7-2700-12544-1

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF REVENUE

In the Matter of the Proposed Amendment of Rules Governing the Valuation and Assessment of Personal Property of Electric, Gas Distribution and Pipeline Companies, Minn. Rule Chapter 8100.

REPORT OF THE ADMINISTRATIVE LAW JUDGE

The above-entitled matter came on for hearing before Administrative Law Judge Richard C. Luis at 9:30 a.m. on November 18, 1999, at the Minnesota Department of Revenue, 600 North Robert Street, St. Paul, Minnesota 55146. The hearing continued until all interested persons had been heard.

This Report is part of a rulemaking proceeding held pursuant to Minn. Stat. §§ 14.131 to 14.20, to hear public comment, to determine whether the Minnesota Department of Revenue (the Department) has fulfilled all relevant substantive and procedural requirements of law applicable to the adoption of the rules, whether the proposed rules are needed and reasonable and whether or not modifications, if any, to the rules proposed by the Department after initial publication are impermissible, substantial changes.

Linda Geier, Staff Attorney, Minnesota Department of Revenue, 600 North Robert Street, St. Paul, Minnesota 55146, appeared on behalf of the Department. The Department's hearing panel consisted of Allan Whipple, Manager of the State Assessed Properties Section; Ronald Cook, Revenue Tax Specialist Senior; and Deb Volkert, Assistant Director of the State Assessed Properties Section. Thirty-five persons attended the hearing. Twenty-nine persons signed the hearing register. The hearing continued until all interested persons, groups or associations had an opportunity to be heard concerning the adoption of these rules.

The record remained open for the submission of written comments for thirteen calendar days following the hearing, to December 1, 1999. Pursuant to Minn. Stat. § 14.15, subd. 1, five working days were allowed for the filing of responsive comments. At the close of business on December 8, 1999 the rulemaking record closed for all purposes. The Administrative Law Judge received written comments from interested persons during the comment period. The Department submitted written comments responding to matters discussed at the hearing and identifying the amendments proposed to the rules.

The Commissioner of Revenue must wait at least five working days before taking any final action on the rule(s); during that period, this Report must be made available to all interested persons upon request. When the Commissioner files the rules with the Secretary of State, he shall give notice on the day of filing to all persons who requested that they be informed of the filing.

Based upon all the testimony, exhibits, and written comments, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On September 30, 1999, the Department filed the following documents with the Chief Administrative Law Judge:

(a) a copy of the proposed rules, certified as to form by the Revisor of Statutes;

(b) a proposed Notice of Hearing;

(c) a Statement of Need and Reasonableness (SONAR); and

(d) a request that the Department's Notice Plan be approved.

2. The Department's Notice Plan consisted of mailing the Notice of Hearing to all utility companies with property affected by the proposed rules and all county assessors and posting the Notice of Hearing on the Department's website at http://www.taxes.state.mn.us/rules. The Administrative Law Judge approved the Notice Plan on October 1, 1999.

3. On October 11, 1999, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Department for the purpose of receiving such notice and the persons identified under the Department's Notice Plan. Also on October 11, 1999, the Department mailed the SONAR to the chairs of certain committees in the Legislature.

4. On October 18, 1999, the Notice of Hearing and the proposed rules were published at 24 *State Register* 577. On October 18, 1999, the Department posted the Notice of Hearing and SONAR on the Department's website at http://www.taxes.state.mn.us/rules.

5. At the hearing on this matter, Department filed the following documents with the Administrative Law Judge:[1]

[1] The numbering of the documents is identical to the exhibit numbering of each document as received into the rulemaking record.

(1) the Request for Comments published at 23 *State Register* 2299, on June 14, 1999;

(2) the rules as published in the *State Register*, approved by the Revisor of Statutes;

(3) the SONAR;

(4) the Certificate of Mailing the SONAR to the Legislative Reference Library;

(5a) the Notice of Hearing, as mailed;

(5b) a photocopy of the Notice of Hearing and proposed rules, as published at 24 S.R. 577 on October 18, 1999;

(6a) the certification that the Department's mailing list is accurate and complete;

(6b) the certification of mailing the Notice of Hearing and a copy of the proposed rules to the Department's mailing list and those persons identified in the Notice Plan;

(7) the certification of mailing the Notice of Hearing and proposed rules to certain legislators;

(8a) the certification of mailing the Request for Comments to persons on the Department's mailing list and additional mailing list on June 16, 1999;

(8b) the certification of mailing a letter and the proposed rules to persons on the Department's mailing list and additional mailing list on July 29, 1999;

(8c) the certification of compliance with the Department's Notice Plan; and

(9) the comments received by the Department in response to the Request for Comments.

6. At the hearing, the Department filed a written copy of the agency presentation.

Advisory Committee on Proposed Rule.

7. No advisory committee was formed to assist the Department in formulating these rules. The Notice of Solicitation of Outside Opinion, published in the *State*

Register on June 14, 1999, provided opportunities for significant input into the development of the rules.

Nature of the Proposed Rules and Statutory Authority.

8. Property taxes are paid to counties in Minnesota by utilities on some of the property used by them for the generation or transmission of electricity, petroleum, or natural gas. The taxes are determined in part by the valuation of the property subject to taxation. The Department has used a combination of cost factors and income factors to determine the appropriate valuation of each utility's property. The last time the rules were revised was 1996.[2] The Department has concluded that the valuation of property owned by electric cooperatives (co-ops) was not on a par with the valuation of the same type of property owned by investor-owned electric utility companies (IOUs).[3] Allowing co-ops to use the valuation methods IOUs would, in some cases, reduce the property tax obligation of co-ops substantially. The Department concluded that achieving parity between co-ops and IOUs requires a change in the valuation formula used by co-ops.

9. In its SONAR, the Department cites a number of statutes supporting its authority to adopt these rules.[4] Minn. Stat. § 270.06(14) generally authorizes the Commissioner to make rules regarding assessments under the tax laws of the State. Minn. Stat. §§ 273.33, subd. 2; 273.37, subd. 2; and 273.38 authorize the Commissioner to assess certain pipeline property and certain electrical transmission property. It is found that the Department has the general statutory authority to adopt the proposed rules.

Cost and Alternative Assessments in SONAR.

10. Minn. Stat. § 14.131 provides that state agencies proposing rules must identify classes of persons affected by the rule, including those incurring costs and those reaping benefits; the probable effect upon state agencies and state revenues; whether less costly or less intrusive means exist for achieving the rule's goals; what alternatives were considered and the reasons why any such alternatives were not chosen; the costs that will be incurred by complying with the rule; and differences between the proposed rules and existing federal regulations.

11. The Department indicates that costs for co-ops arising from the rule itself will not change, but co-ops will experience changes in their property taxes as a result of the rule.[5] The Department concluded that no fiscal impact would be experienced by the State, but local units of government could see a reduction in revenue.[6] The Department considered using obsolescence as a means of calculating value, but concluded that "there are no obsolescence factors that have been proven to our satisfaction to provide

[2] SONAR, at 1.
[3] SONAR, at 3.
[4] SONAR, at 2.
[5] SONAR, at 2.
[6] *Id*.

an accurate measure of value."[7] Therefore, no less costly way to comply could be devised. Since the Department is not aware of any Federal property tax or other regulations with an effect on the Department's rules, the Department concluded there was no conflict between the proposed rules and any Federal requirement.[8] The Administrative Law Judge finds that the Department has met the requirements of Minn. Stat. § 14.131 relating to cost and alternative assessments.

Impact on Farming Operations

12. Minn. Stat. § 14.111 (1996), imposes an additional notice requirement when rules are proposed that affect farming operations. The proposed rules will not affect farming operations and no additional notice is required.

Analysis of the Proposed Rules

13. Under Minn. Stat. § 14.14, subd. 2, and Minn. Rule 1400.2100, the Administrative Law Judge must determine whether the need for and reasonableness of the proposed rules have been established by the Department by an affirmative presentation of facts. The Department prepared a Statement of Need and Reasonableness ("SONAR") in support of the adoption of each of the proposed rule amendments. At the hearing, the Department supplemented the SONAR in making its affirmative presentation of need and reasonableness for each provision. The Department also made written post-hearing comments.

14. The question of whether a rule is reasonable focuses on whether it has a rational basis. The Minnesota Court of Appeals has held a rule to be reasonable if it is rationally related to the end sought to be achieved by the statute.[9] The Supreme Court of Minnesota has further defined the burden by requiring that the agency "explain on what evidence it is relying and how the evidence connects rationally with the agency's choice of action to be taken."[10] An agency is entitled to make choices between possible standards as long as the choice it makes is rational. If commentators suggest approaches other than a rational one selected by the agency, it is not the proper role of the Administrative Law Judge to determine which alternative presents the "best" approach.

15. In addition to need and reasonableness, the Administrative Law Judge must assess whether the rule adoption procedure was complied with, whether the rule grants undue discretion, whether the agency has statutory authority to adopt the rule, whether the rule is unconstitutional or illegal, whether the rule constitutes an undue delegation of authority to another, or whether the proposed language is not a rule.[11] This Report is

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[7] *Id*.
[8] SONAR, at 3.
[9] ***Broen Memorial Home v. Minnesota Department of Human Services***, 364 N.W.2d 436, 440 (Minn. App. 1985); ***Blocher Outdoor Advertising Company v. Minnesota Department of Transportation***, 347 N.W.2d 88, 91 (Minn. App. 1984).
[10] ***Manufactured Housing Institute v. Pettersen***, 347 N.W.2d 238, 244 (Minn. 1984).
[11] Minn. Rule 1400.2100.

limited to the discussion of the portions of the proposed rule that received significant critical comment or otherwise need to be examined. Accordingly, the Report will not discuss each comment. Persons or groups who do not find their particular comments referenced in this Report should know that each and every submission has been read and considered.

16. Where changes are made to a rule after publication in the State Register, the Administrative Law Judge must determine if the new language is substantially different from that which was proposed originally.[12] The standards to determine if the new language is substantially different are found in Minn. Stat. § 14.05, subd. 2 (1998). The Department proposed no language differing from the rule as published in the State Register. Suggested changes by commentators must be assessed under "substantially different language" standard, as well as for need and reasonableness.

Minn. Rule 8100.0100 - Definitions

17. The Department has proposed to delete from this rule subpart 5(a), which defines "earnings growth rate." The information relied upon by the Department to calculate the earnings growth rate is no longer published.[13] Great Lakes Gas Transmission Company (Great Lakes) supported the change. Retaining a valuation method in the rule that is impossible to calculate is neither needed nor reasonable. The Department has demonstrated that deleting subpart 5a is both needed and reasonable.

18. The Department has proposed an amendment to the definitions for “electric company” (subpart 6) and "gas transmission company" (subpart 7). The amendment deletes the exclusion of co-ops from each definition. The change is important to conform the definitions to other changes in the rule. The language in subparts 6 and 7 is needed and reasonable as proposed.

Minn. Rule 8100.0200 - Introduction

19. Minn. Rule 8100.0200 describes the purpose and overall procedure in determining the valuation of utility companies operating within Minnesota. The Department proposed to amend the rule part by adding several reports to the list of reports that utilities submit to the Department as part of the valuation process. The new language includes the reports of the United States Department of Agriculture, Rural Utility Service, or equivalent." The Department explained that this rule language conforms the regulatory obligation on co-ops to match what they are already filing with their lenders.[14] Lee Sundberg, Director of Government Affairs for the Minnesota Rural Electrical Association (MREA), supported the use of equivalent alternative reports because those reports are "identical."[15] The Department indicates that the reports are

[12] Minn. Stat. § 14.15, subd. 3 (1998).
[13] SONAR, at 5.
[14] SONAR, at 6.
[15] Exhibit 9.

all in the same format and contain the information needed to perform the valuation calculation.[16] This proposed amendment is found to be needed and reasonable.

20. The other change proposed to part 8100.0200 is to establish the effective date as 2000, and subsequent years. Bradford R. Johnson, Goodhue County Assessor, objected to making the rule effective before a study is done regarding the methods of valuation being used and the impact of deregulation on developing true market values for assessing property values.[17] MREA indicated that co-ops are already experiencing wholesale competition through deregulation, but retail deregulation is years away.[18] With wholesale competition, MREA maintains that co-ops need the "fairness in the end result of the amount of taxes paid on the same type of utility property within the state", whether the property is owned by a co-op or an IOU.[19] The Department has shown that making these changes effective in 2000 is needed and reasonable. The rule part, as modified, is needed and reasonable.

Minn. Rule 8100.0300 - Valuation

21. The only modification proposed in Minn. Rule 8100.0300, subpart 1, is the effective year for the changes. The new language in subpart 1 conforms to the effective year discussed in the foregoing Finding and is needed and reasonable.

Subpart 4 - Income Approach

22. Subpart 4 sets out the method of determining the income factor in the valuation calculation. The Department proposes to delete the earnings growth rate from the calculation. The Department explained that the rate cannot now be calculated since the information required to perform the calculation is no longer published. Without a basis for the calculation, the Department maintains that including the rate in the rule results in a calculation which is invalid.[20] The method as set out in the current rule for IOUs takes into account the capital structure of the utility, the cost of capital, and the yield on common and preferred stocks and applies the earnings growth rate.[21] An example is provided in the proposed subpart 4 that shows the deletion of the earnings growth rate. The example also shows the "capitalized income at 9.25%." The example in the existing rule showed the capitalized income rate at 10.0%. The rate in the example is for demonstrative purposes only, and the rate applicable to any particular utility may vary. The Department clarified that the change to the capitalized income in the example (from 10.0% to 9.25%) is the result of using an actual rate in effect, not attempting to set a rate with future effect.[22]

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[16] *Id*. The Department notes the only difference appears to be the name of the lender at the top of the report.
[17] Goodhue County Comment.
[18] MREA Reply, at 1.
[19] *Id*.
[20] SONAR, at 6.
[21] *Id*.
[22] Department Comment, at 1 (the rate in the example, 9.25%, is the gas transmission facility rate for 1999).

23. Kathleen Heaney, Assistant Sherburne County Attorney and representative of the Minnesota Coalition of Utility Counties (the Coalition), objected to the rule as "not consistent."[23] The absence of any reference to production of income and an accurate forecast of that income are cited by her as deficiencies in the rule.[24] Without that information, the Coalition suggests that the rule will result in an unsupported market value.[25] The Coalition then suggested that an income model was inappropriate for the co-ops' property since the property was really special use property for which the cost approach must be taken.[26] The Administrative Law Judge notes that the cost approach to valuation is the existing valuation method in the rule and would remain as an option for co-ops under the proposed rule.

24. Identifying a property as "special use" recognizes that there is no active market for the property and triggers an assessment of value by alternative methods.[27] Where alternative valuation methods (such as using the income generated by the property) are not available, the cost approach has been held to be an appropriate valuation method in the absence of a true market value.[28]

25. The approach taken by the Department is not to adopt an entirely new method of valuation for co-op properties. Rather, the Department has removed the exclusion of co-ops from the existing method of valuation for IOUs. If the Coalition's argument that the proposed method results in unsupported market values is correct, then the valuation method currently applicable to IOUs is invalid. The record does not support such a result. The nonexempt property of IOUs is currently valued with the valuation calculation proposed for co-ops here. There is no evidence in the record that the current valuation methodology for IOUs results in unsupported market values for their taxable property. Therefore, the use of the same method for co-op properties is found to be needed and reasonable.

26. The Coalition indicated that the capitalization rate calculation was not identified in the rules. Subpart 4 explicitly requires the "band of investment method" to calculate the capitalization rate, which considers, and is derived from the co-op's capital structure, cost of debt, and yield on common and preferred stocks. Gerald Kritzeck, Wright County Assessor, questioned whether a uniform system of accounting principles would be used to calculate the capitalization rate.[29] Co-ops are obligated to follow generally accepted accounting principles determined by the U.S. Department of Agriculture and available on the Internet at http://www.gpo.gov.[30] The reports made by co-ops under those principles provide the figures for calculating the capitalization rate. The proposed capitalization rate calculation is found to be needed and reasonable. Subpart 4 is needed and reasonable as proposed.

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[23] Coalition Reply, at 4.
[24] Coalition Reply, at 4.
[25] *Id*. citing ***Equitable Life Assurance Society of U.S. v. County of Ramsey***, 530 N.W.2d 544 (Minn. 1995).
[26] Coalition Reply, at 5.
[27] ***Federal Reserve Bank of Minneapolis v. State of Minnesota***, 1980 WL 1030, *3 (Minn.Tax 1980).
[28] ***Federal Reserve Bank***, at *4.
[29] Wright County Comment, at 2.
[30] Department Reply, at 3 (the accounting principles are found by retrieving 7 CFR Part 1767).

Subpart 6 - Valuation of Utility Property of Cooperatives and other Noncommon Carrier or Nonregulated Utilities

27. The Department proposes to modify subpart 6 of Minn. Rule 8100.0400 to allow the optional use of the unit value method for co-ops and some other utilities. The unit value method is set out in subparts 1 through 5 of part 8100.0400 and discussed in the foregoing Findings. The Department explained the reasons for extending the optional valuation method to co-ops and others as follows:

> This is being done to bring cooperatives into parity with investor-owned companies. Evidence indicating the difference in valuation methods is the relationship between the cost of property and the market value. For cooperatives, the minimum ratio between market value and cost is 75%. For investor-owned companies, the average ratio between market value and cost is about 60%. That indicates a very different level of assessment and when asked to review the assessment method, it was decided that a change in assessment methods was needed. We are allowing an election because there are some very small cooperatives with very little taxable property, and requiring additional reporting would be an unwanted burden on them.[31]

28. Electrical distribution lines through rural areas are exempt from property taxation by operation of Minn. Stat. §§ 273.38 to 273.41.[32] The MREA supports the changes in subpart 6 as needed to determine the value of nonexempt property used by co-ops for distribution of electricity to incorporated areas of the state.[33] Michele Beck, Rates Analyst for the Minnesota Department of Commerce (Commerce), supports the proposed rule as bringing "the state closer to the Department's goal of a competitively-neutral state tax policy for energy providers …."[34] MREA and Commerce indicated that the changes in subpart 6 put co-ops on the same footing as IOUs.[35]

29. The Coalition objected to using the unit value method for co-ops as both unnecessary and unreasonable. Each argument will be addressed separately.

30. The Department indicates that there are insufficient sales of co-ops to arrive at a market value by comparing sale prices. The Coalition argues that the Department's justification for affording co-ops the option in valuation is inconsistent with the evidence available. The Department used the difference between ratios of market value to cost for IOUs and co-ops to support the rule change. The Coalition maintains the difference

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[31] SONAR, at 6.

[32] The property tax exemption applies to co-op property in rural areas and substitutes a nominal fee based on each 100 members of the co-op. Minn. Stat. § 273.41. By contrast, IOUs are covered by Minn. Stat. § 272.02, subd. 19, which states: "Subd. 19. Property used to distribute electricity to farmers. Electric power distribution lines and their attachments and appurtenances, that are used primarily for supplying electricity to farmers at retail, are exempt.

[33] Exhibit 9.

[34] Exhibit 9. The letter is on Department of Public Service stationery, since the merger of the Departments of Public Service and Commerce had not been finalized as of the date of the letter.

[35] Exhibit 10 and Commerce Comment, December 8, 1999.

in ratios cannot be relied upon if there is no true market value for co-ops.[36] Without the difference in ratios, the Coalition asserts that there is no need demonstrated to support the change in the rule.

31. In addition, the Coalition argues that the Department's contention of unfair treatment of co-ops is inconsistent. The Coalition notes that IOU's have lobbied the Legislature for treatment identical to co-ops.[37] Thus, the Coalition concludes that there is no need demonstrated to change the valuation method for co-ops.

32. The Department responded that the IOUs have lobbied for property tax exemptions similar to that of the co-ops for rural distribution property.[38] The Department maintains that IOUs "have never claimed to the Department of Revenue that they were valued too high compared to cooperatives."[39] The SONAR touches on the topic minimally, indicating that the rule change was initiated by co-ops complaining of the difference in taxation methods.[40] The MREA more fully described why the rule should be changed, as follows:

> The proposed rule achieves fairness and equity because it gives co-ops the opportunity to use the **same** valuation method for their plants as the investor-owned utilities with the same type of plant across the street. This is not a valuation method that is different or special or advantageous for co-ops, but the same. This fairness is proposed for both generation and transmission co-ops and the few distribution co-ops which are experiencing growth within incorporated areas.[41]

33. No commentator has indicated how allowing co-ops to use the same valuation method as IOUs for the same personal property is not needed. The Coalition has not shown that there is some need to use different valuation methods when co-op property is valued. The Department has demonstrated allowing co-ops the option to use unit valuation is needed to assess fairly the taxable value of co-op property.

34. The Coalition maintains that using the proposed valuation method is unreasonable because a market for co-ops exists.[42] The statutory standard for valuation is to use the market value, which is the usual selling price of property in an "arms-length" transaction.[43] The Department responded that there are insufficient sales and insufficient evidence that the sales that occur are arms-length transactions to establish a market value for co-op property by actual sales. In the proposed rule, the

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[36] Coalition Reply, at 3.
[37] *Id*.
[38] Department Reply, at 4.
[39] *Id*.
[40] SONAR, at 6 ("… when asked to review the assessment method, …").
[41] Exhibit 10 (emphasis in original).
[42] In its Reply, the Coalition submitted information concerning numbers of and types of sales of co-ops. Since this is new information and was received after the close of the comment period, the information was not considered in the analysis in this Report. In the interest of completeness, the information is analyzed in the Memorandum attached to the Report.
[43] Minn. Stat. §§ 272.03, subd. 8, and 273.11.

Department adopts a method currently used to value IOU property and allows co-ops the option to value their property by that method. It is found that subpart 6 has been shown to be needed and reasonable as proposed.

Minn. Rule 8100.0500 - Adjustments for Non-Formula-Assessed or Exempt Property

35. As discussed above, co-ops have a statutory exemption from taxation on property used to deliver electricity in rural areas. The Department proposed changes to part 8100.0500 to ensure that such exempt property is excluded from the ultimate valuation of each co-op's property. A further reason for changing the method was the discovery that, with the other rule changes, some co-ops would have a "negative market value."[44] That result is unreasonable, since those co-ops have a market value and that value must be assessed to calculate the appropriate property tax. The Department proposes at part 8100.0500, subp. 4a, a formula to determine the percentage of excludable property owned by the entity in Minnesota compared to all property owned by that entity Minnesota. The percentage derived is multiplied by the Minnesota market value (denominated as "Minnesota portion of Unit Value") to arrive at the excludable amount. That amount is then subtracted from the "Minnesota portion of Unit Value" to arrive at the amount that is the taxable value of the property (denominated as "Minnesota Apportionable Value"). The rule is found to be needed and reasonable to apportion fairly the market value between taxable and exempt property.

Impact of Taxation on Rural Gas Distribution Systems

36. Mike Gorham, President of Northwest Gas (Northwest Gas), related the problems facing small gas companies serving modestly sized Minnesota communities arising from changes in the tax formula. When the mains were installed, tax was assessed per meter (by customer). Thus, a company could run a long feeder line for gas supply and be assured of a property tax assessment based on the number of customers, not the value of pipe in the ground.[45] Under the new valuation system adopted in 1997, the entire cost of the system is included in the tax base and the amount of tax paid per meter rose, from $20-30 to $40-102.[46]

37. The rules as published in the *State Register* do not extend to revaluing small natural gas company property. To modify the rules to attempt such a revaluation would constitute substantially different language from the rule language published and this would be a defect in the proposed rules. More importantly, the change sought by Northwest Gas appears to parallel the treatment afforded co-ops delivering electricity to rural areas. The property used to provide such service is exempt from taxation, but that exemption is afforded by statute.[47] The Department cannot adopt a rule exempting property from taxation that is made taxable by statute. Northwest Gas may wish to consider requesting legislative relief.

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[44] SONAR, at 7.
[45] Northwest Gas, August 12, 1999 Letter.
[46] *Id*.
[47] Minn. Stat. §§ 273.38 to 273.41.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Minnesota Department of Revenue (the Department) gave proper notice of this rulemaking hearing.

2. The Department has substantially fulfilled the procedural requirements of Minn. Stat. §§ 14.14, subds. 1, 1a and 14.14, subd. 2, and all other procedural requirements of law or rule so as to allow it to adopt the proposed rules.

3. The Department 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, and 14.50 (i) and (ii).

4. The Department has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2 and 14.50 (iii).

5. There were no additions or amendments to the proposed rules suggested by the Department after publication of the proposed rules in the State Register and thus there is no issue regarding rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 14.15, subd. 3, and Minn. Rule 1400.2100C.

6. Any Findings which might properly be termed Conclusions are hereby adopted as such.

7. A finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Department from further modification of the proposed rules based upon an examination of the public comments, provided that the resulting rule is not substantially different from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the proposed rules be adopted.

Dated this ___ day of December, 1999.

RICHARD C. LUIS
Administrative Law Judge

Reported: Taped, No Transcript Prepared

MEMORANDUM

On December 7, 1999, the Coalition submitted a comment that included information regarding sales of co-ops nationally. Since this evidence is new to the record, it can only be received during the comment period, which closed on December 1, 1999, at 4:30 p.m.[48] The evidence was excluded from the rulemaking record and not considered in arriving at the Findings of Fact, Conclusions, or Recommendation contained in this Report. The evidence is discussed here only in the interest of completeness, to assure finality in this rulemaking process.

In its criticism of the Department's assessment of need for changing the treatment of co-op property, the Coalition stated:

> Differences may arise in valuation of industry types due to financing available to different entities, the ownership structure of the operation, the market in which they are operating and regulatory requirements. Failure to exclude these factors, **which can greatly impact the market value of the property**, means that the conclusion [that co-ops are disadvantaged against IOUs] is erroneous.[49]

Those factors identified by the Coalition can affect the market value of individual co-ops as readily as the different types of utilities. The information submitted by the Coalition indicates that thirty-seven sales of co-ops occurred. The information lacks any of the details of the transactions that could provide assurance that the sales were conducted at arms-length and that the market price was not affected by some unique characteristic of the business being purchased. The information submitted by the Coalition (and excluded from the record in this rulemaking) does not demonstrate that sufficient information is available to use sales price data, standing alone, as the measure of "market price" for valuation of utility property to assess the appropriate amount of property tax.

R.C.L.

[48] Minn. Rule 1400.2230, subp. 2.
[49] Coalition Reply, at 3 (emphasis added).