

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

Proposed Permanent Rules
Relating to Utility Service
Disconnection During Cold
Weather.

REPORT OF THE
CHIEF ADMINISTRATIVE LAW JUDGE

The above-entitled matter came on for review by the Chief Administrative Law Judge pursuant to the provisions of Minn. Stat. § 14.15, subds. 3 and 4, which provide:

Subd. 3. Finding of substantial change. If the [administrative law judge's] report contains a finding that a rule has been modified in a way which makes it substantially different from that which was originally proposed, or that the agency has not met the requirements of sections 14.131 to 14.18, it shall be submitted to the chief administrative law judge for approval. If the chief administrative law judge approves the finding of the administrative law judge, the chief administrative law judge shall advise the agency and the revisor of statutes of actions which will correct the defects. The agency shall not adopt the rule until the chief administrative law judge determines that the defects have been corrected.

Subd. 4. Need or reasonableness not established. If the chief administrative law judge determines that the need for or reasonableness of the rule has not been established pursuant to section 14.14, subdivision 2, and if the agency does not elect to follow the suggested actions of the chief administrative law judge to correct that defect, then the agency shall submit the proposed rule to the legislative commission to review administrative rules for the commission's advice and comment. The agency shall not adopt the rule until it has received and considered the advice of the commission. However, the agency is not required to delay adoption longer than 30 days after the commission has received the agency's submission. Advice of the commission shall not be binding on the agency.

Based on a review of the record in this proceeding, the Chief Administrative Law Judge hereby approves the Report of the Administrative Law Judge with the exception of Findings of Fact 48 through 51 and Conclusions 3 and 4.

As to Findings of Fact 48 through 51, the Chief Administrative Law Judge finds as follows:

With respect to the issue of "full amount of the utility bill" the Chief Administrative Law Judge finds that Minn. Stat. § 216B.095 (Supp. 1989) indicates that if a customer pays a utility the full amount of his monthly utility bill during a cold weather month, that customer cannot be disconnected during that month. The statutory provision in question provides:

The commission shall amend its rules governing disconnection of residential utility customers who are unable to pay for utility service during cold weather to include the following:

* * *

(2) a requirement that a customer who pays the utility at least ten percent of the customer's income or the full amount of the utility bill, whichever is less, in a cold weather month cannot be disconnected during that month;...

The rule proposed by the Commission provides at parts 7820.1600, subpart 5 (a) and 7820.1800, subpart 1, item B(2), that the full amount of the utility bill means the current month's bill, not including arrearages. The Chief Administrative Law Judge concludes that this is a necessary and reasonable interpretation of the statute and it is consistent with the legislative intent.

As used in the statute, the words "in a cold weather month" modify both the phrases "at least ten percent of the customer's income" and "the full amount of the utility bill". Thus, the statutory wording to be interpreted is "the full amount of the utility bill . . . in a cold weather month."

It is reasonable to conclude that the legislature intended this to mean the full amount of the utility bill for that particular month and thus the Commission's exclusion of arrearages from the definition is authorized. The words "full amount" still have meaning and effect insofar as this is distinguishable from the payment of some portion of the month's bill which would be less than the "full amount" of the month's bill (i.e. a partial payment of the charge for utility service in the current month).

For these reasons, and considering the justification for the Commission's interpretation as set forth in Finding 43 of the Administrative Law Judge's Report, the Chief Administrative Law Judge finds that the Commission's interpretation of Minn. Stat. § 216B.095 (2) (Supp. 1989) so as to exclude arrearages, which is reflected in parts 7820.1600, subpart 5 (a) and 78.20.1800, subpart 1. B. (2) is needed, reasonable and consistent with the legislative intent.

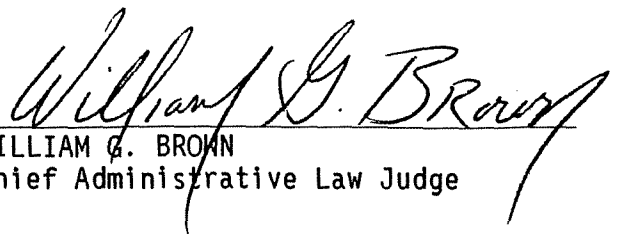
Based on the above, the Chief Administrative Law Judge does not approve the Administrative Law Judge's finding of a defect within the meaning of Minn. Stat. §§ 14.15 and 14.16, and therefore amends Conclusions 3 and 4 of the Administrative Law Judge to read as follows:

Conclusion 3. That the Commission has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 11.15, subd. 3, and 14.50 (i) (ii).

Conclusion 4. That the Commission has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2, and 14.50 (iii).

It is hereby recommended that the proposed rules be adopted consistent with this Order.

Dated: March 12th, 1990.


WILLIAM G. BROWN
Chief Administrative Law Judge