

G,E-999/R-86-322of the United States District Court, for the District of Minnesota.

STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

In the Matter of the Proposed Rule
Amendments Governing Disconnection
During Cold Weather, Minn. Rules, parts
7820.1500 to 7820.2300

ISSUE DATE: November 7, 1989

DOCKET NO. G,E-999/R-86-322

STATEMENT OF NEED AND
REASONABLENESS

I. INTRODUCTION

The Minnesota Public Utilities Commission's (Commission) current rules governing Disconnection During Cold Weather prohibit disconnection of a residential utility customer who is unable to pay for utility service during cold weather months. See Minn. Rules, parts 7820.1500 to 7820.2300.

The Commission identified its cold weather rules for amendment and solicited outside information on rule part 7820.1800, along with other non-cold weather, customer service rules. The Commission received many comments in response to its solicitation, which are a part of this rulemaking. See Exhibit 1.

Then the Commission formed an Advisory Task Force to review and discuss the solicited comments and draft rule amendments. The Task Force consists of representatives from the utilities, state agencies, and consumer groups, all of whom responded to the Notice of Intent to Solicit Outside Information. See Exhibit 2.

While the Task Force was meeting, the Minnesota Legislature enacted Minn. Stat. § 216B.095 (1989 Supp.). See Exhibit 3. That statute directs the Commission to amend its cold weather rules in certain respects. After the legislation was enacted, the Commission invited other affected organizations, such as representatives of the local energy assistance providers, to participate in the Task Force meetings. See Exhibit 4.

The Task Force and participants focused on the cold weather rules and assisted Commission Staff in incorporating the new law in these proposed rule amendments. Some of the Task Force members and participants submitted written comments during the rule drafting process. See Exhibit 5.

II. STATEMENT OF COMMISSION'S STATUTORY AUTHORITY

The Commission's statutory authority to adopt these rules is set forth in Minn. Stat. § 216B.08 (1988), the Commission's rulemaking authority, and Minn. Stat. § 216B.095 (1989 Supp.), which directs the Commission to amend its cold weather rules to include certain requirements.

Under these statutes the Commission has the necessary statutory authority to adopt the proposed rules.

III. STATEMENT OF NEED

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

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

Since the current cold weather rules were adopted in 1979, experience has shown that the rules need clarification in some points and procedural changes or substantive additions in others. For instance, the term "reasonably on time with payments" is not defined in the current rules. The proposed amendments clarify the rules by adding a definition of "reasonably on time with payments".

The current rules also need amendment to implement the new law governing disconnection during cold weather. Minn. Stat. § 216B.095 (1989 Supp.), directed the Commission to amend its rules. This law is not self-enacting, but requires a rulemaking.

For these reasons, the cold weather rules need amendment.

IV. STATEMENT OF REASONABLENESS

The Commission is required by Minn. Stat. ch. 14 (1988) to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Reasonableness is the opposite of arbitrariness or capriciousness. It means that there is a rational basis for the Commission's proposed action.

However, the proposed rule need not be the most reasonable solution to the situation which created the need for a rule. The proposed rule is not unreasonable simply because a more reasonable alternative exists or a better job of drafting might have been done.

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

A. Reasonableness of the Rules as a Whole

The overall approach taken to amend these rules was to solicit outside comment and form an Advisory Task Force to review and discuss the draft rules in light of Commission concerns and the new law.

Soliciting outside comment allowed the Commission to consider comments on a draft rule without the substantial change prohibition associated with proposed rules. The Advisory Task Force allowed interested persons to help Commission Staff identify issues and evaluate the consequences of various alternatives.

This approach was reasonable because it ensured input and participation by those affected by the rules.

B. Reasonableness of Individual Rules

The following discussion addresses the specific provisions of the proposed rules.

7820.1500 PURPOSE AND AUTHORITY.

The Commission proposes to amend this rule in several ways.

First, statutory cites have been added to the rule. Minn. Stat. § 216B.02 (1988) defines utility, Minn. Stat. § 216B.026 (1988) allows electric cooperative associations to elect regulation, Minn. Stat. § 216B.095 (1989 Supp.) sets forth certain requirements for the cold weather rules, and Minn. Stat. § 216B.17 (1988) is the complaint statute governing electric cooperative associations and municipal gas and electric utilities. See Exhibit 6. Adding these cites updates the rule by referring to the appropriate statutes governing the Commission's authority to prescribe the cold weather rules.

Second, the sentence "Parts 7820.1500 to 7820.2300 do not relieve a residential customer's responsibility for utility bills." has been added to the rule. The sentence is intended to address utility concerns that the cold weather rules absolve low-income customers from paying their utility bills. A reasonable way to alleviate their concern is to clearly state in the rule that the rules do not relieve a customer's responsibility for utility bills.

7820.1600 DEFINITIONS.

Subp. 1a. Calendar days.

A definition of "calendar days" has been added to the rules.

The current rules often refer to "working days", which is defined in part 7820.1600, subp. 7. Occasionally the current rules refer to "days". See part 7820.2000, subp. 1. "Days" is not defined in the current rules, but has been interpreted to mean calendar days.

The proposed rules distinguish between working days and calendar days in several new parts. See parts 7820.1800, subp. 1, item B, and 7820.1900, subp. 1b. These represent important procedural differences. Therefore, it is necessary to define "calendar days" and replace "days" with "calendar days" to clearly distinguish it from "working days".

The proposed definition of calendar days is reasonable because it is the commonly used and well understood meaning of that term. The definition also makes it clear that legal holidays are normally counted unless the last day falls on a legal holiday, in which case, that day is not counted.

Subp. 2a. Financial counseling provider.

A definition of financial counseling provider has been added to the rules in response to the new legislation which requires that customers receive budget counseling from a local energy assistance provider or other entity. See Minn. Stat. § 216B.095 (1989 Supp.).

To implement the new law, the rules need to define "other entity". The proposed definition identifies various types of entities that currently provide budget counseling.

The rule specifies that the appropriate entities are either affiliated with the National Foundation on Consumer Credit Counseling or the Counsel on Accreditation of Services for Families and Children, Inc.; or are licensed with the Minnesota Department of Commerce to offer a debt prorating plan; or have licensed social workers or staff registered with the Board on Unlicensed Mental Health Providers.

These entities have the necessary qualifications and proven expertise to provide budget counseling to residential utility customers. Therefore, the proposed definition is consistent with the new law.

Subp. 2b. Household income.

A definition of "household income" has been added to the rules.

This definition is necessary to implement Minn. Stat. § 216B.095 (1989 Supp.). To receive protection under the new law, a residential customer's household income must be less than 185% of the federal poverty level. Therefore, a definition of "household income" is necessary.

The rule definition incorporates by reference the definition of "income" used in Minn. Stat. § 290A.03, subd. 3 (1988). That is the Minnesota Property Tax Refund Act definition of income. See Exhibit 7.

The definition sets out a standard of income that is well-known and commonly understood by utilities, the local energy assistance providers, and the various state agencies and consumer groups that will be applying and interpreting the rule.

The Commission currently uses this definition in its rules governing the Telephone Assistance Plan, Minn. Rules, chapter 7817. See Exhibit 8. That definition has worked successfully without controversy since its adoption.

The proposed rule also specifies that household income means the income of a residential customer and all persons residing with the residential customer. This is the usual interpretation of "household" applied by local energy assistance providers when verifying household income for energy assistance. See Exhibit 9. Since the new law requires local energy assistance providers to verify income to qualify for protection under the cold weather rule, it is reasonable to use the same standard in this rule.

Finally, the proposed rule definition of household income does not include any amount received for energy assistance. This is consistent with the new legislation which specifically excludes amounts received for energy assistance from the calculation of household income.

Subp. 2c. Local energy assistance provider.

Local energy assistance providers are required to do various tasks by the new legislation. See Minn. Stat. § 216B.095 (1989 Supp.). For this reason, a definition of local energy assistance provider has been added to the rules.

Local energy assistance providers are subgrantees for the purposes of implementing the low-income home energy assistance block grant as provided by Public Law Number 97-35, as amended. See Exhibit 9. The proposed definition accurately explains which entities qualify as local energy assistance providers and, therefore, is reasonable.

Subp. 2d. Monthly income.

The new legislation requires the inclusion of an additional type of cold weather rule protection - the ten percent plan. For the purposes of that plan, the new legislation defines "customer's income" as:

the actual monthly income of the customer except for a customer who is normally employed only on a seasonal basis and whose income is over 135 percent of the federal poverty level, in which case the customer's income is the average monthly income of the customer computed on an annual calendar year basis.

See Minn. Stat. § 216B.095 (1989 Supp.).

The corresponding proposed rule defines "monthly income" in essentially the same way. The proposed rule is titled "monthly income" rather than "customer's income" to emphasize that the ten percent plan is a monthly plan. To make it clear that it is the "customer's" monthly income, the rule states that it is the actual monthly income of a residential customer.

The proposed rule also incorporates by reference the Minnesota Property Tax Refund Act definition of income in Minn. Stat. § 290A.03, subd. 3 (1988). See Exhibit 7. This is a reasonable

incorporation by reference because it is consistent with the proposed rule definition of household income.

As with the definition of household income, the definition of monthly income sets out a standard of income that is well-known and commonly understood by utilities, the local energy assistance providers, and the various state agencies and consumer groups that will be applying and interpreting the rule.

Finally, the proposed rule states that monthly income does not include any amount received for energy assistance. Although the new law specifically refers to household income when it excludes energy assistance payments, the Commission believes it is also reasonable to exclude energy assistance payments from the calculation of monthly income.

First of all, this interpretation makes the rule consistent. Since the proposed rule definition of household income excludes energy assistance payments, it is logical to similarly exclude energy assistance payments from the calculation of monthly income.

More importantly, however, is the decision of the Federal Circuit Court of Appeals in Schmiege v. Secretary of Agriculture, 693 F.2d 55 (8th Cir. 1982). See Exhibit 10. The Eighth Circuit found that the framers of the federal Home Energy Assistance Act (42 U.S.C. § 8621 et seq.) intended not to diminish food stamp benefits by reason of energy payments, even when paid directly to the energy supplier. The Conference Report accompanying the Act stated that:

6. The conference agreement requires that fuel assistance payments or allowances provided under this title will not be considered income or resources of an eligible household for any purpose under a Federal or State law.

...

Thus, under such a law, benefits will be computed as if the total cost of the fuel, including the amount of assistance provided, had been paid by the household.

Id. at 56. For this reason, the Eighth Circuit affirmed the order of the United States District Court, for the District of Minnesota.

As a result of Schmiege v. Secretary of Agriculture, the Minnesota Department of Human Services changed its policy to disregard Low Income Home Energy Assistance Program payments as income for AFDC Emergency Assistance. See Exhibit 11.

Similarly, the Commission proposes to exclude energy assistance payments from the calculation of a residential customer's income for the purposes of the ten percent plan.

Subp. 3. Notice of residential customer rights and possible assistance.

The Commission proposes to repeal the last two sentences of this definition. The sentences state what the notice of residential customer rights and possible assistance must contain.

However, the Commission proposes to amend part 7820.1900, subpart 1, to explain in detail what must be in the notice. The information required by these two sentences is now found in part 7820.1900, subpart 1. Therefore, the rule definition no longer needs to contain these two sentences.

Subp. 3a. 185 percent of the federal poverty level.

Minn. Stat. § 216B.095, subd. 1 (1989 Supp.) requires the Commission to amend its cold weather rule to include the coverage of customers whose household income is less than 185 percent of the federal poverty level. See Exhibit 12. A definition has been added to the rule to specify what 185 percent of the federal poverty level means.

This proposed definition incorporates Public Law Number 97-35, as amended, by reference. See Exhibit 9. Thus, the dollar amounts corresponding to 185 percent of the federal poverty level will be taken from that law and be amended when appropriate.

Subp. 4. Payment schedule.

The Commission proposes to clarify this definition in two respects.

First, Minn. Stat. § 325E.015 (1988) recognizes a type of payment schedule, the budget payment plan. See Exhibit 13. The Commission acknowledges that a budget payment plan under this statute is a valid type of payment schedule under its rules.

Second, the proposed rules establish three types of payment plans: payment schedules, ten percent plans, and reconnection plans. To avoid confusion, the definition of payment schedule clearly states that these are distinct plans rather than types of payment schedules.

Subp. 4a. Reasonably on time with payments.

The term "reasonably on time with payments" is used in the current cold weather rule. Questions have risen as to what exactly this term means. The Commission proposes to define "reasonably on time with payments" as payment within seven calendar days of agreed-to payment dates.

Although Northern States Power originally suggested four calendar days, it and the other Task Force members and participants agreed that seven calendar days was appropriate.

Seven calendar days allows an adequate amount of time for a residential customer to mail payment and for a utility to receive and credit that payment. Since the result of not being reasonably on time with payments is potential disconnection during the cold weather months, the Commission believes that seven calendar days is reasonable.

Subp. 4b. Reconnection plan.

A definition of reconnection plan is needed to distinguish it from payment schedules and the ten percent plan. Reconnection plans are addressed in proposed part 7820.2300. Therefore, the proposed definition of reconnection plan refers to that rule part.

Subp. 5a. Ten percent plan.

Minn. Stat. § 216B.095 (1989 Supp.) requires the Commission to amend its rules to include 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.

In the rule, this requirement is referred to as the ten percent plan. Although the term is used throughout the rules, the ten percent plan requirements are contained in proposed part 7820.1800, subpart 1, item B. The proposed definition cites proposed part 7820.1800 and summarizes the requirements of that rule part.

Subp. 6a. Utility.

The current rules do not define utility. Occasionally, the question of who the rules apply to has arisen. The proposed definition answers that question.

Utility means a public utility as defined in Minn. Stat. § 216B.02 (1989 Supp.). See Exhibit 6. This statute excludes cooperative electric associations and municipal gas and electric utilities.

However, Minn. Stat. § 216B.026 (1988) allows a cooperative electric association to elect to become subject to rate regulation by the Commission pursuant to Minn. Stat. §§ 216B.03 to 216B.23 (1988). See Exhibit 6. The Dakota Electric Association elected under this statute and currently complies with the cold weather rules. For this reason, the proposed definition includes the election statute.

Cooperative electric associations may also be treated as a public utility when a complaint is filed under Minn. Stat. § 216B.17, subd. 6a (1988). See Exhibit 6. The complaint statute is limited to service standards and practices. The cold weather rule is clearly a service standard and practice, rather than a rate rule. Therefore, the proposed definition includes the complaint statute for cooperative electric associations.

Finally, the Commission has jurisdiction over the municipal gas and electric utilities under Minn. Stat. § 216B.17, subd. 6 (1988). See Exhibit 6. The Commission has the power to hear, determine and adjust complaints made against any municipally owned gas or electric utility with respect to rates and services upon petition of ten percent of the nonresident consumers of the municipally owned utility or 25 such nonresident consumers, whichever is less. Once again, the cold weather rule is a service. Therefore, the proposed definition includes municipally owned gas and electric utilities for nonresident consumers when a complaint is filed under Minn. Stat. § 216B.17, subd. 6 (1988).

The Commission received several letters from the Minnesota Municipal Utilities Association during the rule drafting stage. See Exhibit 14. In its most recent letter, dated October 2, 1989, the Executive Director, R. G. Kirkham, stated that the proposed rule "more closely tracks what we would argue is a proper role of the Commission in responding to complaints from non-resident customers of municipally-owned systems".

Mr. Kirkham went on to state he "may want to restrict the language further to assure that any action by the Commission would be premised upon complaints that are well founded and valid and that the action of the Commission is restricted and appropriate to redressing such complaints" if the Association decides to pursue it at the rule hearing. The Commission believes that Minn. Stat. § 216B.17, subd. 6 (1988) grants it authority over all appropriate complaints and specifically sets forth the Commission's role in determining these complaints. Therefore, the rule language being considered by the Association is not necessary.

The Commission also notes that Minn. Stat. § 216B.095 (1989 Supp.) does not now, nor ever has, defined "public utility" to include municipal gas and electric utilities. The language referred to by the Association in its letters dated September 7 and 19, 1989, was part of proposed legislative amendments to Minn. Stat. § 216B.241 (1988), the statute governing energy conservation improvements. However, the Association's confusion is understandable because both legislative amendments were part of House File 1532 and were discussed by the legislative Low-Income Energy Task Force.

Finally, the Commission received several letters from the City of Kasson, Minnesota, expressing concern over the inclusion of municipally owned gas and electric utilities in the cold weather rules. See Exhibit 15. The Commission is aware of the additional work this may create for some municipalities. However, the Commission's long-standing duty to determine certain non-resident consumer complaints requires it to exercise its authority in this area. The proposed rules do not remove judgment from local elected officials nor do they require any more from municipal utilities than from other utilities in Minnesota. To require anything less would unfairly disadvantage the municipal utilities' non-resident customers.

7820.1700 EARLY NOTIFICATION OF RIGHTS AND THIRD PARTY NOTICE OPTION.

This rule currently requires early notification of the cold weather rule "annually in the monthly billing mailed to residential customers immediately prior to the commencement of the billing cycle which includes October 15."

Elsewhere in the proposed rules, more information is required in the early notification than is currently provided. See proposed part 7820.1900, subpart 1. Some utilities do not have the mechanical capability to fit all the information in the monthly billing and need the option of a separate mailing.

Therefore, the Commission proposes to amend this rule to allow either a separate mailing or inclusion of the information in the monthly billing. Under either option, the early notification must still be mailed immediately prior to the commencement of the billing cycle which includes October 15. In this way, the protection of the rule are maintained.

7820.1750 DEPOSITS AND DELINQUENCY CHARGES PROHIBITED.

This proposed rule is new. The Commission believes that charging deposits and delinquency charges to residential customers who are unable to pay or who qualify for the ten percent plan is unreasonable. Applying these extra charges is unduly burdensome and should be prohibited.

The proposed rule also acknowledges the fact that some utilities, such as Northern States Power and Minnegasco, often do not charge deposits to residential customers who qualify for ITP status even though they are currently entitled to do so. Moreover, Northern States Power waived its right to charge deposits in a written agreement with Ramsey Action Programs. See Exhibit 16.

Northern States Power's gas and electric tariffs also state:

Residential customers, with limited fixed income may request waiver of the late payment charge on the "current bill" portion of each monthly bill. Limited fixed income customers are defined as those receiving social security or governmental assistance, pensions, disability, cold weather rule protection, or fuel assistance.

See Exhibit 16.

Furthermore, the Commission's Consumer Affairs Office has intervened in some instances to encourage other utilities to waive these charges for ITP customers.

The Commission proposes to extend current practice to include residential customers who qualify for the ten percent plan under the newly enacted Minn. Stat. § 216B.095 (1989 Supp.). Both categories of customers are already in threat of disconnect, so to require additional money from these customers is unreasonable and unrealistic.

7820.1800 DISCONNECTION RESTRICTION FOR OCCUPIED RESIDENTIAL UNITS.

Subpart 1. Prohibited disconnection.

This rule contains the requirements for prohibited disconnections during the cold weather months.

Item A of subpart 1 is the current ITP, or inability to pay, status. Residential customers that qualify for ITP are protected from disconnection. The Commission proposes to amend item A to recognize the income requirements associated with ITP status. The current rule contains the income requirements in part 7820.2000, subpart 1. The proposed rule restates the income requirements so that all the requirements for ITP status are in one rule, part 7820.1800, subpart 1, item A. The proposed rule is also reasonable because it recognizes the new income requirements of Minn. Stat. § 216B.095 (1989 Supp.).

Proposed item B is the ten percent plan required by Minn. Stat. § 216B.095 (1989 Supp.). That statute states, in part:

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; ...

During the course of the Advisory Task Force meetings and Commission meetings, the utilities have interpreted Minn. Stat. § 216B.095 (1989 Supp.) to require the replacement of ITP status with the ten percent plan. The Commission and various state agencies and consumer groups interpret Minn. Stat. § 216B.095 (1989 Supp.) to be an additional form of protection for residential customers. The Commission proposes to keep item A, governing ITP, and add item B, governing the ten percent plan, as a distinct plan.

The Commission believes that its interpretation is consistent with legislative intent. The Commission received a letter dated October 4, 1989, from Mr. Scott Sande, the Administrative Assistant to the Senate Public Utilities and Energy Committee. See Exhibit 17. Mr. Sande's letter comes from Senator Dicklich's office. Senator Dicklich is the Chair of the Public Utilities and Energy Committee and an author of the legislation.

In his letter, Mr. Sande stated that this issue specifically came up during the 1989 session:

Toward the end of the 1989 regular legislative session, it became apparent to me that the Cold Weather Rule section of H.F. 1532 could be interpreted in different ways. This conclusion was based on what our office was hearing about the way utility lobbyists were claiming the changes in the Cold Weather Rule would work. They were saying that the changes would result in less protection for low-income people, because it would require all people to pay 10% of their monthly income, while under the old rule there was more flexibility for how much low-income people were required to pay.

In discussing this with the authors of the bill, they were angered and said that it is clearly not the intent to provide less protection for low-income people and the 10% provision was to be an additional option for protection from shut off. The reason for inclusion of the 10% provision in the bill was because consumer groups were concerned about those people who, for some reason or another, weren't reasonable current as of the start of the cold weather season and didn't qualify for Inability To Pay status.

During the last Saturday of the legislative session, May 20, 1989, I met with Senator Dicklich and Representative Dawkins in Senator Dicklich's office. Both authors felt that it was too late to come up with alternative language for the Cold Weather Rule portion of H.F. 1532. Senator Dicklich felt he could clarify the issue in a statement on the Senate floor when the bill was considered for Special Orders.

On the Senate floor on Saturday, May 20, 1989, Senator Dicklich made the following statement in relation to the amendment that accepted the House language for the Cold Weather Rule portion of the bill:

"The amendment takes the language dealing with the Cold Weather Rule that passed the House of Representatives, to provide for additional protection for winter utility service disconnections for people with incomes below 185% of the poverty level, or people who pay at least 10% of their income in a cold weather month."

Based on my work as staff to the Low-Income Energy Task Force, my work on this legislation, discussions with the authors of the bill and the statement by Senator Dicklich, it is my opinion that the authors of H.F. 1532 intended the requirement, "a customer who pays the utility at least ten percent of the customer's income or the full amount of the utility bill...cannot be disconnected during that month", as additional protection from winter shut off and not as a replacement or inclusion to Inability to Pay status.

Minnegasco has pointed to transcripts from a Low-Income Task Force meeting, dated April 26, 1989, in which Representative Dawkins, an author of the legislation, stated that "instead of getting a free ride during the winter months, which is what you can get under the Cold Weather Rule now, you're going to have pay 10% of your monthly income during the cold weather season in order to stay connected up." See Exhibit 18. Minnegasco relies on this statement to support its position that the current ITP rule should be replaced with the ten percent plan.

The Commission interprets Representative Dawkin's statement differently.

Representative Dawkins was distinguishing between the legislation and the current ITP rule. Under the current ITP rule, customers must be reasonably on time with their payments to receive ITP status. Once they qualify, they cannot be disconnected even if they pay nothing during the cold weather season.

The Commission believes Representative Dawkins was explaining that the situation would not occur with the ten percent plan. Representative Dawkins did not want to deny service to customers who were not reasonably on time with their payments. However, he wanted them to develop the habit of making payments toward their bills. For that reason, when a customer is not reasonably on time, the legislation requires payment of ten percent of income to continue service.

Moreover, Representative Dawkins' statement at a task force meeting early on in the legislative process carries less weight with the Commission than Senator Dicklich's subsequent explanation of the bill to the Senate at the time of enactment.

Commission Staff asked Representative Dawkins about this issue when it came up during the rule drafting process. He couldn't shed any light on it specifically, but he said he reviewed the draft rule and it was consistent with his intent. Moreover, he said the Commission should rely on Mr. Scott Sande's recollection of this issue.

Commission Staff also asked Senator Dicklich about this issue. He agreed with the interpretation given by the Commission in the proposed rule. His recollection was the same as Mr. Sande's, as also indicated by the fact that Mr. Sande's letter comes from Senator Dicklich's office.

Finally, one of the purposes of the legislation was to protect customers that did not qualify for ITP status because they were not reasonably on time with their payments. This implies to the Commission that the ITP rule should remain in place and the ten percent plan is a secondary form of protection for those who would otherwise be disconnected.

For these reasons, the Commission proposes to keep the current ITP protection and add the ten percent plan as a separate form of protection from disconnection.

The next issue surrounding item B, the ten percent plan, is in that portion of the proposed rule which states:

To request the ten percent plan, the residential customer must pay the utility at least the lesser of the following amounts:

- (1) ten percent of the residential customer's monthly income; or
- (2) the full amount of the current month's utility bill not including arrearage.

The rule implements Minn. Stat. § 216B.095 (1989 Supp.) which states in part:

- (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 dispute concerns the meaning of the term "utility bill" in the legislation. Does it mean the entire amount owed to the utility, including arrearage? Or, does it mean the current month's bill without arrearage?

The Commission interprets "utility bill" to mean the current month's bill without arrearage.

If "utility bill" were interpreted as that month's bill plus arrearage, ten percent of the customer's income would most likely be the lesser amount. The "whichever is less" language would be meaningless because the lesser amount would always be ten percent of the customer's income.

The statute also refers to payment "in a cold weather month" and disconnection "during that month". It is logical to similarly view "utility bill" as the bill for service provided during that month, not during prior months.

Finally, if the customer were able to pay the current bill and arrearage, the customer would not be in threat of disconnection. To interpret "utility bill" in the manner urged by the utilities would render the legislation meaningless.

When this issue came up during the rule drafting process, Commission Staff again contacted Representative Dawkins and Senator Dicklich. They both stated their clear intent and understanding that arrearage were not to be included.

For these reasons, the proposed rule interprets "utility bill" as the current month's utility bill not including arrearage.

Finally, item B of the proposed rule states:

Payment must be received within seven calendar days of the due date or regularly scheduled payment date or payment must be received by the date agreed upon by the utility and the residential customer.

The Commission chose the timeframe of seven calendar days to be consistent with the seven calendar days used for determining whether a customer qualifies for ITP protection under item A. This treats similarly situated customers the same and is administratively efficient for the utilities.

However, there may be instances in which the customer and utility agree on a payment date that is beyond the due date or regularly scheduled payment date. In those instances, an additional seven calendar days is not necessary because extra time has already been arranged. To add seven calendar days to the additional time worked out would give those customers an unfair advantage over customers that only receive seven calendar days.

Subp. 2. Multiple utilities.

The Task Force devoted considerable time to this rule part. Minn. Stat. § 216B.095 (1989 Supp.) states:

(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;

(3) that the ten percent figure in clause (2) must be prorated between energy providers proportionate to each provider's share of the customer's total energy costs where the customer receives service from more than one provider;

The proposed rule states:

If a residential customer receives service from more than one utility, the ten percent amount in subpart 1, item B, clause (1) must be prorated between utilities. The utility providing the major portion of the residential customer's total energy costs during the cold weather months shall receive seventy percent of the ten percent amount. Other utilities shall receive equal portions of the remaining thirty percent of the ten percent amount.

The proposed rule mirrors the statute by only requiring proration of the ten percent amount. It does not require proration if the customer pays the full amount of the current month's utility bill not including arrearage. If the lesser amount under the ten percent plan is the utility bill, proration is not necessary. The utility being paid for service keeps the customer's payments. If the customer must pay ten percent of income, the statute and rule require that amount to be split among providers.

A problem the Task Force and Commission faced was the use of the word "utility" in clause (2) of the statute and the word "provider" in clause (3). Some state agencies and consumer representatives believe the ten percent amount should be prorated among utilities and oil and propane energy providers.

However, the Commission does not have jurisdiction over oil and propane energy providers. Nor does Minn. Stat. § 216B.095 (1989 Supp.) grant jurisdiction to the Commission. Moreover, clause (2) of the statute requires the customer to pay the utility. It doesn't make sense for that payment to then be split between entities not entitled under the statute to receive payment.

Finally, the Commission notes that if there are problems with proration, proposed rule part 7820.2150, Ten Percent Payment Plan Appeals, provides access to the Commission for resolution of the dispute.

For these reasons, the proposed rule requires proration between utilities and does not include oil and propane energy providers.

The proposed rule also addresses how the proration will be calculated and the time period for that calculation.

Typically one utility provides more energy than the other utility or utilities serving the customer. That utility is, therefore, entitled to more than 50% of the ten percent amount. Minnegasco states that their numbers indicate a 70/30 split in many cases. The other utilities serving on the Task Force or participating in this rulemaking are willing to go along with Minnegasco's estimate. The proposed rule is also consistent with other states, such as Illinois, which has a 12% plan and will apply a 80/40 split. See Exhibit 19. The energy assistance program in Minnesota uses a 2/3 to 1/3 split. See Exhibit 20.

The 70/30 proration will only apply to total energy costs incurred during the cold weather months. Since the ten percent plan is only in effect during the cold weather months, it is necessary to similarly limit the proration requirement to the cold weather months.

7820.1900 DECLARATION OF INABILITY TO PAY OR PLAN REQUEST.

Subpart 1. Notice before disconnection of service.

The Commission proposes to amend item B of subpart 1 to specifically include the information that must be contained in the notice of residential customer rights and possible assistance. Under the current rule, the contents are summarized in the definition of notice of residential customer rights and possible assistance, part 7820.1600, subp. 3. The Commission proposes to replace that rule definition summary with item B of subpart 1.

The proposed rule contains the information previously found in the rule definition. It also contains information required by Minn. Stat. § 216B.095 (1989 Supp.) which states:

(6) a requirement that the customer receive, from the local energy assistance provider or other entity, budget counseling and referral to weatherization, conservation, or other programs likely to reduce the customer's consumption of energy.

Item B of this rule implements this law by requiring the utilities to provide the following information to residential customers:

(1) for each county served by the utility, a list of the names and phone numbers of local energy assistance providers, weatherization providers, conservation providers, and other entities that assist residential customers in reducing the consumption of energy;

(2) an explanation of no-cost and low-cost methods to reduce the consumption of energy, including, for example, lower thermostat and hot water heater settings, turn off lights and close off rooms not in use, reduce hot water usage, block drafts around doors, cover windows with plastic sheets, replace furnace filters, caulk, weather strip, install hot water heater wraps, and similar methods. The explanation shall also include, if applicable, a description of utility conservation services which could assist the residential customer in implementing these measures;

Paragraph (1) of the proposed rule satisfies the statutory requirement that customers receive a referral to weatherization, conservation, and other programs likely to reduce the customer's consumption of energy.

Weatherization, conservation, and other programs likely to reduce the consumption of energy may require the customer to initially invest money. Paragraph (2) of the proposed rule requires the utilities to inform customers of ways to conserve energy at little or no expense to the customers.

This information is helpful to many customers who cannot afford more extensive conservation measures or who live in rental units. The space it takes on the notice and the printing expense for the utilities is minimal when compared to the benefits gained by including this information in the notice.

Paragraph (2) of the proposed rule also requires the utilities to inform customers of utility conservation services that could assist the customers in implementing these conservation methods. Certain utilities must provide energy conservation improvement programs. See Minn. Stat. § 216B.241 (1988 and 1989 Supp.) and see Exhibit 21. These services are likely to reduce the customer's consumption of energy. Therefore, referral to these services complies with the mandate of Minn. Stat. § 216B.095.

Paragraph (3) of the proposed rule states:

(3) an explanation of the residential customer's rights and responsibilities under part 7820.2010 and, for each county served by the utility, a list of the names and phone numbers of local energy assistance providers, financial counseling providers, and other entities from which the residential customer can receive budget counseling; and

This paragraph requires the utilities to explain the budget counseling rule part 7820.2010 and refer customers to budget counseling providers. Since the new law requires budget counseling, it is reasonable to notify customers of this requirement and how they can satisfy it.

Paragraph (4) of the proposed rule states:

(4) a written explanation of how the utility payments will be prorated under the ten percent plan when the residential customer is served by multiple utilities;

When customers apply for protection under the cold weather rule they must indicate whether they receive service from more than one utility. See proposed Minn. Rules, part 7820.1900, subp. 1, item D. Therefore, it is reasonable to explain to them why this information is necessary when they apply for protection.

Item C of proposed subpart 1 requires utilities to include a form in the notice to customers:

C. a commission-approved, addressed, postage-prepaid form on which a residential customer, or any designated third party, shall state that the customer received budget counseling pursuant to part 7820.2010; and

Since Minn. Stat. § 216B.095 (1989 Supp.) mandates that customers receive budget counseling, some method for determining that customers have complied with this requirement is necessary. A reasonable way to determine compliance is a written statement by the customer, verified by the budget counseling provider, that budget counseling has been received. See proposed Minn. Rules, part 7820.2010.

To facilitate this procedure, the Commission proposes to include a form in the notice of residential customer rights and possible assistance for the customer to indicate compliance with the new law. The alternative was to require local energy assistance providers, financial counseling providers, and other entities that provide budget counseling to supply customers with forms. This would be administratively inefficient for everyone involved. Giving the form directly to the customer is also more reasonable because it reminds the customer to seek budget counseling.

Proposed item D of subpart 1 governs the application form. Residential customers must indicate on the form whether they receive any type of public assistance, including energy assistance, that uses household income eligibility at or below 185 percent of the federal poverty level.

This requirement stems from Minn. Stat. § 216B.095 (1989 Supp.) which states:

(5) verification of income by the local energy assistance provider, unless the customer is automatically eligible as a recipient of any form of public assistance, that uses income eligibility in an amount at or below the income eligibility in clause (1); and

The proposed rule requires customers to indicate if they receive public assistance with the appropriate income eligibility level so that the utilities will know whether local energy assistance

providers need to verify income. The utilities will then notify local energy assistance providers when income verification is necessary. See proposed part 7820.1900, subp. 1b.

Item D also requires the customer to provide the following on the form:

- (1) written consent to the utilities' exchange of billing information when the residential customer is served by multiple utilities;
- (2) acknowledgment that the residential customer has received, read, and understood the notice served under item B; and
- (3) a declaration that the information provided is true and correct.

Paragraph (1) is necessary so that utilities can share billing information to prorate payments. Paragraph (2) is needed to ensure that customers understand their rights and responsibilities. Paragraph (3) ensures that the information received is accurate.

Subp. 1a. Notice to local energy assistance provider.

Proposed subpart 1a requires the utility to mail the name and address of the customer, the expiration date of the notice of proposed disconnection and date of proposed disconnection, and the amount due to the local energy assistance provider.

The Commission's understanding is that the utilities currently provide this information to local energy assistance providers. This helps the local energy assistance providers by informing them of customers that may need their assistance.

For these reasons, the Commission proposes to include this requirement in the rules.

Subp. 1b. Income verification and appeal.

This proposed rule sets forth the procedure for verifying customer income. Minn. Stat. § 216B.095 (1989 Supp.) requires the Commission to include in its rules:

- (5) verification of income by the local energy assistance provider, unless the customer is automatically eligible as a recipient of any form of public assistance, including energy assistance, that uses income eligibility in an amount at or below the income eligibility in clause (1); and

The Commission is aware that the local energy assistance providers were not given funds to verify income. The Commission is also aware of the burden this places on them. An author of the legislation, Representative Dawkins, was concerned about this problem and asked Commission Staff that the rulemaking record clearly state the local energy assistance providers lack of resources.

Under the proposed rule, the utility must notify the local energy assistance provider when verification is necessary. The local energy assistance provider has 21 calendar days to verify

income. Twenty-one calendar days allows local energy assistance providers sufficient time to receive and review the information they need to verify income.

The local energy assistance provider must document its verification and, upon request, provide a copy to the Commission. Documentation and providing copies is necessary in the event the customer appeals a local energy assistance provider determination.

If the local energy assistance provider determines a customer's income is greater than 185 percent of the federal poverty level, the utility must notify the customer of the right to appeal to the Commission. Customers are entitled to an appeal of income verification, just as they are entitled to appeal payment schedule disputes. See part 7820.2100, subp. 3.

Appeals must be made within seven working days and the procedures in part 7820.2000 apply. The utility cannot disconnect during an appeal. However, if the customer does not appeal, the utility may disconnect service. The proposed rule is reasonable because it mirrors existing rule part 7820.2100, subp. 3, governing payment schedule appeals.

Subp. 3. Appeal of customer's declaration or request.

Subpart 3 currently governs the utilities' right to appeal a customer's declaration of inability to pay. The Commission proposes to amend this rule to include the utilities' right to appeal a customer's request for the ten percent plan.

Utilities have 14 working days after receipt of the customer's form to appeal. Upon receipt of the customer's form, the utility will be able to determine if an appeal is necessary right away. In the past, the Commission has allowed Northern States Power and Minnegasco 14 working days, rather than the current rule's 7 working days limit. See Exhibit 22.

The Commission believes a permanent extension to 14 working days is reasonable for all utilities because of the increased workload created by the new legislation and rules. Moreover, residential customers are protected from disconnection during an appeal so a time extension does not create a hardship for them.

The proposed rule also makes an editorial correction by substituting the phrase "any local community organization responsible for dispersing fuel emergency assistance" with the more appropriate term "local energy assistance provider".

Finally, subpart 3 recognizes the fact that utilities typically mail copies of their appeals to the Commission, and substitutes the word "mails" for "files".

Part 7820.2000 COMMISSION DETERMINATION OF DECLARATION OR REQUEST.

Subpart 1. Determination of appeal.

Subpart 1 has been amended to include the ten percent plan. The Commission will determine all ITP or ten percent plan appeals. This is a reasonable application of the Commission's authority and the statutory mandate for the ten percent plan.

The proposed amendments also make it clear that the Commission has 30 calendar days for determining appeals. This is consistent with current practice.

The income guidelines have been changed to comply with Minn. Stat. § 216B.095 (1989 Supp.) which requires:

- (1) coverage of customers whose household income is less than 185 percent of the federal poverty level;

The current rules use the 1982 guidelines which are no longer appropriate. This amendment was a driving force behind the new legislation.

Under the current rule, income was only verified by the Commission on appeal. The new legislation and proposed rules require income verification by the local energy assistance provider unless the customer receives public assistance with the appropriate income eligibility guidelines. Therefore, proposed rule items A and B require the Commission to consider documentation of these legislative requirements when it determines an appeal.

Subp. 2. Disconnection during 30-day appeal period.

Under the current rule, a utility cannot disconnect a customer during the appeal period. If the Commission determines that the customer is able to pay, the utility may disconnect service.

The proposed amendment is reasonable because it treats ten percent plan appeals the same way ITP appeals are treated. That is, the utility can only disconnect service if the Commission determines the customer is not eligible for the ten percent plan.

7820.2010 BUDGET COUNSELING.

Subpart 1. Requirement.

This proposed rule arises from Minn. Stat. § 216B.095 (1989 Supp.) which includes:

- (6) a requirement that the customer receive, from the local energy assistance provider or other entity, budget counseling and referral to weatherization, conservation, or other programs likely to reduce the customer's consumption of energy.

The Task Force and participants spent considerable time discussing the phrase "from the local energy assistance provider or other entity". The local energy assistance providers prefer that the utilities provide budget counseling, rather than themselves. The Commission understands that the local energy assistance providers lack the financial resources to provide budget counseling. Nor does Minn. Stat. § 216B.095 (1989 Supp.) provide them with the necessary funds.

Nonetheless, the Commission proposes to require the local energy assistance providers do budget counseling, rather than the utilities. The local energy assistance providers are in a better position to provide this service because they are in regular contact with the customers that need budget counseling. The energy assistance and emergency assistance services they provide are also more closely related to budget counseling than the credit collection function of the utilities.

However, to offset the burden on the local energy assistance providers, the Commission proposes to share this responsibility with financial counseling providers and other entities that provide budget counseling, such as some churches and community groups. These entities already offer budget counseling and, therefore, are a reasonable choice. See Exhibit 23 for a partial list of financial counseling providers and other entities that provide budget counseling in Minnesota, provided by the St. Paul Foundation.

The proposed rule requires residential customers that declare their inability to pay or request the ten percent plan to receive budget counseling. The Commission believes that both groups would benefit from budget counseling. Moreover, the Commission doesn't believe there is a reasonable basis for distinguishing between these customers. Both request protection from disconnection during the cold weather months and potentially may not pay the full amount of their bills during the winter.

Under the proposed rule, residential customers have 90 calendar days to receive budget counseling. The Commission chose 90 calendar days because the local energy assistance providers, financial counseling providers, and other entities that provide budget counseling often have long waiting lists. Three months should be sufficient time to receive counseling and, therefore, is reasonable.

The proposed rule goes on to require proof that budget counseling was received. The residential customer and the budget counseling provider must sign and date the form mailed to the customer by the utilities when disconnection was imminent. The completed form must be mailed to the utility. This is a reasonable procedure for the utility to determine whether the residential customer has complied with the legislation and rule.

However, the proposed rule clearly states that budget counseling is not a prerequisite for cold weather rule protection. The residential customer does not have to receive budget counseling to qualify for ITP status or the ten percent plan. To do otherwise could result in the customer being disconnected without just cause.

Subp. 2. Appeals.

Disconnection is possible if a residential customer does not receive budget counseling within the allotted time.

Under the proposed rule, the utility must notify the customer of the right to appeal disconnection for failure to receive budget counseling. The residential customer then has seven working days after receipt of the notice to appeal to the Commission. The procedures of rule part 7820.2000, governing ITP and ten percent plan utility appeals, also govern budget counseling appeals.

The proposed rule also prohibits disconnection while an appeal is pending or until an appeal has been determined by the Commission. If the residential customer does not appeal, the utility may disconnect service.

The above rule provisions are patterned after payment schedule appeals in current rule part 7820.2100, subp. 3. That rule has been proven reasonable and works well. For these reasons, the Commission proposes to use the same provisions for budget counseling appeals.

Finally, the proposed rule states that the Commission shall consider whether the residential customer made a good faith effort to obtain budget counseling when it determines an appeal.

This provision was added to protect residential customers who, through no fault of their own, attempted to receive budget counseling and failed. There are often lengthy waiting lists for budget counseling and, in some instances, the customer may not be able to get an appointment within 90 calendar days. While the Commission expects customers to receive budget counseling within the allotted time, it recognizes that there may be circumstances beyond the control of the customer that prevent compliance with the rule. In those situations, the Commission would not look favorably on an automatic disconnect by the utility. Therefore, the Commission proposes to consider a customer's good faith effort when determining an appeal.

7820.2100 PAYMENT SCHEDULE.

Subp. 2. Inability to pay.

This subpart has been amended to recognize the income requirements for receiving ITP status. To receive ITP protection, a residential customer must have household income less than 185 percent of the federal poverty level. See Minn. Stat. § 216B.095 (1989 Supp.).

Subp. 3. Appeals.

Similarly, this rule subpart has been amended to recognize the increase in income level required by Minn. Stat. § 216B.095 (1989 Supp.). That law raises the income level to 185 percent of the federal poverty level.

7820.2150 TEN PERCENT PAYMENT PLAN APPEALS.

The proposed rule governs the residential customer's right to appeal to the Commission when the utility and customer are unable to agree on the timeliness of the payment or the proration among multiple utilities under the ten percent plan.

An appeal protects customers from unwarranted disconnection. The current rules grant appeal rights to customers who enter payment schedules. See part 7820.2100, subp. 3. Customers who qualify for ITP protection are also protected from disconnection. See part 7820.2100, subp. 2. Therefore, an appeal for the ten percent plan is necessary.

The appeal rule for the ten percent plan is modeled after the payment schedule appeal rule, part 7820.2100, subp. 3. This rule has been shown to be reasonable and works well. For these reasons, the Commission proposes to use the same procedure for ten percent plan appeals.

7820.2200 DISCONNECTION OF POTENTIALLY UNOCCUPIED UNITS.

Subp. 2. Notice.

This subpart has been amended to make it consistent with other proposed rules.

For instance, proposed rule part 7820.1900, subp. 1, lists the information that must be in the notice of residential customer rights and possible assistance. That rule includes the information stated in this subpart. So, rather than restating the contents of part 7820.1900, subp. 1, the proposed rule cites the appropriate rule part.

Similarly, "local community organization responsible for dispersing fuel emergency assistance" is the local energy assistance provider. The proposed rule has been amended to make this clear.

7820.2300 RECONNECTION AT BEGINNING OF COLD WEATHER MONTHS.

Subpart 1. Reinstatement of service.

The Commission proposes to amend this rule because it does not accomplish its objective. The current rule requires a residential customer to be reasonably on time with payments under a payment schedule in order to be reconnected. However, customers who are reasonably on time would not need to be reconnected.

In certain cases, the Commission has allowed a customer to be reconnected after paying that month's bill plus one-sixth of the overdue amount. The customer was then expected to pay approximately that amount for the remaining five months until the arrearage were paid.

Past experience has shown, however, that the customer was unable to keep up with the payment arrangement and was again subject to disconnection. See Exhibit 24. Therefore, the Commission proposes to institute a reconnection plan that will pay off arrearage in manageable installments.

However, the utility may attempt to enter a payment schedule with the customer in lieu of a reconnection plan. The payment schedule could be payment of the entire past due amount in one lump sum, or one-half of the past due amount, or one-third, and so on. This is the standard approach. The proposed rule does not remove that option for the utilities.

Subp. 2. Reconnection plan.

Although the legislature did not address the reconnection problem in Minn. Stat. § 216B.095 (1989 Supp.), the Commission looked to that law as guidance in drafting a reasonable reconnection plan.

The new law requires ten percent of the customer's monthly household income. The reconnection plan rule requires ten percent of one-twelfth of the customer's annual income. One-twelfth of annual income was chosen to avoid the monthly variations associated with the ten percent plan.

The reconnection plan also includes arrearage, whereas the ten percent plan does not. Moreover, the reconnection plan requires payment until all arrearage are paid in full. Customers cannot pay ten percent of their income, be reconnected, and then cease payments without being disconnected.

The utilities would rather limit the reconnection plan to the winter months. Presumably they would use disconnection at the end of the cold weather season to induce customers to pay more than ten percent toward the remaining arrearage.

The Commission disagrees with this approach. Under this scenario, customers could allow disconnection, not pay anything toward their arrearage all summer, and then be reconnected under the reconnection plan the following October. Moreover, although the reconnection rule applies to customers disconnected as of October 15th, it does not automatically expire the following April.

The utilities also argue that requiring a customer to pay ten percent of his or her income will not pay off arrearage by the following October. They say arrearage will pyramid because a customer's monthly bills will be higher than ten percent of his or her income.

The Commission notes that the utilities claimed just the opposite when they argued for including arrearage in the ten percent plan under proposed part 7820.1800. There the utilities argued that the ten percent plan should include arrearage because a customer's monthly bills will be less than ten percent of his or her income.

The Commission imagines that both situations could occur. However, the overall effect is still unknown. The impact of raising the income eligibility guidelines to 185 percent of the federal poverty level is hypothetical despite the utilities examples of possible situations.

An early draft of the reconnection rule mirrored the ten percent plan exactly and did not require arrearage. The Commission attempted to address the utilities' concerns by including arrearage in the reconnection plan. This was done over the objections of the Legal Aid Society of Minneapolis, the Legal Services Advocacy Project, the Minnesota Department of Public Service, and the Office of the Attorney General.

The Commission proposes this rule because it ensures that utilities receive their arrearage while also ensuring customers can meet the monthly payments. The Department of Jobs and Training presented a comparison of energy costs and income showing that total energy costs typically comprise 8.66% of a customer's income. See Exhibit 25. Ten percent of income is, therefore, a reasonable amount to cover monthly bills plus arrearage.

Subp. 3. Appeal of reconnection plan.

This rule part allows a residential customer to appeal to the Commission when the customer and utility are unable to agree on the establishment, amount, or reasonable timeliness of payments under a reconnection plan.

A residential customer can be reconnected by entering a payment schedule. A residential customer is also currently entitled to appeal payment schedule disputes. See Minn. Rules, part 7820.2100, subp. 3. Therefore, it is reasonable to similarly grant an appeal for reconnection plans. The reconnection plan appeal language is also reasonable because it is patterned after the payment schedule appeal rule.

Subp. 4. Payment schedule.

The current reconnection rule has been clarified by citing part 7820.2100, the payment schedule rule.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

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

- (a) the establishment of less stringent compliance or reporting requirements for small businesses;
- (b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (c) the consolidation or simplification of compliance or reporting requirements for small businesses;
- (d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and
- (e) the exemption of small businesses from any or all requirements of the rule.

See Exhibit 26.

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

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

Small businesses regulated by the Commission are not exempt from this statute. Minn. Stat. § 14.115, subd. 7 (1989 Supp.) states:

Applicability. This section does not apply to:

- (1) emergency rules adopted under sections 14.29 to 14.36;
- (2) agency rules that do not affect small businesses directly, including, but not limited to, rules relating to county or municipal administration of state and federal programs;
- (3) service businesses regulated by government bodies, for standards and costs, such as nursing homes, long-term care facilities, hospitals, providers of medical care, day care centers, group homes, and residential care facilities, but not including businesses regulated under chapter 216B or 237; and
- (4) agency rules adopted under section 16.085.

See Exhibit 26.

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

Methods (a), (b), and (c) address compliance and reporting requirements. The proposed rules do not contain reporting requirements, as such. Moreover, the compliance requirements in the rules are the minimal amount needed to assure the Commission that the utilities have satisfied the rules. For instance, the utilities must provide a Commission-approved notice of proposed disconnection and notice of customer rights and possible assistance to certain customers. See part 7820.1800. The Commission cannot require some utilities to provide less information to their customers than other utilities.

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

Method (e) addresses the exemption of small businesses from any or all rule requirements. The proposed rules do not exempt small utilities. The purpose of the cold weather rule is to protect residential customers from disconnection during the winter. Exempting small utilities from the rule requirements would result in less safeguards for their customers than the customers of larger utilities. Therefore, the rules apply equally to large and small utilities.

VI. LIST OF WITNESSES AND EXHIBITS

A. Witnesses

In the event that an administrative rulemaking hearing is necessary, this Statement of Need and Reasonableness contains the Commission's verbatim affirmative presentation of the need and reasonableness of the proposed rule amendments.

The following members of the Commission and Office of Attorney General staff will be available at the hearing to answer questions about the proposed rule amendments or to briefly summarize all or a portion of this Statement of Need and Reasonableness if requested by the Administrative Law Judge:

1. Betty Ware, Supervisor
Consumer Affairs Office
Public Utilities Commission
2. Deborah Smith, Consumer Mediator
Consumer Affairs Office
Public Utilities Commission
3. Caroline Heil, Rules Attorney
Public Utilities Commission

4. Margie Hendriksen, Supervisor
Office of Attorney General
Public Utilities Commission Division

B. Exhibits

The following documents are referenced in this Statement of Need and Reasonableness:

<u>Exhibit No.</u>	<u>Document</u>
1.	Notice of Intent to Solicit Outside Information (12 S.R. 299, August 17, 1987); draft rules; and comments received on the utility rules.
2.	List of Advisory Task Force members.
3.	Minn. Stat. § 216B.095 (1989 Supp.)
4.	List of participants.
5.	Comments received during rule drafting process.
6.	Minn. Stat. § 216B.02, subd. 4 (1989 Supp.); Minn. Stat. §§ 216B.026 and 216B.17 (1988)
7.	Minn. Stat. § 290A.03, subd. 3 (1988)
8.	Minn. Rules, chapter 7817
9.	Public Law Number 97-35
10.	<u>Schmiege v. Secretary of Agriculture</u> , 693 F.2d 55 (8th Cir. 1982)
11.	Minnesota Department of Human Services Decision of State Agency on Appeal, Docket No. 13388; and Instructional Bulletin #88-2G (April 20, 1988).
12.	Percent of 1989 Poverty Income Guidelines, Federal Register, February 16, 1989
13.	Minn. Stat. § 325E.015 (1988)
14.	Minnesota Municipal Utilities Association

letters dated September 7, September 19,
October 2, 1989.

15. City of Kasson letters dated October 6, 1989.
16. Agreement between Northern States Power Company and Ramsey Action Programs, Inc. (September 13, 1988); Northern States Power Company Gas Rate Book, Sheet No. 6-7, 6th Revision (8/29/85) and Electric Rate Book, Sheet No. 6-8, 6th Revision (8/29/85).
17. October 4, 1989 letter from Administrative Assistant for the Senate Public Utilities and Energy Committee.
18. Transcript from legislative Low-Income Energy Task Force meeting of April 26, 1989.
19. 47 Illinois Administrative Code Ch. I, § 100.13, item (c)(1)(B), Final Draft (9/27/89) for emergency implementation.
20. Minnesota Department of Jobs and Training, Economic Opportunity Office, Energy Assistance Plan for Fiscal Year 1990, Chapter G. Payments, page 13.
21. Minn. Stat. § 216B.241 (1988 and 1989 Supp.)
22. Orders Varying Minnesota Rules, part 7820.1900, subp. 3, for Northern States Power Company and Minnegasco, Docket Nos. G,E-002/M-88-546 and G-008/M-88-596 (October 5, 1988).
23. Partial list of financial counseling providers and other entities that provide budget counseling in Minnesota, provided by the St. Paul Foundation (June 26, 1989).
24. Minnesota Power Declaration of Inability to Pay form, Account Number 15110 68206, received November 9, 1988.
25. Minnesota Department of Jobs and Training,

Economic Opportunity Office, Energy
Assistance Program Annual Report, Fiscal Year
1988, Chapter VII. Energy Burden in Relation
to Income, pages 16 and 17.

26. Minn. Stat. § 14.115 (1988 and 1989 Supp.)

VII. CONCLUSION

Based on the foregoing, the proposed amendments to Minn. Rules, parts 7820.1500 to 7820.2300, are both needed and reasonable.

Lee Larson
Acting Executive Secretary