(b) The ability to determine the applicability of each of the program measures, and

(c) A proficiency in the auditing procedures for each applicable program measure established in 6 MCAR S 2.2303.

(6) A working ability to calculate the steady state efficiency of furnaces or boilers;

(7) An understanding of the nature of solar energy and its residential applications including:

(a) Insulation,

(b) Shading,

(c) Heat capture and transport, and

(d) Heat transfer for hot water;

(8) An understanding of the nature of wind energy and its residential applications including:

(a) Wind availability,

(b) Effects of obstruction,

(c) Wind capture,

(d) Power generation, and

(e) Interfaces with residential and utility power line and

(9) A working knowledge of building and fire codes related to the installation and safety of wood burning appliances.

c. These examinations shall be conducted by the agency and offered at the following times;

(1) Within two (2) days after the completion of each state-sponsored training course or orientation session,

(2) Once a month, until February 1982, with a minimum of two examinations per year afterward.

d. Certification shall be valid for one year.

e. After one year, each auditor must be recertified. Recertification procedures shall be as follows:

(1) One month prior to the date of certificate expiration, the auditor shall attend a recertification course, as required by the agency. Attendance in this course shall recertify the auditor for the next year.

(2) The recertification course requirement for auditors shall be eliminated for any particular year, if the agency determines that no changes were made in the MECS program that year. Certification shall then be automatically renewed.

(3) This recertification shall occur annually, for the life of the program.

f. Any person who is certified to conduct residential conservation service audits in another state shall not be required to take the training course established in 6 MCAR S 2.2307 B.1., but shall be required to pass the Minnesota certification examination.

C. Inspectors.

1. Qualifications to conduct random inspections.

a. No person shall participate in the MECS program as a general inspector unless he or she has been qualified. To become qualified each person must first take a training course which has been approved by the agency.

b. The training course shall cover the following subject matter

(1) The measures listed in 6 MCAR S 2.2306 C.3;

(2) Methodology to evaluate whether the installation of a measure conforms to DOE installation standards;

(3) The MECS recommended standards for R-values for each insulation measure, pursuant to 6 MCAR S 2.2303 D.1.

c. Each covered utility shall submit to the agency for approval a plan for the training of general inspectors, as required in 6 MCAR S 2.2307 C.1.a, by June 15, 1981. The agency shall approve a plan if it ensures coverage of the subject matter pursuant to 6 MCAR S 2.2307 C.1.b.

d. Each covered utility shall notify the agency of each person qualified as a general inspector within two weeks after that person has been qualified.

2. Qualifications to conduct mandatory inspections.

a. No person shall participate in the MECS program as a specialized inspector unless he or she has been qualified. To become qualified each person must first take training courses which have been approved by the agency. Each person shall only be qualified to inspect those measures for which that person has been trained.

b. The training courses shall cover:

(1) The following subject matter concerning flue opening modifications and electrical or mechanical ignition systems:

(a) Applicable state and federal codes and regulations

(b) An understanding of gas appliances used in residential buildings, including basic system requirements, components and operation, and an understanding of potential malfunctions of gas appliances;

(c) An understanding of gas appliance controls and safety controls, including automatic gas valves, limit switches, and thermostats;

(d) An understanding of basic furnace and boiler circuitry, including electrical components, and the use of appropriate meters for testing gas appliance circuitry;

(e) An understanding of the purpose, general structure, and operational systems of vent dampers including the advantages and disadvantages of each type; an ability to service and install electrical, mechanical, and thermal vent dampers;

(f) An understanding of the purpose, basic system requirements and components, and operation of electrical or mechanical ignition systems; an ability to service and install the system, an understanding of schematic diagrams and potential malfunctions of the system;

(g) An understanding of the types of vents, draft diverters, and heat transfer components; an understanding of venting theory including ventilation air, dilution air, vent sizing, and venting installation procedures; an ability to perform leak and spillage checks, and to use instrumentation to measure carbon monoxide and carbon dioxide emissions from gas appliances;

(h) An understanding of proper combustion and proper flame characteristics and gas piping procedures; and

(i) An understanding of the methodology to evaluate whether the installation of the measures conform with DOE installation standards.

(2) The following subject matter concerning wind

energy devices:

(a) An understanding of the structural characteristics of wind energy devices;

(b) An understanding of national and local codes governing the electrical interconnection between the wind energy device and the residential and/or utility electrical system; and

(c) Methodology to evaluate whether the installation of a wind energy device conforms with DOE installation standards.

(3) The following subject matter concerning solar domestic hot water and active solar space heating systems:

(a) The residential construction methods employed in the region and the characteristics of structures that would preclude a safe and enduring solar installation;

(b) The applicable provisions of the HUD (Intermediate Minimum Property Standards Supplement), Solar Heating and Domestic Hot Water Systems 4930.2, 1977 Edition.

(c) The design, operation, installation and degradation of residential hot water and heating systems with which the solar devices will interconnect; and

(d) The connection of the solar devices into the existing residential systems, including testing for satisfactory performance of the solar devices and the modified system, according to the requirements of the HUD (Intermediate Minimum Property Standards Supplement), Solar Heating and Domestic Hot Water Systems 4930.2, 1977 Edition.

(e) Methodology to evaluate whether the installation of a solar domestic hot water or active solar space heating system conforms with DOE installation standards.

c. Each covered utility shall submit to the agency for approval a plan for the training of specialized inspectors as required in 6 MCAR S 2.2307 C.2.a. by June 15, 1981. The agency shall approve a plan if it ensures coverage of the subject matter pursuant to 6 MCAR S 2.2307. C.

d. Each covered utility shall notify the agency of each person qualified as a specialized inspector, within two weeks after that person has been qualified.

403A-N

6 MCAR S 2.2308 Consumer grievance procedures.

A. Conciliation conference.

1. OCS shall be responsible for the mediation of customer complaints against lenders, suppliers, contractors, and

participating utilities and heating suppliers which are acting as lenders, suppliers, or contractors under the MECS program.

2. Before utilizing the OCS mediation service, customers shall be directed by the participating utilities and heating suppliers or OCS to first bring their complaint to the attention of the contractor, supplier, lender, or participating utility or heating supplier which is acting as a lender, supplier or contractor.

3. Within three working days of receipt of a written MECS customer complaint, an OCS mediator will contact the customer and the party complained against to ascertain their positions in regard to the complaint. If necessary, the OCS mediator shall conduct a conciliation conference between the parties in person or by phone.

4. OCS shall report to the agency, the name of any lender, supplier or contractor which, after two weeks notice from OCS has failed:

a. To respond to attempts to contact it; or

b. To actively participate in good faith in the mediation process within 30 days of initial contact; or

c. To correct program violations or take remedial measures agreed to in mediation within two (2) weeks after agreement.

B. Annual report. The Office of Consumer Services shall submit to the agency by May 15 each year, up to and including May 15, 1986, a report containing the following information for the twelve (12) month period ending the preceeding April:

1. The number and nature of complaints against suppliers, contractors and lenders which have been handled through the conciliation conference; and

2. The number and function of employees within OCS assigned to the MECS program.

4031A-M

6 MCAR S 2.2309 Customer payments.

A. Customer billing.

1. Each covered utility and heating supplier, when billing the customer for any costs it incurred under the MECS, including arranged loans, shall identify and list the charges separately on the billing for the charges. The customer shall be allowed to include payment for those charges with payment for the utility bill.

2. When receiving a payment from a customer that includes payment for utility service or fuel and payment for any MECS

service, the covered utility and heating supplier shall credit the payment to utility service or fuel first, and to credit the remainder to MECS program charges, unless the customer specifies otherwise.

B. Loan payments.

1. If the lender agrees, a loan arranged by a covered utility pursuant to 6 MCAR S 2.2304 A. may be repaid by the customer as part of the periodic utility bill. The utility may recover from the lender the cost incurred by the utility in carrying out this repayment.

2. If the lender agrees, any loan for the purchase or installation of program measures made or arranged by a heating supplier shall be subject to the following requirements:

a. The heating supplier shall allow the customer to repay the loan over a period of not less than three years, unless the customer chooses a shorter repayment schedule. The heating supplier may impose a minimum periodic payment of five dollars ($5).

b. A lump-sum payment of outstanding principal and interest may be required by the lender upon default in payment by the customer.

c. No penalty shall be imposed by a heating supplier or a lender for payment of all or any portion of an outstanding loan prior to the date that such payment would be due.

C. Termination of service. No participating utility or heating supplier shall terminate or restrict utility or fuel service upon customer default or nonpayment of any MECS program charges and loans.

4031A-N

6 MCAR S 2.2310 Utility supply, installation and financing.

A. Survey of utilities.

1. Each covered utility which supplies or installs any program resource measure:

a. Shall be listed as a supplier or contractor pursuant to 6 MCAR S 2.2305, in the same manner and subject to the same requirements as any other supplier or contractor;

b. Shall charge fair and reasonable prices for the supply or installation of program measures;

c. Shall not discriminate unfairly among eligible customers in undertaking the above described activities.

2. Beginning in June 1981, the agency shall conduct an annual survey of prices charged for the supply or installation

of goods and services comparable to those the covered utilities supply or install. If the agency determines that the prices charged by covered utilities for the supply and installation of program measures are significantly different from the typical local prices and interest rates disclosed in the agency's survey, or the agency receives complaints from contractors or suppliers regarding the prices, the agency shall notify the covered utility of disparity in prices and request a written justification with supporting documentation. This documentation with copies of the survey shall then be sent to the Minnesota Attorney General's Office, Anti-Trust Division.

B. Financing. Whenever a covered utility undertakes to finance its own lending program for program measures through financial institutions, the utility shall seek such funds from institutions located in the area covered by the lending program.

However, if the covered utility determines that this limitation is disadvantageous to its customers, or not feasible, the limitation shall not apply.

403A-N

6 MCAR S 2.2311 Reporting and recordkeeping.

A. Annual report. Each covered utility and heating supplier shall submit to the agency by May 15 of each year up to and including May 15, 1986, a report containing the following information for the twelve (12) month period ending the preceding April:

1. The approximate number of customers in its system and, if available, the percentage of that number for whom the covered utility or heating supplier provides the primary heating fuel;

2. A copy of the program announcement;

3. The number of requests for each of the following services as well as the number of requests fulfilled:

a. Program audit,

b. Installation arrangement,

c. Financing arrangement, and

d. Billing service for repayment of loans;

4. The number of installations of program measures installed by, supplied by, or financed by the covered utility or heating supplier;

5. The number and results of post-installation inspections, including description of violations;

6. The number and function of employees assigned to the program; and

7. The costs incurred, including that portion of the cost paid by individual customers for services received and that portion paid by all ratepayers, in providing each type of the following services:

a. the program audit,

b. installation arrangement,

c. loan arrangement, and

d. post-installation inspections.

B. Recordkeeping requirements.

1. Each covered utility and heating supplier shall keep the following records which shall be kept for the periods indicated:

a. For five (5) years from the date of the program audit, the name and address of each customer who receives a program audit;

b. For five (5) years from the date of the program audit, a copy of the data collected and the estimated cost and savings information for each customer who receives a program audit;

c. For five (5) years from the date of the request, each request for a furnace audit;

d. For five (5) years from the date of the arrangement, the name and address of each customer for whom installation or financing of measures was arranged; and

e. For two (2) years from the date of the program audit, the total amount and cost of fuel purchased for the period of 12 months prior to and 12 months following each audit. This information is only required for those utilities and heating suppliers which supply the primary heating fuel to the customer.

2. This information shall be made available to the agency upon request.

1031A-N

6 MCAR S 2.2312 Heating suppliers.

A. Any heating supplier may apply to the agency to participate in the MECS program.

B. Any heating supplier or association of heating suppliers may apply to the agency for a waiver of any requirement of this plan, except those listed in 6 MCAR S 2.2312 C. All waivers that do not substantially limit either the delivery of services described in this plan or the conservation potential of the

program shall be approved by the agency.

C. The following requirements of these rules shall not be waived:

1. The calculation procedures in Appendix A and the ban on advertising in program announcements offered, as established in 6 MCAR S 2.2302 A.2.b.

2. The reporting and recordkeeping requirements, pursuant to 6 MCAR S 2.2311.

3. The on-site energy audit, pursuant to 6 MCAR S 2.2303.

4. The arrangement service for the financing of program measures, pursuant to 6 MCAR S 2.2304 A., C., and D.

5. The distribution of master lists developed, pursuant to 6 MCAR S 2.2305.

6. The offer of the consumer complaint process, pursuant to 6 MCAR S 2.2308, and

7. The exclusive use of certified auditors, pursuant to 6 MCAR S 2.2307.

D. Any participating heating supplier may voluntarily withdraw from this program after completing all outstanding services offered to its customers.

E. A participating heating supplier which does not provide MECS services or does not comply with the requirements listed in 6 MCAR S 2.2312 C., shall be excluded by the agency from participating in the MECS program.

4038A-10

6 MCAR S 2.2313 Nonregulated utility program.

A. Any nonregulated utility may apply to the agency for inclusion in the MECS program.

B. A nonregulated utility or an association of nonregulated utilities may apply for a waiver of any requirements in this rule, except as noted in 6 MCAR S 2.2313 C. All waivers that do not substantially limit either the delivery of services listed or the conservation potential of the program shall be approved.

C. The following requirements of these rules shall not be waived:

1. The on-site program audit, pursuant to 6 MCAR S 2.2303.

2. The arrangement services for the financing of program measures, pursuant to 6 MCAR S 2.2304 A., C., and D.

3. The distribution of master lists developed pursuant to

6 MCAR S 2.2305.

4. The offer of the consumer complaint process, excluding post-installation inspections, pursuant to 6 MCAR S 2.2308.

5. The exclusive use of certified auditors, pursuant to 6 MCAR S 2.2307.

D. The following requirements of this rule shall not be required for nonregulated utilities:

1. Program promotion, pursuant to 6 MCAR S 2.2302.

2. Post-installation inspection services, pursuant to 6 MCAR S 2.2306.

3. Customer payments, 6 MCAR S 2.2309 A. and B.

4. Reporting and recordkeeping, pursuant to 6 MCAR S 2.2311.

E. Any participating nonregulated utility may voluntarily withdraw from this program after completing all outstanding services offered to its customers.

F. A participating nonregulated utility which does not comply with the requirements listed in 6 MCAR S 2.2313 C. shall be excluded by the agency from participating in the MECS program.

APPENDIX-A

Appendix A

Procedures for Calculating Energy Savings
for Program Measures and Practices

The following procedures shall be the basis for calculating energy savings for program measures and practices for the program announcements.

A. Energy conserving measures

1. General energy savings equation. The following equation will be used to calculate energy savings for the practices and measures listed below, except for those that are already termed in E.

Equation #1. $\Delta E = \frac{\Delta H \times D \times 20.4c}{N \times V}$

where

ΔE = the quantity of annual energy savings in the appropriate energy units, e. g. hundreds of cubic feet of natural gas, gallons of fuel oil, or kilowatt hours of electricity.
ΔH = the difference in design heat loss per degree Fahrenheit between the improved condition and the existing condition for infiltration and/or thermal transmission. Equations for calculating H are listed in subsequent subsections.
D = the normalized annual degree days as published by the National Oceanic and Atmospheric Administration (NOAA).
N = the seasonal operating efficiency of the heating system.
V = the heating value of the fuel type, consistent with ΔE and ΔH.

2. Caulking

Equation #2. $\Delta H = .018 \times I \times Vol$

where

I = change in infiltration rate in air changes per hour
Vol = volume of heated space in cubic feet

3. Weatherstripping
Use equation #2

4. Furnace efficiency modifications

a. Replacement furnaces or boilers.

Equation #3. $\Delta E = E_h \left(1 - \frac{N_o}{N_1}\right)$

b. Furnace replacement burner. (ΔE is given as a range)

Equation #4. Low estimate of $\Delta E = .10E_h$
High estimates of $\Delta E = .18E_h$

c. Flue opening modifications. (ΔE is given as a range)

Equation #5. Low estimate of $\Delta E = .07E_h$
High estimate of $\Delta E = .10E_h$

d. Install electronic ignition system

(1) If pilot is turned off during the summer.

Equation #6. $$\Delta E = \frac{3600F}{V}p$$

(2) If pilot is left on in the summer.

Equation #7. $$\Delta E = \frac{7300F}{V}p$$

where

E_h = total annual energy used for space heating, in units of fuel.
N_o = the seasonal operating efficiency of the existing heating system.
N_1 = the seasonal operating efficiency of the proposed heating system.
F_p = rate at white pilot uses energy, in Btu hours. (Typically 800 to 1000 Btu per hour).
V = heating value of the fuel type in Btu per unit of fuel.

5. Replacement central air conditioner

Equation #8. $$\Delta E = E_c \left(1 - \frac{PSE}{NSE}\right)$$

where

E_c = annual energy used by existing central air conditioner, in units of fuel.
PSE = present seasonal efficiency.
NSE = new (proposed) seasonal efficiency.

6. Ceiling insulation

Equation #9. $$\Delta H = \left(\frac{1}{R_o} - \frac{1}{R_1}\right) A$$

where

R_o = total R-value in present condition.
R_1 = total R-value of proposed condition.
A = area for which additional insulation is being proposed.

7. Wall insulation
Use equation #9 for above grade walls.

8. Floor insulation
Use equation #9.

9. Duct insulation

Equation #10. $$\Delta E = \frac{(\frac{1}{R_o} - \frac{1}{R_1})(T_2 - T_1)A \times HRS}{N \quad V}$$

where

R_o = the total R-value of the ducts before improvement.
R_1 = the total R-value of the ducts after improvement.
T_2 = average temperature of air inside ducts during an on cycle of the heating system.
T_1 = average temperature of the unconditioned space the ducts pass through.
A = duct area for which insulation is proposed.
HRS = number of hours the heating system operates in a heating season.
N = seasonal operating efficiency of the heating system.
V = heating value of fuel in Btu per unit of fuel.

10. Pipe insulation
Equation #11. $$\Delta E = \frac{(Q_1 - Q_o)\ L \times HRS}{NV}$$

where

Q_1 = heat loss in Btu/hr. ft. before improvement
Q_o = heat loss in Btu/hr. ft. after improvement
L = length of uninsulated pipes in unconditioned space.
HRS = number of hours the heating system operates in a heating season.
N = seasonal operating efficiency of the heating system.
V = the heating value of fuel in Btu per unit of fuel.

11. Water heater insulation
a. If water heater is in an unconditioned space.

Equation #12. $$\Delta E = \frac{8760A\ (\frac{1}{R_o} - \frac{1}{R_1})\ (T_w - T_a)}{N_r V}$$

b. If water heater is in a conditioned space.

Equation #13. $\Delta E = \dfrac{H \times A \times \left(\frac{1}{R_o} - \frac{1}{R_1}\right) (T_w - T_a)}{N_r V}$

where

R_o = total R-value of the water heater before improvement.
R_1 = total R-value of the water heater after improvement.
T_w = hot water temperature.
T_a = average air temperature of area surrounding temperature of area surrounding water heater.
N_r = recovery efficiency of water heater.
V = heating value of fuel type in Btu per unit of fuel.
H = number of hours per year that the outside temperature is above 65° F.

12. Storm and thermal windows
Equation #14. $\Delta H = (U_o - U_1) \times A$

where

U_o = the U-value of the existing window assembly.
U_1 = the U-value of the proposed window assembly.
A = the area of the window assembly.

13. Storm and thermal doors
Use equation #14 where:

U_o = the U-value of the existing door assembly.
U_1 = the U-value of the proposed door assembly.
A = the area of the door assembly.

14. Heat reflective and heat absorbing window or door material.

Equation #15. $\Delta E = \dfrac{A \times F_{ss} \times F_{es}}{N_{ac}}$

where

A = area of glazing
F_{ss} = summer shading factor
F_{es} = glazing orientation factor
N_{ac} = seasonal efficiency of the air conditioning system.

15. Load management. Each utility offering such system will provide ΔE according to the particular system that the utility offers.
16. Clock thermostats. Energy savings will be given for

a single 8 hour night setback.

Equation #16a. $\Delta E = .07E_h$ for 5° F setback
Equation #16b. $\Delta E = .10E_h$ for 10° F setback
Equation #16c. $\Delta E = .11E_h$ for 15° F setback

where

E_h = total annual energy used for space heating, in units of fuel.

17. Solar domestic hot water
Equation #17. $\Delta E = SSF \times E_{hw}$

where

SSF = solar saving fraction = fraction of hot water supplied by the solar system. (Target SSF = .7)
E_{hw} = annual energy used for heating domestic hot water, in millions of Btus.

18. Passive solar systems

a. Direct gain glazing, indirect gain-water well storage, indirect gain -- trombe wall storage. Energy savings for 100 square feet of double glazing with R-8 night insulation: (ΔE is given as a range)

Equation #18. $\Delta E = \frac{10 \times PSF \times F_o}{N}$ High estimate

$\Delta E = .6 \times$ High estimate Low estimate

b. Indirect gain-thermosiphon air panel
Energy savings for 100 square feet of panels:

Equation #19. $\Delta E = \frac{3.5 \times PSF \times F_o}{N}$ High estimate

$\Delta E = .7 \times$ high estimate Low estimate

c. Sunspace systems
Energy savings for 100 square feet of vertical double glazing:

Equation #20. $\Delta E = \frac{5 \times PSF \times F_o}{N}$ High estimate

$\Delta E = .6 \times$ High estimate Low estimate

where

ΔE is in million of Btu.
PSF = prime solar fraction, estimated by auditor.
F_o = orientation factor, from tables

N = heating system season efficiency

d. Window heat gain retardants
Same as equation #14

19. Wind energy devices

a. Systems providing utility grade power that can be sold to the electric utility when the system provides excess power. A system will be chosen with an Annual Wind System Output (AWSO) equal to one half the current annual electric use.

Equation #21a. Low estimate of ΔE = .8 AWSO
High estimate of ΔE = 1.2 AWSO

b. Systems providing variable voltage power for heating use only.
A system will be chosen with an Annual Wind Systems Output (AWSO) equal to one half of the annual heat supplied by the space heating system.

Equation #21b. Low estimate of ΔE = .8 AWSO
High estimate of ΔE = 1.2 AWSO

where

AWSO = annual wind system output in kwh

20. Replacement solar swimming pool heaters
Equation #22. $\Delta E = SSF \times E_{sp}$

where

SSF = solar saving fraction = fraction of swimming pool heat supplied by the solar system. (Target SSF = .5)
E_{sp} = energy used to heat the pool for the months of May through September.

21. Install positive shut-off's for all fireplaces or fireplace stoves

Equation #23. $\Delta H = 1.08 (Q_o - Q_1) A$

where

Q_o = the infiltration value in cubic feet per minute per square foot for the existing condition before improvement.
Q_1 = the infiltration value after improvement with a positive shut-off.
A = the cross sectional area of the flue or connector in square feet.

22. Install thermal shutters, shades, or draperies on exterior windows and glass doors. Equation #14 will be used.

B. Energy conserving practices

1. Furnace efficiency maintenance and adjustments

a. Periodic cleaning and combustion efficiency adjustments.
Savings for gas conversion units will be estimated at up to 15%.
Savings for gas-designed systems will be estimated at up to 5%.
Savings for oil heating systems will be estimated at 5% to 15%.

b. Periodic cleaning or replacing of filters in forced air systems.
Savings will be estimated at 5% to 10%.

c. Fan setting on forced air furnaces reduced to 80° F if possible.
Savings will be estimated at up to 5%.

d. Increase Fan Speed.
Savings will be estimated at up to 5%.

e. Reduce aquastat setting to 140° F between December 1 and March 1 and 120° F between March 2 and November 30 or other reduction as appropriate to individual boiler. Savings will be estimated at 5% to 10%.

2. Nighttime temperature setback. Savings estimates will be the same as for clock thermostats.

3. Reducing thermostat settings in winter. Savings will be estimated at 3% per °F reduction for 24 hours per day.

4. Raising thermostat settings in summer. Savings will be estimated at 5% per °F increase for 24 hours per day.

5. Water flow reduction in showers and faucents. Savings will be estimated at up to 40% of total energy used for domestic hot water.

6. Reducing hot water temperatures. Savings will be estimated at about 10% for reducing temperature from 140° F to 120° F.

7. Reducing energy use when a home is unoccupied.

a. Reducing thermostat setting to 55° F when home is unoccupied for four hours or more. Use equation #16b.

b. Turning an air conditioner off when no one is home. Savings will be estimated as up to 25% of energy used for air conditioning.

c. Turning a water heater off when a home is vacant for 2 or more days. Savings will be estimated as 1/365 of water heater jacket losses for each day the heater is turned off.

8. Plugging leaks in attics, basements, and fireplaces. Savings will be estimated as up to 30%.

9. Sealing leaks in pipes and ducts. Savings will be estimated as up to $6 per month for fixing a dripping hot water peipe or faucet. Savings for patching leaks in ducts in unconditioned spaces will be estimated as up to 15% of the energy used for space heating.

10. Efficient use of shading. Use Equation #14.

C. Energy Index

Energy Index = $E \times F_w$

where

E is energy content of all fuel (including electricity) used during the months of November thru April, in Btus.

F_w is a weather adjustment factor. It is the ratio of the number of degree days in an average heating season (Nov. 1 thru April 30) to the number of degree days for the heating season preceding the calculation.

REP038

6 MCAR S 2.2401 Authority and purpose.

A. Authority. Rules 6 MCAR SS 2.2401-2.2409 implementing the Community Energy Planning Grants Program are promulgated by the agency pursuant to Minnesota Statutes, section 116H.089.

B. Purpose. It is the purpose of the Community Energy Planning Grants Program to improve the energy planning capabilities of local governments, to conserve traditional energy sources, to develop renewable energy systems and to broaden community involvement in the energy planning process. These rules set forth criteria and procedures for providing state assistance to counties and cities, however organized.

C. Limitation. No more than forty-five percent (45%) of the amount appropriated for Community Energy Planning Grants shall be distributed to counties and cities within the seven-county metropolitan area defined in Minnesota Statutes, section 473.121, subdivision 2.

6 MCAR S 2.2402 Definitions. The following terms used in 6 MCAR SS 2.2401-2.2409 shall have the following meanings.

A. "Agency" means the Minnesota Energy Agency.

B. "Local unit of government," for purposes of applying for grants under this program, means a city, a county or a combination of such units. "Local unit of government" also includes those organizations which the local unit of government recognizes as capable of, and with which it may enter into a contract for the purpose of, performing the authorized energy-related planning and implementation activities.

C. "Clearinghouse" means that governmental unit which has authority to review requests for state and federal aid for local units of government within its jurisdiction.

In the seven-county metropolitan area this review authority is the Metropolitan Council under Minnesota Statutes, section 473.171, subdivision 2.

The review authority for the remainder of the state is the appropriate Regional Development Commission under Minnesota Statutes, section 462.391, subdivision 3.

D. "In-kind" means:

1. Salary and cost of fringe benefits of the grant recipient staff working on activities funded by the grant.

2. Increases in overhead resulting from carrying out activities funded by the grant.

REPOSE

6 MCAR S 2.2403 Types of grants. There shall be two types of grants made to local units of government: Community Energy Planning Grants and Community Energy Plan Implementation Grants.

A. Community Energy Planning Grants. Planning Grants shall be used for developing local energy plans relating to such issues as, but not limited to: citywide or countywide conservation; use of renewable resources through technologies currently available; conservation of energy used in buildings owned by the local unit of government, of energy used for building and street lighting, and of energy used in building space heating and cooling; and energy considerations in traffic management, in land use planning, in capital improvement programming and budgeting, in municipal operating budgets, and in economic development plans.

B. Community Energy Plan Implementation Grants. Implementation Grants shall be used for purposes of implementing all or portions of a local community energy plan. Local units of government may apply for implementation grants whether or not the community energy plan was prepared under the Community Energy Planning Grant Program, provided the community energy plan has been submitted to and reviewed by the agency.

C. The following activities or expenditures are eligible for Planning Grants:

1. Salaries or benefits for planning staff personnel;

2. Data collection or analysis or both;

3. Development of local energy documents including plans;

4. Modification of capital improvement programs for energy-related projects;

5. Development of energy-conscious fleet management systems, transportation plans, intergovernmental plans;

6. Development of budgetary or fiscal systems which significantly address energy costs;

7. Development of zoning, subdivision and other codes, ordinances, regulations, supplements or amendments relating to energy;

8. Any other activities which carry out the purpose of the program as expressed in 6 MCAR S 2.2401 B.

D. The following activities or expenditures are ineligible for Planning Grants:

1. Non-energy related issues;

2. Retroactive payment of revenue to local units of government for energy activities previously undertaken;

3. Out-of-state travel, unless specifically approved in a contract between the grantee and the agency.

E. The following activities or expenditures are eligible for Implementation Grants:

1. Detailed drawings, architectural drawings, site designs, engineering specifications;

2. Equipment purchases directly affecting energy recovery, conservation or production;

3. Construction of energy production or energy recovery systems;

4. Any other activities which carry out the purpose of the program as expressed in 6 MCAR S 2.2401 B.

F. The following activities or expenditures are ineligible for Implementation Grants:

1. Non-energy related projects;

2. Property acquisition (real property);

3. Personnel for continued operation of energy conservation, production or recovery facilities beyond the first year of an Implementation Grant.

REP0654

6 MCAR S 2.2404 Evaluation of preliminary applications.

A. Planning Grants. Preliminary applications which satisfy all eligibility requirements shall be evaluated in a two step process: general criteria and planning function criteria.

1. General criteria. Planning Grant applications which address the greatest number of the following considerations will be given priority over Planning Grant applications which address a lesser number of the following considerations.

a. Programs designed to result in significant savings of traditional energy sources;

b. Programs designed to assist in the development of renewable energy systems;

c. Programs which encourage broad community involvement in addressing and solving energy problems encountered by local citizens and local units of government;

d. Programs that show a significant degree of transferability to similar units of government;

e. Local-unit-of-government programs which include the provision of local support to address energy problems and to

undertake energy planning for the local unit of government.

2. Planning function evaluation. Applications achieving similar priority ranking based on the general criteria stated in A.1. will be evaluated for purposes of funding on the basis of the following criteria:

a. Comprehensiveness of plan elements, such as: potential effects on residential, industrial, municipal and county programs;

b. Ability of the local unit of government's plan to affect energy consumption through the use of tools, such as, but not limited to, codes, ordinances, joint powers agreements, property covenants and easements;

c. Use of renewable energy resources such as: solar, wind, biomass, hydropower;

d. Cost-effectiveness;

e. Public participation efforts, such as: neighborhood energy committees, governmental energy committees;

f. Private sector participation such as: van pools, staff, materials or financial contributions;

g. Transferability, as shown by the appropriateness of other units of government utilizing all or parts of a planning process or the results of that plan or process.

B. Implementation Grants. Evaluation of preliminary applications. Preliminary applications which satisfy all eligibility requirements shall be evaluated in a two-step process: general criteria and implementation function criteria.

1. General criteria. Implementation Grant applications which address the greatest number of the following considerations will be given priority over Implementation Grant applications which address a lesser number of the following considerations:

a. Applications with programs designed to result in significant savings of traditional energy sources;

b. Programs designed to assist in the development of renewable energy systems;

c. Programs which encourage broad community involvement in addressing and solving energy problems encountered by local citizens and local units of government;

d. Programs that show a significant degree of transferability to similar units of government;

e. Local-unit-of-government programs which include the

provision of local support to address energy problems and to undertake energy production or conservation in the local unit of government.

2. Implementation grant evaluation. Applications achieving similar priority ranking based on the general criteria stated in B.1. will be evaluated for purposes of funding on the basis of the following criteria.

a. The proposed project must be technically feasible. Technically feasible means:

(1) The degree to which the project meets scientifically accepted laws; or

(2) The degree to which the project increases or enhances the state of the energy art.

b. The project must be economically viable. Economically viable means the budget is adequate to complete the proposed project.

c. The applicant must be capable of successfully conducting the project. This will be determined by evaluating:

(1) The level of education, or experience in conducting similar project implementation; or

(2) The existence of other or similar projects or related studies from which the applicant may obtain assistance.

d. The application must show that economic benefits will result from this project. Economic benefits are:

(1) Monetary or fuel savings resulting from conservation, or

(2) Job creation.

e. The proposal must demonstrate a significant degree of transferability.

f. The applicant must show that the proposal complies with local, state and federal requirements (environmental, zoning, health).

REPOSE

6 MCAR S 2.2405 General application procedure.

A. The approval process for Planning Grants and Implementation Grants has three stages: preliminary application, final application, and contract execution.

B. Joint applications may be submitted by two or more local units of government which are encountering energy-related problems for which it appears joint consideration of problems is

possible, preferable and appropriate. In addition to complying with 6 MCAR S 2.2406 regarding application contents, joint applicants shall also designate a lead applicant and include their authority for joint application in the form of resolutions, joint powers agreement, or other such agreements.

C. The preliminary application or a notice of preapplication shall be submitted to the appropriate clearinghouse for review and comment at least 45 days prior to the date applications are due at the agency. The clearinghouse may waive this review requirement. Written evidence of the clearinghouse waiver shall be included in preliminary applications submitted directly to the agency. Failure of the clearinghouse to conduct its review within 45 days shall be considered as approval of the application by the clearinghouse, unless both the applicant and the clearinghouse agree to extend the review period for an agreed-upon time period. Upon receipt of the clearinghouse review comments the applicant shall submit the preliminary application together with the clearinghouse comments to the agency on or before the due date. Each clearinghouse must submit to the agency a list of all applications reviewed during a particular funding cycle. The timetable in this rule shall apply to all grant cycles after the first cycle. During the first cycle simultaneous submission to both the agency and the clearinghouse shall be permitted.

D. The agency shall have thirty days after the preliminary application due date to review preliminary applications. Incomplete or ineligible applications will be returned to the applicant with a written statement of reasons for rejection.

REPOST

6 MCAR S 2.2406 Preliminary application.

A. A preliminary application shall be submitted to the agency for purposes of determining eligibility and priority for funding. The preliminary application shall be in a form and manner prescribed by the agency and shall contain the information required by the rules, including the following: name of community, demographic data, previous community planning efforts, descriptions of community services, statement of intended results, identification of amount and source of local share, total estimated program cost, and a copy of a resolution authorizing submission of the application to the agency.

B. Preliminary applications shall be submitted semi-annually not later than February 1 and August 1, except that during calendar year 1981, the due date for preliminary applications shall be 90 days after these rules become effective.

REPOST

6 MCAR S 2.2407 Final application.

A. A final application may be submitted only by applicants which have received a letter of notification authorizing submission of a final application. Final applications must be

received by the agency no later than 45 days after the date of the letter of notification. The format for final applications is set out in B. Final applications will be reviewed for completeness and compliance with the rules of this program. Incomplete applications or applications which differ substantially from preliminary applications will not be granted, and a written statement citing the reasons for rejection will be provided to the applicant. Eligible final applications will be funded based on the priorities of this program and the availability of grant funds. Receipt of a letter of notification is not a guarantee that a grant will be made to the submitter of a final application. A grant award shall be made by contract as set out in 6 MCAR S 2.2408.

B. The final application shall contain at least the following elements:

1. A work program and schedule which contains the following:

a. A statement of the existing or emerging energy problems which are to be investigated with the grant. This statement should identify how the problems are affecting or will affect the applicant and the means the recipient is planning to use to alleviate the problems.

b. A description of the activities which the grant makes possible. The description of activities should identify the expected results and products and should be in sufficient detail to enable the agency to measure progress and to identify the person responsible for the completion of each activity. The description should include expected completion dates, by particular activity. Each work element should be assigned to a specific staff member or consultant.

c. A statement identifying the way in which the grant will improve the governing body's capability to address local energy problems and a schedule indicating when and how this will be accomplished.

2. Designation of a lead applicant. The grant applicant shall designate a lead applicant. Lead applicant means an agency, organization or individual who will be responsible for completion of the agreed-upon work program.

3. Local share. A detailed statement identifying the source and amount of the local share. The local share may be in cash or in-kind or a combination of cash and in-kind.

4. Signature/resolution. The application shall be submitted to the agency only if accompanied by a resolution passed at an official meeting of the governing body and signed by the authorized person.

6 MCAR S 2.2408 Grant contract.

A. The final step in the awarding of a Planning Grant or an Implementation Grant is execution of a grant contract. The grant contract shall be based upon the final application. The contract shall specify the amount of the grant to the recipient and the duration of the grant. The contract shall include assurance that the local share will be provided and that the agreed-upon work program will be carried out. A grant contract based upon a joint application will be executed by the lead applicant. Amendments may only be made in writing signed by both parties. Extensions must be justified in writing. Planning grant extensions shall not exceed 90 days. Implementation Grant extensions will be based on the scope of work remaining and a reasonable period in which to complete all work.

B. Funding period. Grants will be funded for the following periods.

1. Planning Grants will be approved for a period of up to one year.

2. Implementation Grants will be approved for a period to be agreed upon by the grantee and the agency and specified in the contract, based upon the scope of the implementation activities funded and a reasonable work schedule.

C. Grant ratios.

1. Planning Grants shall not exceed 75% of the total first year proposed planning budget;

2. The agency may award an Implementation Grant up to 50% of the project's implementation cost, but not to exceed $50,000.00;

3. No single grant shall exceed $50,000.00.

D. Disbursement schedule. Grant funds will be disbursed to the grantee according to invoices submitted on the following schedule:

1. 50% during the first month of the grant contract funding period;

2. 40% upon completion of half of the agreed-upon work program;

3. 10% upon completion of a satisfactory evaluation according to 6 MCAR S 2.2409.

E. Required reports. The grantee shall submit to the agency quarterly work progress reports in a format prescribed by the agency. Reporting requirements will vary depending upon the scope of work proposed and approved by the agency for funding. In addition, the grantee shall provide the agency with three copies and a camera-ready copy of a grantee's final community

energy plan.

F. Records. The grantee shall maintain for a period of not less than three years from the date of the execution of the contract all records relating to the receipt and expenditure of grant monies.

G. Monitoring grant results. As a condition of accepting a grant a grantee shall be expected to:

1. Document on an annual basis the results of the grant program for a period of up to 3 years from the date of the execution of the contract (for example, energy savings, financial savings, or any other documentation related to the results of the grant); and

2. Participate in at least one agency workshop at which the grantee will present the results of the grant program.

H. Contract deviations.

1. No grant funds shall be used to finance activities by consultants or local staff not included in the grant contract, unless agreed upon in writing by the agency.

2. Unless agreed upon by the grantee and the agency it will not be permissible for 100% of all energy-related activities to be contracted out to consultants.

REPOSE

6 MCAR S 2.2409 Evaluation. The agency shall conduct a final evaluation within 60 days of the submission by the grantee to the agency of the final community energy plan and all the required reports and financial documents. The evaluation shall assess:

A. Whether the agreed-upon work program was completed;

B. Whether the governing body has formally reviewed the completed energy plan.

Upon completion of a satisfactory evaluation the remaining 10% of the grant shall be disbursed to the grant recipient. If the results of the evaluation are unfavorable to the grantee and the grantee does not agree with the findings of the evaluation, the grantee may request a review before the agency.

insert new:
6 MCAR §§ 2.2501-2.2510,
AR01245T

REPORT

6 MCAR S 2.3101 Authority. These rules are authorized by Minnesota Statutes, section 116H.09. These rules will also meet, in part, federal requirements set forth in the Emergency Energy Conservation Act of 1979, Section 212, 42 United States Code, Section 8512 (1976 and Supplement III 1979).

6 MCAR S 2.3102 Purpose. These rules identify measures that may be used in the event of a petroleum supply emergency. The further purposes of these rules are: to protect the health and safety of the citizens of the state by ensuring that certain priority petroleum users have sufficient fuel to conduct essential activities; to facilitate the distribution of supplies to the public in a fair manner; to identify and authorize the actions to be undertaken by governmental agencies in an energy supply emergency; to describe the responsibilities of major employers and school district authorities in petroleum supply emergency planning and implementation; to establish an appeals system and procedures for exemptions from and exceptions to emergency measures; and to authorize the state executive to provide for the public health, safety, and welfare during an energy supply emergency.

6 MCAR S 2.3103 Applicability of rules. These rules shall apply:

A. generally, during a declared energy supply emergency (see 6 MCAR S 2.3106);

B. generally, during a declared energy supply alert (see 6 MCAR S 2.3105);

C. to the Minnesota Department of Energy, Planning and Development when the department is preparing to recommend that an energy supply alert or an energy supply emergency be declared.

6 MCAR S 2.3104 Definitions. For purposes of 6 MCAR SS 2.3101-2.3121 the terms defined in this rule have the meanings given them:

A. "Agriculture" means activities of establishments primarily engaged in food production, processing and sale classified under the industry code numbers specified below as set forth in Standard Industrial Classification Manual, 1972 edition and the transport of goods and commodities for the below defined activities:

1. Major Group 01-Crops, except for industry code nos. 0132 tobacco, and 0181 ornamental floriculture and nursery products.

2. Major Group 02-Livestock, except for animal specialties, industry code nos. 0271, 0272, and 0279.

3. Major Group 07-Agricultural Services, except for industry code nos. 0742 veterinary services for animal specialties, 0752 animal specialty services, 0781 landscape counseling and planning, 0782 lawn and garden services, and 0783 ornamental shrub and tree services.

4. Major Group 09-Fishing, Hunting, and Trapping.

5. Major Group 20-Food and Kindred products, except for all industry codes under Group 208 Beverages, and 2065 candy and other confectionary products.

6. Group 514-Groceries and Related Products (all industry codes found thereunder).

7. Group 515-Farm Product Raw materials (all industry codes found thereunder).

8. Major Group 54-Food Stores.

B. "Assistant commissioner" means the assistant commissioner of the Minnesota Department of Energy, Planning and Development who heads the Energy Division;

C. "Baseline consumption" means the reasonable estimate of the amount of motor fuel consumed by employees or students in commuting to and from the worksite plus the amount of motor fuel consumed for a school's or an employer's travel, over a period which represents the normal level of operation. For determining baseline consumption any of the following methods shall constitute a representative period for the purpose of these constitute a representative period for the purpose of these rules:

1. the preceding 12 months, or

2. the most recent 3-year average, or

3. a 12-month "rolling base" where the most recent month's data is added and the thirteenth month's data deleted.

D. "Btu" means British thermal unit, a unit of energy measurement used for comparative purposes;

E. "Cargo, freight and mail hauling, including newspaper deliveries" means: motor carriers for hire, licensed and operating under Minnesota Statutes, sections 221.011 to 221.293 including independent owner-operators transporting goods under a lease or contract indicating their "for hire" status, where the lease can be produced by the driver-operator; local cartage carriers, licensed and operating under Minnesota Statutes, section 221.296; interstate motor carriers, operating in Minnesota under Minnesota Statutes, sections 221.61 to 221.68; mail hauling by any motor vehicle owned and operated by the U.S. Postal Service; and newspaper delivery by a motor vehicle identified as a newspaper carrier; trucks that have truck bodies

specifically designed for cargo and freight hauling and are commercial vehicles as defined in H.; and rail, barge and ship transportation of cargo or freight;

F. "Carpool" means a continuing travel arrangement by which three or more persons travel together in a vehicle owned or rented by one or more of such persons;

G. "Commercial building" means a building all of whose occupants are engaged in commerce, unless residential occupants have separate heating controls;

H. "Commercial vehicles" means vehicles registered and licensed in the commercial class with the Division of Driver and Vehicles Services of the Department of Public Safety, or vehicles which by their design, size or company identification or by the presence of specialized equipment, tools, or instruments of the trade or profession, or other evidence of commercial use are obviously being used for commercial purposes;

I. "Commissioner" means the Commissioner of the Minnesota Department of Energy, Planning and Development;

J. "Company-owned vehicles" means passenger automobiles, vans, and light trucks owned or leased by the employer;

K. "Consumer" means a person that consumes fuel oil, or motor fuel whether diesel fuel, gasoline, propane or alcohol;

L. "County or municipal fuel coordinator" means a person who has been appointed by the county board or city council to act as local fuel allocation resource person;

M. "Demand" means the quantity of products or services for which there are willing and able purchasers;

N. "Department" means the Minnesota Department of Energy, Planning and Development;

O. "Division" means the Division of Emergency Services of the Department of Public Safety;

P. "Division Director" means the Director of the Division of Emergency Services;

Q. "Electric utility" means an entity engaged in the generation, transmission, or distribution of electric energy for sale;

R. "Emergency vehicle" means any of the following vehicles: a vehicle of a fire department or fire fighting unit; a publicly-owned law enforcement vehicle or privately-owned vehicle used by a law enforcement officer for police work under agreement, express or implied, with the local authority; a vehicle of a licensed emergency ambulance service, whether publicly or privately owned; an emergency vehicle of a

municipality, department or public service corporation including emergency services vehicles approved by the chief of police of a municipality, the county sheriff, or the division director; a vehicle of a utility or contractor while performing emergency repairs or maintenance for electric, water, waste treatment, natural gas or telecommunications utilities and end-user primary services, and petroleum, petroleum products or natural gas pipelines or facilities; a vehicle of the state, county, municipal, or other subdivision of government used for snow removal, emergency road and traffic signal repair or search and rescue operations, or privately-owned vehicles of a contractor under contract to perform these services;

S. "Employer-provided parking" means a space such as a lot, garage, or other space, or portion thereof, which is used for the parking of commuter vehicles, and which is wholly or partly owned or leased by an employer or otherwise made available to its employees, except that this term shall not include park-and-ride facilities or customer parking provided by a retail or service establishment;

T. "Employment site" means a building, facility, complex or site at which employees work or study, or any combination of such buildings or sites which are geographically close;

U. "Energy production" means transportation of energy or primary fuels by pipeline, transmission line, rail, barge or a motor carrier included in the definition of cargo, freight and mail hauling or other trucks and the refining, processing, production and distribution of coal, natural gas, petroleum or petroleum products, shale oil, nuclear fuels and electrical energy;

V. "Environmental standards" means the laws and regulations, both federal and state, intended to protect the environment;

W. "Essential government services" means court and judicial activities, jails and prisons, meetings of duly elected political officials, operations of the Division of Emergency Services and the Emergency Operating Center, hearings of Local Energy Conservation Boards and the Office of Administrative Hearings, minimum services to provide AFDC, SSI and Social Security checks and other welfare payments including food stamps, and activities which provide life-sustaining services;

X. "Extracurricular activities" means school-sponsored activities requiring transportation off-campus, except for the daily transportation of students to and from school;

Y. "Flexible work hours" or "flextime" means a work system in which employees at an employment site have some discretion in their choice of working hours;

Z. "Forecast" means a projection of future demand or supply for a specified time period;

AA. "Fuel oil" means a liquid or liquifiable petroleum product with a flashpoint above 100 degrees F which is used to generate heat or power including middle distillate oil or residual oil;

BB. "Health and residential care services" means hospitals, nursing homes, penal institutions, and all types of residential treatment centers including drug/alcoholism treatment centers, residential mental health centers, and residential care centers for the retarded or handicapped;

CC. "Highways" means interstate, trunk, county state-aid, county, and municipal state-aid highways in Minnesota, as defined in Minnesota Statutes, section 160.02, subdivisions 2 to 5 and 7, and 23 United States Code, section 101 (1980);

DD. "Homeowner" means a person who has a vested legal or beneficial interest, jointly or severally, in a dwelling which is occupied by that person;

EE. "Jitney" means a spontaneous carpool formed by driving along an existing transit route and picking up riders for a fare or participating in a telephone ride exchange system. Jitneys supplement existing transit service;

FF. "Licensed motor vehicle dealer" means a motor vehicle seller or lessor licensed to do business under Minnesota Statutes, section 168.27, subdivisions 2 to 25;

GG. "Middle distillate" means a derivative of petroleum, including kerosene, home heating oil, range oil, stove oil, and diesel fuel, which has a fifty percent boiling point in the ASTM D86 standard distillation test falling between 370 degrees and 700 degrees F, except that kerosene-base and naphtha-base jet fuel, heavy fuel oils as defined in ASTM D-396, grades #4, 5, and 6, intermediate fuel oils (which are blends containing #6 oil), and specialty items such as solvents, lubricants, waxes, and process oil are excluded;

HH. "Military uses" means the activities of the armed forces of the United States and of the Minnesota Department of Military Affairs, the Office of Adjutant General, military reservations, installations, armories, air bases, and facilities owned or controlled by the state for military purposes and includes the national guard, the state guard, and any other organization or components of the organized militia authorized by Minnesota Statutes, chapters 190 to 193, known as the Military Code;

II. "Moped" means a pedal bicycle or similar two-wheel vehicle propelled by a motor;

JJ. "Motorcycle" means a vehicle with two wheels in tandem, propelled by an internal combustion engine, and sometimes having a sidecar with a third wheel;

KK. "Motor fuel" means a mixture of volatile hydrocarbons,

suitable for operation of an internal combustion engine;

LL. "Motor vehicle owner" means a person owning or renting a motor vehicle, or having exclusive use thereof, under a lease or otherwise, for a period greater than seven days;

MM. "Park-and-ride facility" means a parking facility the use of which is limited exclusively to the parking of commuter vehicles whose occupants transfer at the facility to transit or paratransit services;

NN. "Passenger transportation services" means: conventional public transit service which operates on a fixed route and is available to the public for a fare, intercity bus transportation, vanpools, subscription buses, tour and charter bus transportation, bus transportation of pupils for educational purposes, taxicabs licensed to conduct business in a municipality, air and rail passenger transportation except for air charter services, and special transportation services for the elderly or handicapped;

OO. "Permit-sticker" means a self-adhesive tag issued by the Department of Public Safety to designate the weekday on which a vehicle issued that sticker is prohibited from being operated;

PP. "Person" means an individual, firm, estate, trust, sole proprietorship, partnership, association, company, corporation, governmental unit or subdivision thereof, or a charitable or educational institution;

QQ. "Plant protection" means minimum plant maintenance necessary to secure buildings and prevent damage to equipment or plant property from inclement weather or loss of essential processes;

RR. "Prohibited day" means the day for which a vehicle owner has been issued a permit-sticker, designating it a "no-driving" day for that vehicle;

SS. "Residence" means the place where a natural person lives, including hotels and motels and buildings being used as emergency housing facilities;

TT. "Residual fuel oil" means the fuel oil commonly known as: No. 4, No. 5 and No. 6 fuel oils; Bunker C; Navy Special Fuel Oil; and all other fuel oils which have a fifty percent boiling point over 700 degrees F in the ASTM D-86 standard distillation test;

UU. "Sanitation services" means: the collection and disposal for the public of solid or liquid wastes and hazardous wastes, whether by public or private entities; the maintenance, operation and repair of liquid purification and uaste facilities; and the provision of a water supply by public utilities, whether private or publicly owned and operated;

VV. "Shortage" means a situation in which demand exceeds supply and normal market forces will not act to equalize supply and demand within a reasonable period;

WW. "Staggered work hours" means employee starting and quitting times stipulated at step intervals by the employer so that work arrival and departure times of employees on a single shift are spread over a period of at least two hours;

XX. "State set-aside" means the amount of an allocated product from the total supply of a supplier made available to the state to meet emergencies and hardship needs under Minnesota Statutes, section 116H.095;

YY. "Subscription bus" means a transit service in which employers or groups of employees contract with a public or private bus operator to provide daily commuter service for a group of subscribers on a prepaid or daily fare basis, following a fixed route and a schedule tailored to meet the needs of the subscribers;

ZZ. "Supplier" means a firm or a part of a subsidiary of a firm (other than the Department of Defense) which presently supplies, sells, transfers, or otherwise furnishes (as by consignment) a petroleum product to wholesale purchasers or end users, including refiners, natural gas processing plants or fractioning plants, importers, resellers, jobbers and retailers;

AAA. "Telecommunications" means the repair, operation and maintenance of voice, data, telegraph, video and similar communication services for the public by a communications common carrier or by a firm providing the same service in direct competition with a communications common carrier;

BBB. "Tenant" means a person who occupies (but does not own) a dwelling under an oral or written agreement, lease, or contract, for a period of time, which requires the payment of rent;

CCC. "Vanpool" means eight or more persons commuting on a daily basis to and from work in a vehicle with a seating arrangement designed to carry eight to fifteen adult passengers; and

DDD. "Vehicle lessee" means a person, firm or corporation possessing a motor vehicle by lease.

REP072

6 MCAR S 2.3105 Energy supply alert. An energy supply alert shall be declared to inform Minnesota citizens of a potential energy shortage, encourage conservation, and initiate a state of readiness for the shortage.

A. An energy supply alert may be declared when the department forecast indicates a reasonable likelihood that an energy supply shortage will occur within six months from the

date of declaration.

B. The commissioner shall have sole responsibility for declaring an energy supply alert.

6 MCAR S 2.3106 Energy supply emergency. An energy supply emergency is a state of declared emergency resulting from a shortage of energy resources, including petroleum products, natural gas, or electricity.

A. Minnesota Department of Energy, Planning and Development. When the department's forecast shows that short-term demand for a fuel or fuels exceeds the forecast of short-term supply and that a supply shortage will occur within three months, the commissioner may recommend that an energy supply emergency be declared by submitting a written statement to the executive council or legislature. The statement shall include the factors the commissioner considered in reaching a decision to recommend that an emergency be declared and the reasons for the recommendation.

B. The executive council or legislature. The executive council (consisting of the Governor, the Lieutenant Governor, the Attorney General, the Auditor, the Treasurer, and the Secretary of State) or the legislature has responsibility for declaring an energy supply emergency.

1. An energy supply emergency automatically expires in 30 days, unless renewed by the legislature. Each renewed energy supply emergency may not continue for longer than 30 days, unless otherwise provided by law. Minnesota Statutes, section 116H.09, subdivision 5.

2. Emergencies may be declared for all or part of the state and measures may be invoked accordingly. The declaration of emergency shall define the geographic area included in the energy supply emergency.

3. The declaration shall be promptly disseminated and brought to the attention of the general public by the executive council or legislature, whichever body declares the emergency. The Energy Supply Emergency Resolution shall be promptly filed with the division, the department and the Secretary of State.

6 MCAR S 2.3107 Operating organization during an emergency.

A. Energy emergency operating center. During a declared energy supply emergency, the division will set up an energy operating center.

1. The director of the emergency operating center will be the division director. The division director shall oversee the implementation of the emergency plan.

2. The emergency operating center will be located at a site designated by the division director and staffed by personnel from the division, the department and other state agencies as deemed necessary by the division director and approved by the Governor.

B. Minnesota Department of Energy, Planning and Development.

1. The department shall assist the division by analyzing the energy supply situation, evaluating alternative courses of action included in the emergency plan, and advising on the proper time and sequence for implementing emergency measures.

2. The department shall select and recommend to the Governor the least restrictive measures specified in 6 MCAR S 2.3114, 6 MCAR S 2.3120 and 6 MCAR S 2.3121 capable of eliminating a fuel shortage.

3. The assistant commissioner shall review employer and school district conservation plans and certify those which meet the requirements set out in 6 MCAR S 2.3120 B. or C.

4. The commissioner shall make the final decision on each appeal taken from measures contained in these rules.

C. Emergency services.

1. The division shall implement the energy emergency plan and coordinate the emergency operations of government agencies involved in energy supply emergency actions.

2. The division shall use the regional and local fuel coordinators to coordinate emergency operations throughout the state.

3. By January 1, 1983, the division of emergency services shall develop an internal management and operations plan for implementing the measures contained in these rules.

D. The Governor may order any state agency or department to carry out the measures contained in these rules under the powers given the Governor in the Minnesota Civil Defense Act, Minnesota Statutes, chapter 12.

REP072

6 MCAR S 2.3108 Local energy conservation board.

A. Each county and each city of the first class shall create a local energy conservation board to hear requests for exemptions or exceptions to the measures listed in 6 MCAR SS 2.3114 A., B., C.1. and 4., 2.3120, except B. and C., and 2.3121.

1. The Governor may order additional local energy conservation boards to be established upon the department's determination that additional boards are necessary to insure compliance with the timing provisions in 6 MCAR S 2.3109 C.

2. The appointment of additional local energy conservation boards and their conduct shall be governed by the procedures set forth in B. and 6 MCAR S 2.3109.

B. Members.

1. The chair of the county board of commissioners shall appoint a five-member county local energy conservation board which includes two elected officials from the county or municipalities within the county, a health professional, the county fuel coordinator and a member of the public. If the county fuel coordinator is not able to sit on the local conservation board, an additional member shall be selected from the public. The county attorney shall advise the local energy conservation board.

2. For cities of the first class and other designated municipalities, the chair of the city council shall appoint a five-member municipal local energy conservation board which includes two elected city officials, the city fuel coordinator, a health professional, and a member of the public. If the city fuel coordinator is not able to sit on the local conservation board, an additional member shall be selected from the public. The city attorney shall advise the local energy conservation board.

C. Appointments to the local energy conservation board shall be made when an energy supply alert or energy supply emergency is declared. The appointer shall make reasonable efforts to avoid any conflict of interests in appointing the members of the local energy conservation board.

D. Three members shall constitute a quorum. The chair of the local energy conservation board shall be designated by the appointing authority.

REPEALED SEE REV: 6 MCAR S 2.3109 AR02975T

6 MCAR S 2.3109 Appeals.

A. An appeal shall be delivered by mail or in person to the following location:

1. An appeal of mandatory measures, except those described in 6 MCAR SS 2.3114 C.2. and 3. and 2.3120 B. and C., shall be heard by the local energy conservation board and should be directed to the county courthouse, or the mayor's office, whichever is appropriate.

2. An appeal from a decision not to certify an employer or school district conservation plan and an appeal from an order to implement an employer or school plan shall be heard by a hearing examiner appointed by the chief hearing examiner and shall be directed to the Office of Administrative Hearings, Summit National Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415.

3. An appeal of an order to curtail delivery of fuel oil, 6 MCAR § 2.3114 C.3., or an order to adopt temporary rules for relaxation of environmental standards 6 MCAR S 2.3114 C.2., and an appeal of priority status shall be heard by a hearing examiner appointed by the chief hearing examiner and shall be directed to the Office of Administrative Hearings, Summit National Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415.

B. Content of appeal.

1. An appeal from an action taken pursuant to a declared energy supply emergency or under authority of these rules shall be in writing and signed by the appellant. The appeal shall state:

a. full identification of appellant and where appellant can be located to receive notice of decision;

b. the action from which the appeal is made, including the individual or unit of government taking the action, and the date and nature of the action;

c. the bases of the appeal, including the reasons the appellant believes the action to be unjust or unwise;

d. the names and addresses of persons known to the appellant who might be adversely or beneficially affected by the outcome of the appeal;

e. the nature of the relief sought, whether reversal, modification, or some other relief.

2. The appeal of a decision not to certify an employer or school district conservation plan or of an order to implement all or any part of an approved conservation plan shall include a description of the existing or proposed conservation programs through which the employer or school district claims compliance with 6 MCAR S 2.3120 B. or C. In the case of an appeal from a decision not to approve 6 MCAR S 2.3120 B.9.a. employer plans (submitted after an energy supply emergency is declared), the appeal shall also contain documentation of the methodology on which the claim of motor fuel savings or program performance is based and a calculation of appellant's baseline consumption.

C. Timing and procedures.

1. Within three working days after receipt of an appeal, the local conservation board or hearing examiner, whichever is appropriate, shall set a hearing date. The hearing shall be held as soon as practicable but not later than seven working days after receipt of the appeal, unless appellant requests a later hearing date. The chair of the local conservation board (or designate), or the hearing examiner, shall notify all known affected persons, either verbally or in writing, of the appeal and the time and place for the hearing, not less than two

working days before the hearing. An appeal shall be considered received when it has arrived at the appropriate location designated in A. A local energy conservation board may convene at any location within its jurisdiction for expediting appeals and decreasing the distance to the hearing for appellants.

2. Appeals shall be governed by the Administrative Procedure Act, Minnesota Statutes, sections 15.0411 to 15.052 and the rules of the Office of Administrative Hearings (9 MCAR SS 2.201-2.299), except that during an energy supply emergency the provisions of 6 MCAR S 2.3109 shall supercede the above-cited rules wherever the two conflict with one another.

3. The parties to an appeal from actions taken during a declared energy supply emergency shall be the appellant and the Emergency Operating Center. Appeals from a decision not to certify an employer or school district conservation plan shall name the assistant commissioner as a party to the appeal.

4. A party may be represented by counsel.

5. An appellant subject to provisions of these rules must comply with all applicable mandatory measures or requirements pending a final decision on the appeal. A final decision shall be made under E.

6. Informal disposition of an appeal or any issue in an appeal may be made at any point in the proceeding by stipulation, agreed settlement, or consent order between the appellant and the emergency operating center. In the case of employer and school district conservation plans, the assistant commissioner shall have the power to informally dispose of an appeal by agreement or consent order.

7. Failure of an appellant to appear after timely notice is sufficient cause for denial of an appeal.

8. The failure of the emergency operating center to appear at a hearing of a local energy conservation board on an appeal from an emergency measure shall not constitute a default or bar the commissioner from reversing the board's decision so long as the commissioner complies with the timing provisions in E.3.

9. The hearing examiner or local energy conservation board may order a prehearing conference to be held at any time prior to a hearing, if a conference may simplify the issues or provide an opportunity for settlement. If a prehearing conference is ordered, notice of the time and place of the conference shall be served on all parties to the appeal not less than two working days before the date of the conference.

10. Appeals shall not be heard if received more than ten working days after the termination or expiration of the energy supply emergency.

D. Hearings.

1. An appellant has a right to a hearing before the local energy conservation board, or the hearing examiner, whichever is appropriate. (See A.) At the hearing the parties may present and cross-examine witnesses, and present written evidence, rebuttal testimony and argument with respect to the issue or issues raised in the appeal.

2. The local energy conservation board or the hearing examiner shall prepare an official record of each hearing. A party requesting a verbatim transcript of the hearing shall bear the expense of preparing the transcript.

3. The chair of the local energy conservation board and the hearing examiner shall use procedures set by the Office of Administrative Hearings at the hearing. The hearing examiner or local conservation board may prohibit devices which interfere with the hearing and may evict persons who disrupt the hearing.

E. Decision.

1. No factual information or evidence which is not part of the record shall be considered by the board or the hearing examiner in deciding an issue in an appeal, except that official notice may be taken of pertinent facts.

2. Within two working days after the hearing is closed, the local conservation board or the hearing examiner shall issue a recommended decision in writing, including the findings and conclusions on which the decision is based. A copy of the recommendation shall be served by first class mail on all parties to the appeal and delivered to the commissioner with the whole record of the appeal. Service is effective on the postmark date.

3. The commissioner may affirm or reverse a decision of a local conservation board or a hearing examiner or may remand the appeal for further hearing on specified parts. The commissioner must notify the appellant of an intent to reverse or remand a decision within two working days after receipt of the recommended decision. The commissioner shall issue a written statement setting forth the grounds for reversing a recommended decision no later than five working days after receipt of the recommendation, and a copy of the statement shall be served on the appellant and sent to the local conservation board or hearing examiner by first class mail. Failure of the commissioner to give timely notice of intent to reverse or remand a recommended decision will act to automatically affirm the recommended decision.

4. The appellant may seek judicial review of a final decision of the commissioner in accordance with the Minnesota Administrative Procedure Act, Minnesota Statutes, sections 15.0411 to 15.052.

REPO72

6 MCAR S 2.3110 Penalties.

A. Penalties for the violation of any provision of the plan are set out in Minnesota Statutes, section 116H.15.

B. Any person who violates the plan or knowingly submits false information in any report required by the plan shall be guilty of a misdemeanor. Maximum penalty is $500 or 90 days or both. Each day of violation shall constitute a separate offense.

C. The plan may be enforced by injuction, action to compel performance or other appropriate action in the district court of the county where the violation takes place. The existence of an adequate remedy at law shall not be a defense to such an action.

D. A court which finds that a person has violated a requirement of the plan or has knowingly submitted false information in any report required by the plan, or has violated a court order issued pursuant to the plan may impose a civil penalty of not more than $10,000 for each such violation. These funds are payable to the general fund in the state treasury.

6 MCAR S 2.3111 Priority uses of fuel oil.

A. Purpose. The priority ranking set out below, and the allocation and conservation measures contained in 6 MCAR S 2.3114, are intended to reduce the demand for petroleum products used for heating and power generation and ensure that the necessary fuel requirements of higher priority consumers are met before the lower priority consumers.

B. Priority uses. In an energy supply emergency resulting from a shortage of fuel oil, highest priority uses are those essential for the health and safety of the citizens of the state. Uses within categories are not ranked by preference.

1. First priority fuel oil uses are:

a. Health and residential care services;

b. Residential heating;

c. Passenger transportation;

d. Plant protection;

e. Emergency vehicles;

f. Telecommunications;

g. Energy production;

h. Agriculture;

i. Sanitation services; and

j. Essential government services.

2. Second priority fuel oil uses are those necessary to minimize the economic disruption of a fuel oil shortage. Second priority fuel oil uses are:

a. Cargo and freight hauling, except for the first priority uses as defined in B.1.

b. Personal motor transportation. Diesel powered automobiles shall be subject to all the provisions of the motor fuel measures described in 6 MCAR S 2.3120 and 6 MCAR S 2.3121.

3. Third priority uses are those not essential for the immediate health and safety of the citizens of the state. These include:

a. Schools and religious institutions;

b. Government, except those services listed in B.1.;

c. Commerce, except those services listed in B.1.;

d. Industry, except those services listed in B.1.

4. In an energy supply emergency, suppliers shall be requested to deliver fuel oil to higher priority consumers before lower priority consumers, where no practicable substitute fuels are available.

5. Vehicles considered to be transporting agricultural products must have the words "first priority agricultural product" on their bill of lading or must be visibly transporting first priority agricultural products.

6. Fuel oil users may apply for state set-aside product if fuel oil becomes otherwise unobtainable, according to state set-aside application procedures developed according to Minnesota Statutes, section 116H.095. Preference shall be given higher priority consumers over lower priority consumers in the assignment of state set-aside product.

REP072

6 MCAR S 2.3112 Priority uses of motor fuel.

A. Purpose. The priority ranking set out below and the supply management and conservation measures contained in 6 MCAR S 2.3120 and 6 MCAR S 2.3121 are intended to reduce the demand for motor fuels and ensure that the necessary fuel requirements of first priority consumers are met before lower priority consumers.

B. Priority uses. In an energy supply emergency resulting from a shortage of gasoline, diesel fuel, or other petroleum

product used as a motor fuel, higher priority uses are those necessary for protecting the health and safety of the citizens of the state, and minimizing the economic disruption of the state's economy. Uses within priority categories are not ranked according to preference.

1. First priority motor fuel uses are:

a. Military uses;

b. Emergency vehicles;

c. Energy production;

d. Sanitation services;

e. Telecommunications;

f. Agriculture;

g. Passenger transportation;

h. Cargo, freight, and mail hauling, including newspaper deliveries; and

i. Aviation ground support vehicles.

2. Exemptions granted in 6 MCAR S 2.3120, and 6 MCAR S 2.3121, are based on the above list of first priority uses.

3. First priority consumers may apply for state set-aside product as provided by Minnesota Statutes, section 116H.095, if fuel supplies become otherwise unavailable. Applications for state set-aside shall be made according to set-aside application procedures adopted according to Minnesota Statutes, section 116H.095. Preference shall be given first priority motor fuel consumers in assignment of state set-aside product.

4. Users claiming an exemption under these rules or operating a vehicle under an exempt status must do so in good faith. Abuse of a vehicle's exemption status will constitute a violation of these rules and subject the user to the penalties described in 6 MCAR S 2.3110.

5. When a motor fuel is also used as a home heating fuel and that specific fuel is in short supply, the fuel oil priority rankings described in 6 MCAR S 2.3111 shall apply.

REF072

6 MCAR S 2.3113 Severe shortage. If the commissioner determines that the supply shortfall of petroleum and petroleum products is so severe that the existing production and distribution system is incapable of providing adequate supplies to all first priority consumers of motor fuel or diesel fuel, then the commissioner shall advise the Governor that deliveries to otherwise priority consumers be curtailed, so that higher

priority consumers will be provided the necessary fuel to continue essential operations. The Governor may order the curtailment of priority consumers when in the Governor's judgment, the available supply best serves to preserve the health and safety of the citizens of the state when put to a higher priority use.

REP072

6 MCAR S 2.3114 Fuel oil emergency measures. Upon declaration of an energy supply emergency for petroleum, the Governor shall select from the following measures to reduce the shortage of fuel oil.

A. Voluntary measures:

1. Homeowners and renters shall be requested to turn their thermostats back to between 62 degrees Fahrenheit and 66 degrees Fahrenheit during the day and 60 degrees Fahrenheit and 58 degrees Fahrenheit during the night and unoccupied hours, and shall be requested to set back water heater thermostats to betwen 105 degrees Fahrenheit and 115 degrees Fahrenheit (or the lowest setting). Residences occupied by persons for whom such a measure endangers health shall be warned not to comply with this measure. Such persons include the elderly and sick and children under the age of one.

2. Voluntary industrial, commercial, government, and residential conservation targets shall be established to reduce energy usage, including electricity and natural gas, especially during periods of peak usage.

3. Commercial and industrial establishments shall be requested to reduce their hours of operations where this action saves energy.

4. Commercial and industrial users shall be requested to release fuel oil from inventory supplies.

a. The procedures for state set-aside allocation adopted according to Minnesota Statutes, section 116H.095 will be used to allocate voluntarily released inventory.

b. Suppliers shall be directed to deliver fuel oil supplies consisting of voluntary releases according to the system of priorities described in 6 MCAR S 2.3111 B.

5. Business, industrial and government institutions shall be requested to close nonessential buildings.

6. Public information efforts shall be used to instruct Minnesotans in fuel oil, natural gas and electricity saving measures. Regular information up-dates regarding the status and severity of the shortage shall be issued.

B. Mandatory measures.

1. Commercial buildings shall be ordered to comply with the standards that were set in the Emergency Building Temperature Restrictions (EBTR), 10 Code of Federal Regulations Part 490 (1979). Buildings which were exempted under EBTR are exempted from this rule.

2. Smoking within buildings shall be prohibited and reduction of the amount of outside air entering the building ventilation systems may be ordered.

3. Electric utilities with oil-fired generating facilities which are members of the Mid-Continent Area Power Pool shall be ordered to use oil of a quality not suitable for home heating or to shut down these plants and purchase power from the pool when power from nonpetroleum-fired generating facilities is available from the pool.

4. Fuel oil suppliers shall be ordered to stop deliveries to large users (1000 gallon or larger storage tanks) until those users have less than one week's fuel oil supply on hand.

5. Business, industrial and government institutions which now burn middle distillate, natural gas, or propane and which have the capacity to burn residual oil shall be ordered to convert to residual oil during the emergency, unless such action is specifically prohibited by other law or rule of the Pollution Control Agency or other agency. Each firm or institution required to convert to residual oil shall be notified at least ten days prior to the effective date of the measure of the state's intent to implement this measure.

C. When the department determines that actions listed in 6 MCAR S 2.3114 A. and B. have not been or will not be sufficient to eliminate the shortage the following measures may be selected by the Governor:

1. Owners/operators of commercial, industrial, and government buildings shall be ordered to reduce heating thermostats to 62 degrees Fahrenheit during the day where such action does not violate rule MOSHC 41(f) of the Department of Labor and Industry, and 50 degrees Fahrenheit at night or during unoccupied periods.

2. Temporary rules shall be ordered adopted or rules may be ordered suspended to relax environmental standards, where such action would yield significant fuel oil savings.

3. Delivery of fuel oil supplies to specific industrial sectors, including commerce and government, shall be ordered to be curtailed according to the following criteria. A curtailment order shall be in writing signed by the division director, and shall be delivered by registered mail to firms in the industrial sectors and area suppliers at least ten days prior to the effective date of the measure.

a. Order of curtailment will be based on an industry's

energy-labor ratio, defined as the sum of natural gas and fuel oil consumption Btu's per year per employee. The industrial sector with the highest energy-labor ratio will be the first to be curtailed, and so on. Such action will be rescinded in reverse order according to the industry's energy-labor ratio.

b. First priority uses under 6 MCAR S 2.3111 B. will be the last to be curtailed. Second priority uses will be curtailed after third priority uses.

c. A firm within an industrial sector may be exempted from curtailment of fuel oil deliveries if it can demonstrate that its energy-labor ratio is significantly below the industry average of the industrial sector because of conservation or conversion efforts. Exceptions may be granted on appeal pursuant to 6 MCAR S 2.3109.

d. A firm's energy-labor ratio shall be determined by dividing the consumption of natural gas and fuel oil per employee by the ratio of its local degree days to the statewide average degree days of 8400. The 30-year average of degree days shall be used.

e. The order of curtailment and energy-labor ratios for industrial sector groupings and associated standard industrial classification codes will be compiled by the department and published biennially in the State Register during the month of October.

4. Homeowners and renters may be requested to close homes and move in with friends, relatives, or into emergency shelters. The emergency operating center shall assist in this effort by designating shelters, aiding in securing homes, and providing emergency transportation.

5. Actions available for implementation under A. and B. will remain available under C.

REPO72 insert new: 6 MCARS 2.3120 AR0297ST

6 MCAR S 2.3120 Motor fuel emergency measures. Upon declaration of an energy supply emergency based upon a petroleum shortage, the Governor shall select from the following measures to reduce a motor fuel shortage.

A. Public information measure.

1. This measure is intended to conserve motor fuel through voluntary public conservation in response to a declared energy emergency, and through broad public application of vehicle efficiency improvements and ridesharing promoted through public service announcements, conservation demonstrations, and dissemination of energy-related literature.

2. Measure requirements.

a. The emergency operating center shall prepare and

issue news releases to news media throughout the state containing at least the following:

(1) The specific cause or causes of the gasoline or petroleum shortage;

(2) Estimates by the department of the shortfall of supplies expected for Minnesota;

(3) Estimates by the department of the probable duration of the energy emergency; and

(4) A list of specific actions taken and measures imposed to reduce shortage.

b. Owners and operators of diesel-powered automobiles may be requested to substantially reduce or discontinue use of their diesel vehicles during severe fuel oil shortages.

c. The emergency operating center shall make available to large worksites, schools and local energy coordinators, literature which relates vehicle fuel economy to driving practices and vehicle maintenance.

3. The emergency operating center shall provide public service announcements to the media which emphasize the importance of individual and corporate efforts in conserving motor fuel and provide specific conservation tips.

B. Employer-based motor fuel conservation measure.

1. The purpose of this measure is to conserve motor fuel by requiring certain employers to reduce employee commuting and business-related motor fuel consumption in an energy supply emergency. The department shall inform affected employers before May 25, 1983 of the requirements for participating in the employer-based conservation measure. The governor may not implement this measure before May 25, 1983.

2. Applicability.

a. The following employers are required to comply with the provisions of this measure:

(1) Employers who have employment sites where 100 or more persons are employed during the course of any 24-hour period during a normal work week.

(2) All educational institutions at the post-secondary school level with a total combined student-faculty commuting population of 200 or more persons, including colleges, universities, and vocational schools.

(3) State, county, and municipal governments who have employment sites where 50 or more persons are employed.

b. Employers having fewer employees at a location shall be encouraged to adopt strategies listed under this subsection or implement any other conservation activity which

reduces employee commuting and business-related motor fuel consumption.

c. Technical assistance in the preparation of emergency motor fuel conservation plans will be provided by the department upon request.

3. Employer plans may be submitted to the department for each applicable site or in conjunction with a business consortium, community, local, municipal or county-wide plan, so long as each employer subject to this rule identifies the conservation strategies adopted for each work site and the program elements listed under B.7.

4. Employers may choose to submit energy conservation plans to the department before the declaration of an energy emergency in the form and manner provided in paragraphs 5. or 6.

5. Employer emergency motor fuel conservation plan.

a. Employers may submit an emergency motor fuel conservation plan that demonstrates how employee commuting and business travel motor fuel consumption would be reduced during an energy supply emergency. The employer may choose conservation strategies which achieve the required reduction.

b. Employer plans must contain conservation strategies which taken together would reduce an employer's baseline consumption by 15 percent.

c. Employers submitting self-styled emergency motor fuel conservation plans shall include:

(1) a calculation of their baseline consumption as defined in 6 MCAR S 2.3104 C.,

(2) the expected motor fuel savings attributed to the selected strategies, and

(3) the plan elements described in B.7.

d. Employers will be credited for travel reduction actions taken prior to submission of their plans that yield ongoing fuel savings.

e. The assistant commissioner may decline to certify an employer plan submitted under this paragraph which fails to empirically support the level of savings attributed to each of the proposed activities. Self-styled employer plans may contain any of the strategies provided in paragraph 6.

6. Employer motor fuel reduction strategies.

a. Employers shall select at least four strategies from the Categories I and II, but in no case less than one from Category I.

b. Category I Strategies:

(1) Establish a carpool program for employees. An employer rideshare program may be independently-sponsored or provided in conjunction with a local or community ridesharing program. A rideshare program must minimally provide for: promotion of ridesharing through company bulletins, advertisements, and policies; the capability to match employees to carpools through rideboards, computer listings, or other methods which provide information necessary to match rideshare applicants; and a rideshare coordinator who will be responsible for the sponsored program.

(2) Sponsor an employee vanpool program. An employer may purchase, rent, lease, or otherwise provide employees with vans for commuting to and from work. The employer may demonstrate an equivalent level of employee participation in an independent or employee-owned vanpool, but in any case shall maintain a participation rate of at least seven percent of total employment to qualify as providing a vanpool program.

(3) Provide an auxiliary transportation service (e.g., subscription bus or shuttle service) or participate in a consortium of two or more employers to provide the service. A qualifying auxiliary transportation service shall consist of:

(a) vehicles with a minimum carrying capacity of 20 passengers,

(b) a participation rate of 50 percent of employees who live within a three mile radius of the work site, or the equivalent number, and

(c) at least one commuter check point at least five miles from the work site.

Employer-sponsored rideshare programs which fulfill the requirements of B.6.b. will be certified by the department. Employers may issue "identifying" rideshare stickers to qualifying employees' vehicles. Rideshare vehicles will be eligible to purchase fuel as priority vehicles under the flag system described in F. and will be exempt from the odd-even purchase restriction described in D.

d. Category II strategies:

(1) Adopt and enforce a parking management strategy which provides for preferential parking for high occupancy vehicles in employer parking lots or subsidizes at least 20 percent of the cost of contract parking in independently operated parking facilities for employee carpools, or both.

(2) Prohibit the use of company-owned vehicles for single-occupancy commuting and adopt a policy of using company vehicles for employee carpools.

(3) Purchase an electric or electric-hybrid vehicle.

(4) Promote transit use by employees through direct sale of transit passes at the work site, fare subsidies, or display of direct and connecting routes serving the work site.

(5) Provide facilities which promote employee commuting by bicycle or moped. These facilities might include:

(a) indoor or sheltered bicycle parking,

(b) high security bicycle parking,

(c) showers and dressing areas for bikers.

(6) Participate with a rideshare agency to provide jitney service to persons requesting travel to a destination on or near the route taken for business purposes. An employer-owner or employee-owned vehicle used for business purposes may be used for the jitney service.

(7) Institute flexible or staggered work hours.

(8) Participate in an independently-sponsored truck and bus fuel economy project which offers both energy-conscious-driver education and instruction on fuel-economizing vehicle maintenance and accessories. Employers choosing this strategy must maintain a fleet of at least ten vehicles used for cargo and freight hauling.

7. An employer submitting an emergency motor fuel conservation plan according to B.5. of 6. shall identify in its plan the following:

a. The carpool, vanpool or subscription bus program sponsored or subscribed to, and an estimate of the number of employees currently using and expected to use such services.

b. Title of the person or persons responsible for supervising each plan component.

c. The internal media to be used to inform employees of the employer's program;

d. The administrative assistance and inhouse resources that the employer will provide for employee ridesharing services;

e. The schedule for implementing chosen strategies; and

f. The personnel (by title or position) that will perform essential plant protection for the firm during a driving ban.

8. Employers shall institute all strategies contained in an approved employer conservation plan when the Governor orders

the employer-based motor fuel conservation measure.

9. Employers who do not have an approved emergency motor fuel conservation plan before the declaration of an energy supply emergency for motor fuel shall:

a. Submit to the department within 15 days after declaration of an energy supply emergency for motor fuel a plan to reduce baseline consumption by at least 15 percent over a period of three months or longer, or

b. Institute a compressed work week pursuant to an Executive Order of the Governor that designates the weekday on which employers not qualifying under B.5., 6., or 9.a., shall not perform or have an employee perform any activity related to the business except where:

(1) Business- or employment-related activity can be performed at an employer's or employee's place of residence;

(2) Activities required in certain industrial processes must operate continuously to prevent long term or irreparable damage to a system or process; and

(3) Plant protection requires a minimum level of attention or surveillance.

c. The following businesses or governmental activities shall be exempt from a compressed work week regardless of B.9.:

(1) Public or private services essential to public health and safety such as health and residential care facilities, medical facilities, law enforcement activities, and emergency services;

(2) Agriculture;

(3) Energy production;

(4) Telecommunications; and

(5) Sanitation services.

10. The emergency operating center shall publicly announce the implementation of the employer-based conservation measure at least ten days prior to the effective date of the measure.

C. School conservation measure.

1. The purpose of this measure is to conserve motor fuel by requiring schools to adopt strategies to reduce student commuting and school-sponsored activities in an energy supply emergency.

2. Applicability.

a. All school districts, as defined by the education code, Minnesota Statutes, chapters 120 to 129, and nonpublic schools, as defined in Minnesota Statutes, section 123.932, subdivision 3, which have a combined student-staff population of 100 persons or more, are required to comply with this measure.

b. The boards of all school districts, defined and empowered under the education code, Minnesota Statutes, chapters 120 to 129, and nonpublic school authorities, shall be responsible for submitting plans under this rule.

3. The governor may not implement the school conservation measure before October 1, 1982. School boards shall submit to the department before April 1, 1984, or within 45 days after declaration of an energy supply emergency, whichever comes first, an emergency motor fuel conservation plan as defined in paragraphs 6. or 7.

4. Nonpublic schools may fulfill the requirements of this rule by submitting a plan to the department in one of the following forms:

a. A school-specific plan, or

b. A school association plan that contains strategies adopted by member schools, or

c. A signed agreement with a school district which states the nonpublic school's strategies and the person or position responsible for implementation of strategies adopted by the private school.

5. School districts or nonpublic school associations shall submit either a self-styled conservation plan as provided in paragraph 6. of this rule or a plan structured from the strategies provided in paragraph 7.

6. School emergency conservation plan: Option A.

a. School districts may submit a self-styled conservation plan including any conservation strategies that taken together would reduce baseline consumption by at least 15 percent during an energy supply emergency.

b. Self-styled conservation plans shall include:

(1) a calculation of the baseline consumption, defined in 6 MCAR S 2.3104 C.,

(2) the expected motor fuel savings attributed to each selected strategy, and

(3) the plan elements described in C.8.

c. School districts will be credited for travel reduction actions taken prior to submission of their plans that yield ongoing motor fuel savings.

d. The assistant commissioner may decline to certify a school district or association plan submitted under this rule which fails to empirically support the savings attributable to each of the proposed actions. Self-styled school plans may include any of the strategies provided in 7.

7. School emergency conservation plan: Option B reduction strategies.

a. School districts shall select at least three strategies from the following categories, provided that at least one strategy is from Category I.

b. Category I strategies. School districts shall implement Category I strategies upon the selection of this measure by the Governor in an energy supply emergency.

(1) Prohibit student parking on school grounds and request local authorities to pass or enforce parking restrictions in areas adjacent to a school for the duration of the emergency. Exemptions from the parking prohibition may be granted to students who:

(a) have no alternative transportation to school; or

(b) have special medical needs that prevent use of alternative methods of traveling to school; or

(c) have job requirements that demand access to automobile transportation; or

(d) are members of a carpool registered with the school rideshare coordinator.

(2) Postpone or cancel extracurricular activities (including athletic events) until the termination of an energy supply emergency for motor fuel.

(3) Cancel two school days for each 30-day declared energy emergency period.

c. Category II strategies. School districts choosing Category II strategies (1), (2), (3), and (6) shall implement these strategies prior to or within 3 months after submitting their conservation plans to the department.

(1) Establish or sponsor a student/staff rideshare program. A student/staff rideshare program may be organized independently or in conjunction with a local or community rideshare program. A rideshare program must provide for: promotion of ridesharing through school policies and newspapers or other publications, the capability to match students or staff carpools through rideboards, manual or computer listings, or other methods which provide information necessary to match rideshare applicants, and a school rideshare coordinator who

will be responsible for the school ridesharing program.

(2) Adopt and enforce a parking management strategy which gives preferential parking to high occupancy vehicles in student parking lots or requires fees for parking on school grounds.

(3) Provide indoor or sheltered bicycle parking with a capacity for at least five percent of the student body.

(4) Eliminate on-the-road driver education for the period of the emergency.

(5) Cancel or reschedule some extracurricular activities. Selection of this strategy is not permitted if Category I - strategy (2) has been chosen and applies when the Governor orders the school conservation measure.

(6) Participate in an independently-sponsored school bus fuel economy program.

8. Emergency motor fuel conservation plans submitted by school districts shall include:

a. the title of the person or position responsible for implementing the plan during an energy supply emergency for motor fuel;

b. the internal media to be used to inform school staff and students of a school district program measure; and

c. the implementation schedule for category II strategies (1), (2), (3) and (6).

9. School districts shall implement all or part of their plans as specified by the division director upon order of the Governor.

D. Odd-even purchase requirement measure.

1. The purpose of the odd-even purchase requirement is to conserve motor fuel and facilitate the orderly purchase of motor fuel by alternating the days of purchase eligibility.

2. Applicability.

a. Retail sales and purchases of motor fuel shall be restricted to even-numbered days of the month for persons in possession of vehicles whose license plate numbers end in one of the even digits 0, 2, 4, 6, 8; and to odd-numbered days of the month for persons in possession of vehicles whose license plate numbers end in the odd digits 1, 3, 5, 7 and 9.

b. Specialty and personalized license plates which display no ending numeral are deemed to be "odd" for purposes of the purchase requirement.

c. The restrictions in this rule shall not apply on the thirty-first day of any month or on the twenty-ninth day of February in a leap year.

3. Exemptions. The following vehicles shall be exempt from the odd-even purchase requirement. Motor fuel may be purchased for them on any day of the week.

a. Vehicles being driven for any first priority use defined in 6 MCAR S 2.3112. For the odd-even purchase requirement, vanpools will be those vehicles either displaying a "vanpool" designation issued by a vanpool leasing agency, vanpool services agency, or employer, or carrying at least eight passengers on a work commuting trip.

b. Ridesharing vehicles identified by employers with state certified conservation plans, as described in B.6.b.

c. Commercial vehicles, as defined in 6 MCAR S 2.3104 H.

d. Vehicles operated by a handicapped person and displaying a handicapped license plate or other special identification.

e. Vehicles with out-of-state license plates.

f. Motorcycles and mopeds.

g. Vehicles not licensed for highway use.

h. Vehicles held for sale by a licensed motor vehicle dealer in the ordinary course of business.

i. Vehicles being operated by individuals under emergency circumstances which in the judgement of the retailer demand an exception. If such an exception is granted by the retailer, the license number and signature of the person granted the exception shall be obtained.

E. Minimum purchase requirement measure.

1. The purpose of this measure is to decrease vehicle lines at motor fuel retail outlets by reducing the frequency of fillups.

2. Measure requirements. Motor fuel shall not be sold, dispersed, or otherwise transacted by a motor fuel retailer for use in any vehicle unless:

a. The amount transacted and dispersed is at least five gallons.

b. In the event the quantity purchased is less than the five gallon minimum, the purchaser shall pay the retailer an additional amount so that the total transaction price is equal

to the stated pump price times the five gallon minimum.

c. In any single transaction, not more than six gallons of motor fuel may be sold or dispensed into a container, other than the fuel tank of a vehicle, to be transported away from the premises of the retail seller. Such containers must meet applicable safety requirements.

3. A person selling motor fuel in transactions to which provisions of this section apply shall display at the point of sale notice of such provisions.

4. Both the motor fuel retailer and the vehicle operator are required to comply with the provisions of this section.

5. Exemptions. The following users are not required to purchase a minimum amount:

a. Vehicles being driven for first priority uses, as defined in 6 MCAR S 2.3112. For the minimum purchase requirement, vanpools are those vehicles either displaying a "vanpool" designation issued by a vanpool leasing agency or vanpool services agency, or carrying at least eight passengers on a work commuting trip.

b. Motorcycles and mopeds and similar three-wheeled vehicles.

c. Out-of-state licensed vehicles.

d. Vehicles held for sale or lease by licensed motor vehicle dealers in the ordinary course of business.

e. Vehicles being operated by individuals under emergency circumstances which in the judgment of the retailer demand an exception. If such an exception is granted by the retailer the license number and signature of the person granted the exception shall be obtained.

F. Flag requirement for motor fuel retailers.

1. The purposes of this measure are to signal to motorists availability of motor fuel for purchase at stations through the display of flags and to permit retailers to limit sales to priority users only.

2. Each motor fuel retail station shall clearly indicate its motor fuel supply and servicing status by displaying a flag of one of the three colors listed below.

a. A green flag indicates that motor fuel is available to the public subject to the purchase restrictions imposed by these rules. A station flying a green flag cannot show preference to any customer, except that emergency vehicles may be allowed to move to the front of an existing line to be fueled.

b. A yellow flag indicates that motor fuel is available only to first priority vehicles, as defined in 6 MCAR S 2.3112, and to ridesharing vehicles which have been identified by employers according to the terms and provisions of a state-certified conservation plan, as described in B. A station flying a yellow flag shall not show preference in the sale of motor fuel to any priority vehicle.

c. A red flag indicates a station is out of fuel and/or is closed. No motor fuel may be dispensed from a station flying a red flag, except to emergency vehicles, as defined in 6 MCAR S 2.3104 R.

3. Flags shall be square and at least two feet by two feet but no greater than three feet by three feet in size. They shall be made of cloth or plastic. Flags shall be located on the boulevard or near enough to the street to allow visibility of at least 100 yards in each direction of the station.

G. Motor fuel availability measure.

1. The purpose of this measure is to assure that motor fuel is available for purchase at key locations throughout the state 24 hours a day and that these locations and their hours of operation are locally publicized.

2. Motor fuel retailers who have historically remained open 24 hours a day and provided emergency road service may apply for state set-aside product assignment according to the state set-aside application procedures authorized by Minnesota Statutes, section 116H.095.

3. The emergency operating center shall publicize the location of the stations participating in the availability program in local newspapers. This information will also be supplied to the AAA of Minnesota (American Automobile Association) and the Economic Development Division's Tourist Information Center, both of which provide motor fuel availability information.

H. Strict enforcement of posted highway speed limits.

1. The purpose of this measure is to conserve motor fuel by strictly enforcing the current maximum speed limit on state highways.

2. Motorists shall strictly obey the maximum legal speed limit. Violations of the maximum legal speed limit during a declared energy supply emergency shall be subject to the additional penalities provided in 6 MCAR S 2.3110.

3. The Governor shall request state, county, and municipal law enforcement agencies to intensify speed limit enforcement through personnel assignments and increased road surveillance.

REF072

6 MCAR S 2.3121 Severe motor fuel emergency measures. When the department determines that the measures listed in 6 MCAR S 2.3120, have not eliminated or will not eliminate the shortage of motor fuel, the Governor may order any of the following measures.

A. Vehicle permit-sticker measure.

1. This measure is intended to conserve motor fuel by prohibiting the use of vehicles for one day per week.

2. Applicability.

a. Vehicle owners shall apply to the Department of Public Safety for a no-driving-day-designation permit-sticker. The applicant may select any day (Monday through Sunday) as the no-driving-day for his/her vehicle but must choose the same day for all vehicles owned. The owner must prominently display the sticker on each vehicle owned and driven during the term of this measure.

b. A vehicle rented or leased for a period exceeding seven days shall be considered owned by the lessee for purposes of this measure.

c. Upon the effective date of the vehicle permit-sticker requirement, all Minnesota-licensed motor vehicles subject to the requirement must display a permit-sticker in the lower right-hand corner of the front windshield.

3. Exemptions.

a. Vehicles being driven for any first priority use defined in 6 MCAR S 2.3112;

b. Vehicles held for sale or lease by a licensed motor vehicle dealer in the ordinary course of business;

c. Motorcycles and mopeds;

d. Short-term rental vehicles; and

e. Such other vehicles as the Governor may determine.

4. Vehicle owners operating a motor vehicle under one of the qualifying exemptions listed above must apply to the Division of Driver and Vehicle Services (DDVS) of the Department of Public Safety for an exempt sticker. Exempt stickers issued by the DDVS must be prominently displayed on the vehicle for which the exempt permit was issued.

5. Vehicle rental agencies must apply for "exempt" stickers for vehicles rented for periods less than one week. Upon approval of a rental agency's application, DDVS will exempt

stickers for designated rental vehicles. Vehicles rented or leased for use predominantly in Minnesota for periods exceeding seven days must be registered by the lessee.

6. The Governor may waive the requirement for the display of exempt permit-stickers for any vehicle class listed under paragraph three (3).

B. Speed limit reduction measure.

1. This measure is intended to conserve motor fuel by reducing the maximum speed limit on all highways in Minnesota.

2. The Governor upon the advice of the department shall order the Commissioner of Transportation to set a lower speed limit on all highways in Minnesota. The Commissioner of Transportation shall lower the speed limit during an energy supply emergency pursuant to Minnesota Statutes, section 169.141.

3. Violation of the maximum limit during an energy supply emergency for motor fuel shall carry the additional penalties as provided in 6 MCAR S 2.3110.

4. The Governor may request state, county, and municipal law enforcement agencies to intensify speed limit enforcement activities through personnel assignments and increased road surveillance efforts.

C. Driving ban measure.

1. This measure is intended to conserve motor fuel by prohibiting the use and operation of all non-exempt motor vehicles for a specified 24-hour period.

2. Upon the department's determination that a 24 hr. driving ban is necessary to reduce the demand for motor fuel, the Governor may order an emergency driving ban. Upon the Governor's order, the division director shall issue the order and a statement to the news media to be promptly disseminated and brought to the attention of the public. The statement shall state the designated date of the ban, the emergency services which will remain available during the ban, the enforcement actions to be taken, and the penalties imposed for violation of the ban. The statement shall be released at least five days prior to the imposition of the driving ban.

3. It shall be unlawful for anyone to operate a Minnesota-registered and licensed motor vehicle on public roads during the period of driving ban.

4. Exemptions. The following motor vehicle uses shall be exempt from a driving ban:

a. Emergency vehicles;

b. Sanitation services vehicles;

c. Aviation ground support vehicles;

d. Vehicles identified as required in 6 MCAR S 2.3120 B.7.f. and used by employees in commuting for the purposes of plant protection.

e. Vehicles used in providing or transporting employees for emergency medical care, residential care, telecommunications services, energy production, and news reporting;

f. Individuals who require daily medical treatment; and

g. Out-of-state licensed vehicles.

5. Any vehicle registered and licensed by the State of Minnesota and operated during a driving ban shall prominently display a sticker or card which clearly identifies that vehicle as exempt. The Governor may waive this requirement for any category of exempted user, for example, police, fire, ambulance, or aviation ground support vehicles.

6. The department will issue guidelines for identification of exempt vehicles prior to a driving ban.

2.4001-7R

6 MCAR S 2.4001 Authority and purpose.

A. Authority. Rules 6 MCAR SS 2.4001-2.4007 implementing the district heating preliminary planning grants program are promulgated by the agency pursuant to Laws of 1981, chapter 356, section 30.

B. Purpose. The objective of the district heating preliminary planning grant program is to encourage the development and expansion of economically viable district heating systems which have the potential to save energy and displace scarce fuels such as oil and natural gas. The program shall encourage: construction of new hot water district heating systems; reconstruction or major expansion of existing steam district heating systems; and expansion of district heating systems by development of satellite systems or heat islands which could be connected to an existing or proposed major central heating system later.

6 MCAR S 2.4002 Definitions. For the purpose of 6 MCAR SS 2.4001-2.4007 the words or terms defined in this rule have the meanings given them.

A. Agency. "Agency" means the Minnesota Energy Agency.

B. Applicant. "Applicant" means a municipality as defined in F. as well as any organization submitting a joint application with the municipality. No application shall be accepted unless submitted by a municipality as sponsor or co-sponsor.

C. Community heatload survey and map. "Community heatload survey and map" means a description of the district heating market including location of heat source, location, type and age of heating systems of potential nonresidential customers, annual energy consumption and temperature requirements and approximate load duration for process heat customers.

D. Director. "Director" means the director of the Minnesota Energy Agency.

E. Major central system. "Major central system" is one that does not rely on oil or natural gas.

F. Municipality. For purposes of applying for grants under this program, "municipality" means a city however organized.

G. Project. "Project" means the preliminary planning project.

H. Satellite or heat island. A "satellite or heat island" system relies on oil, natural gas or the combustion of waste material and is a heating system which in the future would become a part of a major central system.

2.4001-7R

6 MCAR S 2.4003 Preliminary planning grant program.

A. Application schedule. The agency shall accept grant applications on two-month intervals after the effective date of 6 MCAR SS 2.4001-2.4007. Applications received shall be ranked, and the director shall recommend ranked applications which meet all the criteria to the legislative advisory committee for approval and funding. No municipality shall be awarded more than two grants out of the same appropriation.

B. Review process. Applications shall be reviewed and ranked by the agency. The director shall prepare and submit to the legislative advisory committee a list of all district heating grant requests. The list shall contain the necessary supporting information. The recommendations of the legislative advisory committee shall be transmitted to the Governor. The Governor shall approve, disapprove, or return for further consideration each project recommended for approval by the legislative advisory committee. Upon approval by the Governor, a grant agreement shall be negotiated with the agency in accordance with 6 MCAR S 2.4006. Comments on applications not selected for grant awards shall be forwarded to the applicant. Applications not funded shall be included in the next funding round unless withdrawn. Applicants may modify or supplement their proposals for the next funding interval if desired.

6 MCAR S 2.4004 Contents of preliminary planning grant applications. Applications shall contain the information required by Laws of 1981, chapter 356, section 30, and at least the following information:

A. A community heatload survey and map. The survey shall contain a description of the heat source and an estimate of the district heating market.

1. If plans call for an existing heat source such as an electric generation plant or a coal-fired boiler, the application shall include at least a discussion of: type, size, age, fuel, present use and emission controls. If a new heat source is proposed to be used, the application shall include: fuel, estimated cost of fuel and fuel availability.

2. The estimate of the district heating market shall contain nonresidential building information including location, type and age of heating system, type of fuel and annual energy consumption and a description of process load including temperature requirements and load duration.

3. The map shall show the location of the heat source and major load concentrations.

B. Community benefit. Briefly discuss the impact of the district heating system on the community and how it would relate to community development plans.

C. Community commitment. Include written expressions of interest and commitment from major potential loads, owner of heat source, and the municipal governing body.

D. Project plan. The project plan shall include a list of tasks, time estimates for each task and a list of deliverables. It should also include rough estimates of time required in successive stages such as design and construction.

E. Project budget. Include an estimate of expenditures by categories such as personnel and travel and estimates of costs by project plan task.

F. Project organization chart and use of consultants. Assistance in preparing applications can be obtained from the agency.

2.4001-7R

6 MCAR S 2.4005 Ranking criteria. Applications will be ranked according to the following criteria, which are listed in order of importance:

A. Estimated capital cost per million BTU of energy sold per year;

B. Benefit to the community;

C. Project plan;

D. Community commitment;

E. Thoroughness of community heatload survey;

F. Qualifications of project personnel;

G. Clarity and conciseness.

2.4001-7R

6 MCAR S 2.4006 Agreement.

After approval by the Governor, the applicant shall enter into an agreement with the agency.

A. Contents. The agreement shall specify the grant amount and the duration of the grant. The agreement shall include assurance that the local share will be provided and that the agreed-upon work program will be carried out. A grant agreement based upon a joint application must be executed by the lead applicant. Amendments and extensions may only be made in writing and must be signed by all parties.

B. Funding period. Planning grants will be approved for a period of up to one year.

C. Grant limitations. Planning grants shall not exceed 90 percent of eligible planning costs. No single grant shall

exceed $20,000.

D. Disbursement schedule. Ninety percent of grant monies shall be disbursed at the outset upon receipt of invoice to the agency of project costs. The remaining ten percent shall be disbursed upon completion and receipt of a satisfactory final report.

E. Required reports. The grantee shall submit to the agency on the first of each month a report briefly stating the activities that have transpired during the month. The grantee shall provide the agency with three copies, one of which shall be a camera-ready copy, of the final preliminary planning report.

F. Records. The grantee shall maintain for a period of not less than three years from the date of the execution of the contract all records relating to the receipt and expenditures of grant monies.

G. Contract deviations. No grant funds shall be used to finance activities by consultants or local staff if the activities are not included in the grant contract, unless agreed upon in writing by the agency. Unless agreed upon by the agency, a municipality may not contract out all its energy-related activities to consultants.

2.4001-7R

6 MCAR S 2.4007 Evaluation.

A. Evaluation. The agency shall conduct an evaluation within 60 days of the submission by the grantee to the agency of the final report and all the required reports and financial documents. The evaluation shall assess:

1. Whether the local share contributed was equal to or greater than ten percent of the total cost of the preliminary planning project;

2. Whether the agreed-upon work program was completed;

3. Whether the governing body has formally reviewed the completed preliminary district heating plan.

B. Review. Upon completion of a satisfactory evaluation the remaining ten percent of the grant shall be disbursed to the grant recipient. If the results of the evaluation are unfavorable to the grantee and the grantee does not agree with the findings of the evaluation, the grantee may request a review by the director.

REP 166

6 MCAR S 2.4011 Definitions.

A. Applicability. For the purposes of 6 MCAR SS 2.4011-2.4017 the terms defined in B.-G. have the meanings given them.

B. Act. "Act" means Laws of 1981, chapter 334.

C. Commissioner. "Commissioner" means the Commissioner of the Department of Energy, Planning, and Develcpment.

D. Department. "Department" means the Department of Energy, Planning, and Development.

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

F. Preliminary engineering design. "Preliminary engineering design" means a design effort with the objective of estimating district heating design and construction costs within 15 percent of the actual costs.

G. Project. "Project" means a district heating design project.

REP 166

6 MCAR S 2.4012 Authority, purpose, and applicability.

A. Authority. Rules 6 MCAR SS 2.4011-2.4017 are authorized by Minnesota Statutes, section 116H.31, subdivision 11.

B. Purpose. Rules 6 MCAR SS 2.4011-2.4017 are promulgated for the purpose of allowing prompt and proper applications for design loans after comprehensive preliminary engineering, economic, and design studies have been completed. Rules 6 MCAR SS 2.4011-2.4017 set forth the procedures that municipalities must follow to apply for loans and establish the criteria by which the applications are reviewed.

C. Applicability. Rules 6 MCAR SS 2.4011-2.4017 apply to the department and to any municipality applying for design loans under the act.

6 MCAR S 2.4013 Application procedure. Applications for design loans under the act and 6 MCAR SS 2.4011-2.4017 shall be submitted to the commissioner. Ten complete copies shall be submitted. Applications will be accepted beginning on the date 6 MCAR SS 2.4011-2.4017 become effective.

REP 1666

6 MCAR S 2.4014 Application contents. An application shall contain the following information:

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

B. A comprehensive business plan for the project as specified in 6 MCAR S 2.4015;

C. A resolution in support of the project from the governing body of the municipality, which must include the pledges the municipality proposes to make to guarantee repayment of the design loan;

D. A resolution or letter of intent from the proposed owner or operator of the district heating system indicating that he would expect to proceed with construction if the results of the design and final feasibility project are consistent with the preliminary feasibility study;

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

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

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

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

REP 1666

6 MCAR S 2.4015 Contents of comprehensive business plan.

A. Minimum contents. The comprehensive business plan submitted under 6 MCAR S 2.4014 A.2. must contain no less than the information specified in B.-H.

B. Preliminary engineering design. A preliminary engineering design of the project must include the following information.

1. An analysis of the proposed piping layout must address optimum service to the total designated area; reliability of service; system temperatures and pressure requirements; thermal and hydraulic operability for normal and emergency conditions;

optimum piping configuration to provide service; and flexibility for future expansion.

2. An analysis of the proposed piping design must address reliability of service; ease of construction; ease of maintenance; installation methods; and specifications and standards.

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

C. Market study. The comprehensive business plan must include a market study of customers who represent 90 percent of the proposed thermal load of the district heating system defined by the business plan. This study must show detailed information on present fuel consumption or heating demand and the present heating system in each building.

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

E. Preliminary economic analysis. A preliminary economic analysis must include a preliminary financing and development plan for the district heating system and cash flow, income, and balance sheets for a 20-year planning period. This analysis must also contain a cost estimate and expenditure schedule for all transmission and distribution piping; heat source conversion, purchase, or rental; operating and maintenance costs excluding fuel costs; and building heating conversion costs.

F. Letters of intent to purchase heat. The applicant shall submit copies of letters of intent to purchase heat supplied by the project, from major customers representing at least 50 percent of the thermal load.

G. Letter of intent to furnish heat. The applicant shall submit a copy of a letter of intent to furnish heat, from the owner of the heat source or the proposed system owner or operator.

H. Engineering opinion. The business plan requires an opinion by a registered professional engineer that the system described by the preliminary designs is technically feasible and that the preliminary engineering design and cost estimate is within standard engineering practice.

REPEALED

6 MCAR S 2.4016 Application review criteria. The commissioner shall review each application as it is received according to the eligibility and priority criteria of Minnesota Statutes, section 116H.31; the sophistication and reasonableness of the technical

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

REP 1616

6 MCAR S 2.4017 Expenditures not required. Rules 6 MCAR SS 2.4011-2.4017 do not require expenditure of money not available.

insert new →