

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair  
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In the Matter of the Proposed  
Adoption of Rules of the Minnesota  
Public Utilities Commission Govern-  
ing Conservation Improvement Programs  
and Utility Renewable Resource Pilot  
Programs

DOCKET NO. G,E-999/R-85-506

STATEMENT OF NEED AND  
REASONABLENESS

I. INTRODUCTION

Pursuant to the rulemaking authority granted it in Minn. Stat. § 216B.08 (1984), the Minnesota Public Utilities Commission (the Commission) has prepared this Statement of Need and Reasonableness to support and accompany the Commission's Proposed Rules Governing Conservation Improvement Programs (CIPs) and Utility Renewable Resources Pilot Programs (URRPPs).

The proposed rules are designed to implement Minn. Stat. § 216B.241 (1984) by establishing procedures for the submission of CIP and URRPP proposals by public utilities and other interested persons and by establishing the procedures by which the Commission will analyze and select them. The Minnesota Court of Appeals in In the Matter of the Implementation of Utility Energy Conservation Improvement Programs and the Establishment of a Utility Renewable Resources Pilot Program, C7-84-2241 (July 3, 1985), ordered the Commission to adopt procedural rules governing the conservation improvement program and utility renewable resources pilot program processes.

II. SMALL BUSINESS IMPACT

Minn. Stat. § 14.115, subd. 2 (1984) requires an agency proposing a new rule, or an amendment to an existing rule, which may affect small businesses, to consider each of five methods for reducing the impact of the rule on small businesses, and to document how it has considered these methods and the results in its statement of need and resonableness. The five methods are:

(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.

Any method the agency finds feasible must be incorporated into the proposed rule or amendment unless doing so would be contrary to the statutory objectives that are the basis for the proposed rulemaking.

The Commission believes that utilities are not "small businesses" as defined by Minn. Stat. § 14.115, subd. 1 (1984) because they are dominant in their service area and generally have gross annual sales of \$4,000,000 or more.

Furthermore, the Commission notes that in Minn. Stat. Ch. 216B (1982), it has been authorized by the legislature to regulate gas and electric utilities. Some of the basic tenets of utility regulation are: utilities are affected with a deep public interest; utilities are obligated to provide satisfactory service to the entire public on demand; utilities are obligated to charge fair, non-discriminatory rates. A general freedom from substantial direct competition and the opportunity to make a fair return on investment are among the benefits utilities receive from regulation. Given this regulatory scheme, it is clear that the legislature views utilities differently from other concerns defined as small businesses. The degree of government intervention in the operations of a public utility is considerably higher than in other types of businesses.

Even if some small utilities could be viewed as "small businesses" as that term is defined, they, nevertheless, would be excepted from this statute. The Commission finds that Minn. Stat. § 14.115, subd. 7 (1984) establishes exceptions to the general obligations created by the statute and applies to rules promulgated by the Commission. In pertinent part, it states;

Subd. 7. Applicability. This section does not apply to:  
(c) service businesses regulated by government bodies, for standards and costs, such as nursing homes, long-term care facilities, hospitals, providers of medical care, daycare centers, group homes and residential care facilities;

The Commission concludes that utilities fall within this broad definition. They are certainly service businesses regulated by government bodies for standards and costs. The words following the phrase "such as" merely provide some examples of government regulated businesses and are not limiting or exclusive.

Finally, the Commission notes that Minn. Stat. § 216B.241 (1984) provides its own specialized definition of a public utility that is narrower than that of a small business as provided in Minn. Stat. § 14.115 (1984). It requires that the Commission insure that every public utility with operating revenues in excess of \$50,000,000 operate one or more programs, under periodic review by the Commission, which make significant investments in and expenditures for energy conservation improvements. (Emphasis supplied.) The proposed rules apply directly only to such large concerns. For the foregoing

reasons, the Commission finds that Minn. Stat. § 14.115 (1984) does not apply to the utilities addressed by these rules.

However, the Commission finds that other entities which well may qualify as small businesses could become involved in the CIP or URRPP processes. Small businesses may submit CIP or URRPP proposals and thus become subject to these rules, i.e., proposals to perform energy audits, proposals to provide seminars to inform the public, proposals to supply tool or information libraries, etc.

The Commission believes that the rules should not burden small businesses more than necessary, but at the same time the Commission recognizes that it needs adequate information to analyze a small business's proposal. The Commission believes that it has mitigated the impact of the rules on small business in two ways, while at the same time allowing for the presentation of full information which will result in a thorough analysis of each proposal by the Commission.

First, small businesses are not required to take any action under these rules. Any small business that participates in the programs under the rule does so on a voluntary basis.

Second, the rules establish no greater performance standards than are set for the regulated utilities. The rules have been written to mitigate the filing burdens on small businesses as well as other, non-utility participants. Part 7840.0700 has been written to make clear that third person filers do not need to refile material that is already in the utility's annual program filing. This could include, for instance, data, rate making treatment, or evaluation plans. Further, it should be clear that only the utility, and not other persons, will have to file status reports for the previous year's projects.

Minn. Stat. § 14.115, subd. 4 (1984) requires the agency proposing rules or amendments to provide an opportunity for small businesses to participate in the rulemaking process using one or more of four methods. The Commission has complied with this requirement by giving notice of this proposed rulemaking by direct notification of small businesses that have indicated an interest in CIPs and URRPPs in the past.

Minn. Stat. § 14.11, subd. 1 (1984) states that if the adoption of a rule by an agency will require the expenditure of public moneys by local public bodies, the notice of the agency's intent to adopt a rule must be accompanied by a written statement giving the agency's reasonable estimate of the total cost to all local public bodies in the state to implement the rule for the two years immediately following adoption of the rule if the estimated total cost exceeds \$100,000 in either of the two years. (Emphasis supplied) The Commission is aware that some municipalities or counties may want to become involved in the CIP or URRPP process; however, the Commission notes that that participation is strictly voluntary. Furthermore, the proposed rule is a procedural rule, not a substantive one. Therefore, the Commission concludes that Minn. Stat. § 14.11, subd. 1 (1984) does not apply to this rulemaking.

Minn. Stat. § 14.11, subd. 2 (1984) provides that if an agency proposing the adoption of the rule determines that the rule may have a direct and substantial adverse impact on agricultural land in the state, the agency must comply with the requirements of the Minnesota Statutes addressing state agricultural land preservation and conservation policy. (Emphasis supplied.) The Commission finds that here, too, the rule will have only an indirect effect on agricultural land, if any. The rule does not require that agricultural land be directly affected in the CIP and URRPP process. Furthermore, as stated above, the rule is procedural in nature, not substantive. Therefore, the Commission concludes that Minn. Stat. § 14.11, subd. 2 (1984) does not apply to this rulemaking.

This Statement follows the numerical organization of the proposed rules. The rules are provided, followed by the Commission's discussion of why the rule is necessary and reasonable.

This Statement of Need and Reasonableness is designed to comply with Minnesota Rules, part 1400.0500. It contains a summary of the evidence and arguments that support both the need for and reasonableness of the proposed rule.

### III. DISCUSSION OF PROPOSED RULE

#### 7840.0200 PURPOSE.

The purpose of this chapter is to specify procedures to be followed by public utilities in submitting, and by the Public Utilities Commission in analyzing and selecting, proposals for conservation improvement programs and renewable resource pilot programs and to provide for the participation of other interested persons in developing conservation improvement and renewable resource pilot programs.

#### 7840.0300 SCOPE.

This chapter applies to proposals by public utilities and other interested persons for utility investments in conservation improvement and renewable resource pilot programs.

These introductory sections of the rule are intended to set forth the general purpose, intent, and overall effect of the rule for persons who could be affected by them. It is reasonable and necessary that the rule should provide such information at its beginning so that persons do not have to search through it to find out whether the rule concerns them.

#### 7840.0400 PROJECTS IN EFFECT.

Projects that are in effect on the effective date of parts 7840.0200 to 7840.1400 shall continue in effect for 60 days or until their expiration date, whichever occurs later.

Under this section, conservation projects that are in effect on the effective date of these rules will be allowed and are required to be continued for 60 days or until their expiration date, whichever occurs later. Minn. Stat. § 216B.241 (1984) requires utilities to operate conservation improvement programs which make significant investments in and expenditures for energy conservation improvements. All covered utilities have Commission-approved conservation programs which are in various stages of implementation. Virtually all these projects were authorized for a one year period. These one year periods are staggered because the Commission approved utility proposed CIPs between October, 1984 and February, 1985. This rule will bridge the gap between the expiration dates of the projects, the effective date of these rules, and Commission action on new CIPs. The Commission will have sufficient time to examine, analyze, and take action on currently existing projects without utilities incurring the administrative difficulties of restarting or modifying an expired project. These conservation projects, or others like them, must be kept in operation in order for the utilities to meet their statutory obligations to offer significant and cost-effective conservation programs to their customers. If a conservation project were to lapse while the Commission was in the process of reviewing, analyzing and evaluating the conservation projects, inefficient and ineffective program administration would result. Marketing efforts, customer relations, and reputations of participating community-based organizations could be harmed if a conservation program were interrupted while the Commission reviewed conservation programs. This section allows the Commission to meet its statutory obligation of ensuring that the covered utilities operate conservation programs during a reasonable interim period after the adoption of these rules during which the development and decision-making process is being carried out. Further, it appropriately extends the length of time and proportional amount of the budgets of conservation programs which the Commission has already found to be appropriate. The 60-day period is approximately the minimum time needed to allow for a filing to be prepared and submitted by a utility, comments submitted by interested parties and final Commission action.

#### 7840.0500 CONSERVATION IMPROVEMENT PROGRAM FILING.

No later than May 1 of each year beginning in 1986, a public utility required by Minnesota Statutes, section 216B.241 to invest in a conservation improvement program shall file with the Public Utilities Commission a conservation improvement program. The filing must include:

- A. A comprehensive description of the proposed program, including a description of each project making up the program.
- B. A statement quantifying each project's objectives including an estimate of the expected cost effectiveness of the project to the utility, to the project's participants, and to the utility's customers.

C. A statement of the anticipated percentage of use of each project among targeted residential consumer groups.

D. A detailed budget for each project for the next year, and a projected five-year budget for the overall program. If a shorter time period is more appropriate for the five-year budget, the utility must provide reasons for that shorter time period and the projected budget for that shorter period.

E. A detailed description of the proposed ratemaking treatment and the proposed cost recovery method.

F. A description of the marketing plans for each proposed project.

G. A description of the expected effect of each project on peak and average consumption with supporting assumptions, including a computation of the costs that will be avoided or reduced by the implementation of the proposed project and an estimate of the expected revenue effects.

H. An explanation of how the proposed projects provide special consideration for renters and low income customers.

I. An explanation of how the proposed projects provide for the involvement of community energy organizations when appropriate.

J. An outline of the proposed plan for evaluating the effectiveness of the proposed project.

K. A status report on each project from the previous year's program stating the total number of customers served; the number of low income customers and the number of renters served, if applicable; the total amount spent on the project to date; the average amount spent on each customer participating in the project, if applicable; and other information as required by the Public Utilities Commission in its order approving the previous year's program.

L. Additional information that the Public Utilities Commission determines is necessary as a result of its review or evaluation of prior projects of the particular utility.

This part requires covered utilities to file conservation programs with the Commission by May 1 of each year. This section appropriately recognizes that it is the utility's responsibility to operate significant conservation programs and it is the Commission's responsibility to ensure that they do so. This requirement for filing is necessary in order for the Commission to be able to begin its process of evaluating, reviewing, and selecting appropriate conservation programs. An annual filing will provide

the Commission with the information necessary to modify, terminate or extend existing programs and to further the development of new programs. With changing economic and technological conditions and as more information is gathered addressing the efficacy of various types of conservation programs, conservation projects may have to be modified, expanded or terminated in order to achieve workable and efficient projects. The requirement for an annual filing is reasonable because one year is long enough for a program to be implemented and for sufficient information to be gathered to allow for the program evaluation and review. A period significantly shorter than a year would make it difficult for the utilities and the Commission to meet the administrative requirements of developing and selecting programs. Also, a shorter period would not allow for the evaluation of approved programs before the time that new filings were required. A filing period significantly longer than 12 months would not allow the Commission an adequate opportunity to monitor the operation of conservation programs as required by Minn. Stat. § 216B.241 (1984). As a result, inefficient and cost effective programs would not be discontinued as quickly as with an annual review.

The Commission intends to review plans over the summer in order that the programs may be implemented for a full heating season and that it may have results from a full heating season during its review. It believes that most conservation programs for residential customers will be intended to have their greatest impact during the winter heating months in part because the greatest conservation effect should be in the utility service for space heating. Other programs are likely to be aimed at year around usage and thus will be indifferent to a May filing date. Thus, the May 1 filing date is also reasonable.

As fully explained below, filing requirements listed in items A through L are necessary to provide the Commission with enough information to evaluate the proposed programs. Each part is reasonable because it requires the information that is needed by and likely to be useful to the Commission as it makes the important judgments concerning the appropriateness of the programs.

Item A requires a comprehensive description of the proposed program and each proposed project making up the program. Naturally, a filing must begin by describing the proposed program and its component projects. This informs the Commission of the important aspects of the proposal for which approval is sought. It allows the Commission to understand the nature of the project and gives the Commission the background information it will need to understand and evaluate the appropriateness of a proposed program which may result in the expenditure of a significant amount of money.

Item B requires utilities or other interested parties to provide the objectives of the proposed project and to estimate the expected cost-effectiveness of the project. The cost-effectiveness is to be estimated from the perspective of not only the utility but also the participating customers and the general body of customers. This should assist the Commission in evaluating the long term societal benefits as well as benefits to customers even when short term costs to the utility exceed its identified savings.

It is necessary that a statement quantifying each project's objectives be filed because this information is vital to understanding the overall purpose and goals of the project. It also will provide a benchmark for measuring the success of the overall program which is necessary to determine the appropriateness of continuing the project into the future. It is necessary that an estimate of each project's cost effectiveness be provided because Minn. Stat. § 216B.241 (1984) specifies cost-effectiveness as a criterion for the selection of conservation projects. It is reasonable to require this information because it is information that can be expected to be available to any party making a serious proposal for a significant conservation project and is needed by the Commission to perform its evaluation.

Minn. Stat. § 216B.241 (1984) requires that special consideration be given to low-income families and individuals and to renters. The purpose of item C is to provide the Commission with information concerning the extent that the proposed program will be available to these and other groups. This information will permit the Commission to understand the purpose of the project and its potential impact on important segments of the utility's customer base. It presents a statistical analysis that lays the groundwork for an expanded explanation of the effects on conservation that will be filed pursuant to item H. Since it is likely to have been an important consideration in the development of the proposed project, the information should, therefore, be readily accessible. Requiring the information is reasonable because it is needed and should be readily available.

Item D requires submission of the estimated expenditures in appropriate categories for each proposed project for the next year and the program as a whole for the next five years. This information is necessary for the Commission to make informed judgments on the appropriateness of the project and the proposed methods of operating the project. By affording the Commission data regarding several years' expenditures, it will also give the Commission insights into the complete costs of the project. This requirement fulfills a financial control function inasmuch as it encourages the proposing party to fully develop projects before requesting Commission approval of them. Five years appears to be a reasonable look into the future that will allow flexibility when a utility has alternative data that will further the purpose of the rule and lessen the burden on the utility. The utility must show that the alternative is acceptable.

Item E seeks a description of the cost recovery method, including the ratemaking treatment, that the utility proposes for the conservation expenditures under review pursuant to these rules. Heretofore, the information which the Commission has received at the time it reviewed conservation programs has been at best minimal and often non-existent. Utilities have rather deferred the costs with and without the Commission's approval and have presented concrete recovery plans only several years later. For instance, Northern States Power Company only recently filed a ratemaking proposal for conservation expenditures ordered and made as early as 1981. It had deferred the dollars until almost \$15 million had accumulated. While it first made a separate conservation rate increment filing to recover expenditures for its electric utility, these costs will now be reviewed in a recently filed general rate increase case. By this rule, the Commission seeks to encourage anticipatory planning for cost recovery by the utilities and to become informed of those plans.



The Commission recognizes that utilities are entitled under Minn. Stat. 216B.16, subd. 6a, to treat conservation expenses and investment in the same manner as other allowable ratemaking costs. However, this authority to include conservation costs in ratemaking does not address the when or how these costs will be recovered through rates. It is possible that present rates are sufficient to recover the costs or that the utility will seek increased rates because it has increased costs. The rule requires utilities to explain the questions of when and how it will recover conservation costs. The Commission needs this information in order to evaluate conservation plans as well as to assure that the anticipated recovery plan is within the range of reasonable plans.

The Commission does not anticipate actually approving cost recovery plans as part of its review and approval of CIPs. The actual recovery of costs must be filed as a proposed change in rates with the necessary information to support a rate change filing. See Minn. Rule, part 7825.3200. Since the issues and the procedures for review of such rate change filings will be different than proposed here for conservation plans, it would not be appropriate for the Commission to pass upon the merits of a cost recovery plan. However, item E will give the Commission and other affected persons notice of the utility's intentions and allow appropriate planning for cost recovery as a component of the review of the conservation programs.

Item F is necessary because it will provide the Commission with information that is needed to make reasoned judgments on the potential effectiveness of the proposed project. The marketing methods employed can be a key to the ultimate success of the conservation project and it is, therefore, a necessary part of a proposed conservation improvement program. This section is reasonable because it is fair to require the person proposing a project to submit information to the Commission that was necessary to the realistic planning and development of that project.

Due to the increased costs of providing incremental or additional amounts of electricity or natural gas, energy conservation may be the least expensive method of meeting the demand for the services provided by these forms of energy. This may be true from the viewpoint of both the utility and the utility's consumers. Item G requires the person proposing a project to estimate the beneficial aspects of conservation to the utility. It is necessary that the benefits of the proposed conservation projects be estimated and provided to the Commission so that the overall benefits of the program can be compared to the total costs of the proposed program. This will give the Commission a benchmark to look at when considering the overall appropriateness of the proposed project. This requirement is reasonable because this information can reasonably be expected to be developed by a party making a serious proposal for a conservation project to the Commission.

Minn. Stat. § 216B.241 (1984) requires that special consideration be granted to low income families and individuals and to renters. Item H is necessary so that the Commission will be informed of how the proposed project meets the statutory requirement. It is reasonable to require this information because it is needed to meet a statutory requirement.

In item I it is necessary and reasonable that the rules provide for the disclosure of any involvement of community energy organizations because

this information will give the Commission a complete understanding of the scope and the involvement of others than the utility in the proposed project. This item imposes no additional responsibilities on proposing parties, other than a simple reporting of how any community energy organization participation will occur.

Item J addresses the concern that the efficiency of all conservation projects must be evaluated so that decisions can be made whether to continue them. It is important that the person developing a proposed project consider, at least in a general way, the methods to be used to evaluate the project at the time the project is developed to ensure that all necessary information is collected as the program is being operated. To ensure that the evaluation plan is considered in the developmental stage, it is necessary that an outline of the proposed plan for evaluating the effectiveness of the proposed project be submitted. Item J is reasonable because it will provide the framework for the Commission to analyze the proposed project.

Item K requires an historical report of the participation in and expenditures for existing conservation projects. This requirement is necessary and reasonable because it provides for the submission of information that is both relevant and important in determining the effectiveness of existing conservation programs and for the comparison of existing conservation programs with each other and with new proposed conservation programs.

These status reports will provide the Commission with current data on each project. These reports will facilitate the Commission's evaluation of the benefits and effectiveness of each project by providing a synopsis of the relevant facts and effects of each project. It is reasonable to require annual status reports because they will aid the Commission in fulfilling its responsibility to monitor the projects and can be prepared more quickly and easily than a formal evaluation which requires time-consuming analysis and interpretation.

Item L is intended to afford the Commission the opportunity to require additional information in subsequent filings by a utility. It is necessary that the Commission be able to require additional information on an as-needed basis because the limitations in general requirements applied all utilities will not always answer questions regarding a particular utility or a particular conservation program.

Utilities are allowed to and even encouraged to adopt individual conservation projects uniquely suited to their service area or customers. However, in reviewing these projects, particularly on renewal filings, the Commission may have specific concerns or the need for specific information that is not covered by the general requirements adopted above. This rule will allow the Commission through an order entered after review of a filing or evaluation to require the utility to submit the needed information with its next annual filing. The utility is protected from an exercise of unfettered discretion by the existence of a record that must support the requirement to file additional information.

Minnesota Statutes 216A.05, subd. 3(2), authorizes the Commission to obtain information that it deems necessary or useful from utilities appearing before it. Since the Commission can obtain additional information needed to

review conservation projects through requests directed to the utility, it likewise should be able to require that information be filed with the regular filing of a utility. Further, the Minnesota courts have recognized that an agency may require particular information from a utility on a case by case basis when supported by a rule authorizing such a filing. Re Northwestern Bell Telephone Company, No. C4-84-1872 (May 14, 1985), at 18. This rule makes clear the Commission's intention to use its authority to obtain specific information from utilities in this way.

7840.0600 RENEWABLE RESOURCE PILOT PROGRAM FILING.

A public utility required by Minnesota Statutes, section 216B.241 to have a conservation improvement program shall file a proposal for a utility renewable resource pilot program upon the determination of the Public Utilities Commission that additional utility renewable resource pilot programs are needed to expand Minnesota's options for energy from renewable resources. For at least one year after authorizing a utility's renewable resource pilot program, the Commission shall not require a new proposal for a renewable resource pilot program from that utility. The filing must include:

- A. A comprehensive description of the proposed program, including a description of each project making up the program;
- B. An estimate of the net energy to be produced by each project and the projected reliability of the technology which would be used;
- C. A detailed budget for each year of the project;
- D. An estimate of the potential cost effectiveness of each project;
- E. A description of the proposed ratemaking treatment and the proposed cost recovery method; and
- F. An outline of the proposed plan for evaluating the effectiveness of the proposed project.

This part describes the standards and requirements for filing renewable resource pilot program proposals. In accordance with Minn. Stat. § 216B.241 (1984), the Commission is required to order at least one public utility to establish a renewable resource pilot program. As stated in the rule, a utility will be required to file a renewable resource program under the following two standards: (1) the Commission determines additional programs are needed to expand Minnesota's options for renewable energy; and, (2) at least one year has elapsed since the utility's renewable resource pilot program has been authorized. The Commission has been granted the authority to make a determination of standard (1) by Minn. Stat. § 216B.241 (1984). Under the statute, it is necessary and reasonable that the Commission evaluate additional programs when the Commission determines that additional programs

are needed to expand Minnesota's options for renewable energy. The second standard is designed to inform utilities regarding the frequency with which renewable resource plans must be filed. Such information is necessary to assist both utilities and the Commission in the development of these plans. The second standard is reasonable, because the time spent in the development, approval and implementation of these pilot programs is generally greater than one year. The period of at least one year between authorizing and filing of a pilot project will allow the Commission and the utilities an appropriate period to evaluate these projects.

The filing requirements listed in Minn. Rules, part 7840.0600, items A through F are necessary in order to provide the Commission with sufficient information with which to evaluate proposed programs. The information required is not unreasonable or unduly burdensome. The filing information is readily available and relevant to internal utility decision making.

Item A requires that the filing include a comprehensive description of the proposed renewable resource program and projects, providing the Commission with background information and a general understanding of the overall purpose and goals of the project. In addition, a program description allows the Commission to determine if the proposed research is duplicative. A description of individual projects within the program allows the Commission to understand how all projects fit together within a program. Program descriptions also assist the Commission in determining the overall impact on the development of renewable resources in the State of Minnesota. Consequently, this filing requirement is necessary and reasonable.

Item B requires that the filing include an estimate of the net energy to be produced by each pilot project. Information of this sort is essential in determining cost-effectiveness. Minn. Stat. § 216B.241 (1984) requires that the Commission evaluate renewable resource pilot programs on the basis of cost-effectiveness. In addition, an estimate of the net energy produced by the project allows the Commission to consider the potential for replacement of traditional fuels. This information also allows the Commission to consider the potential net economic effect of the project on the State's economy. Minn. Stat. § 216B.241 (1984) also requires that the Commission evaluate programs on the basis of the reliability of the technologies employed. Item B also requires that the filing include an estimate of the projected reliability of the technology. The Commission requires evidence that the utility will make investments in and expenditures for a reliable technology that is at an appropriate stage of development. These filing requirements are both necessary and reasonable.

Item C requires that the filing include a detailed budget for each year of the project. Such information allows the Commission to compare the projected costs of the project with the benefits and to make a general determination of significant investment. Budget information provides the Commission with an estimate of the potential rate impact of the project. Budgets can also be used by the Commission in comparing and choosing between similar projects. Submission of a budget also requires that a project's finances be fully developed prior to filing. For these reasons, the Commission believes the filing of such information is necessary and reasonable.

Item D requires that the filing include an estimate of the potential cost-effectiveness of each project. As stated previously, this information is necessary and reasonable because Minn. Stat. § 216B.241 (1984) specifies that the Commission evaluate projects on the basis of cost-effectiveness. Renewable resource projects can be evaluated only by comparing the price of the output to the price of traditional fuels. Thus, the analysis of all costs and benefits both direct and indirect is essential to the evaluation of any pilot program. In some cases, the Commission recognizes that pilot programs may generate a negative revenue impact until these projects are put into commercial operation.

Item E requires that the filing include a description of proposed ratemaking treatment and the proposed cost recovery method. Minn. Stat. § 216B.241 (1984) provides that all investments and expenditures made pursuant to a Commission Order be treated like other investments and expenditures prescribed in Minn. Stat. § 216B.16, subd. 6b (1984). Thus, investments and expenditures for renewable resource pilot projects that have been ordered by the Commission, and were prudently incurred, would be appropriate for cost recovery. However, the method by which such costs are to be recovered is not specified in Minn. Stat. § 216B.16, subd. 6b (1984). The Commission, therefore, has discretion in determining the method of cost recovery. For this reason, it is necessary and reasonable that parties file a description of the proposed ratemaking treatment and the proposed method of cost recovery.

Item F requires that the filing include an outline of the proposed plan for evaluating the effectiveness of the project. The simultaneous filing of a project and an evaluation plan insures that the evaluation process is well integrated with the project. The evaluation of projects provides two benefits: (1) the development of program objectives; and, (2) a test for cost-effectiveness. The filing of evaluation plans encourages consistency in the evaluation procedure across utilities and across projects. In addition, the filing of an evaluation plan allows all parties to be aware from the outset how programs are to be evaluated. For these reasons, the Commission believes it is necessary and reasonable to require the filing of an evaluation plan.

#### 7840.0700 EXISTING PROGRAMS; FILING.

The filing requirements for renewing existing conservation improvement program or utility renewable resource pilot program projects are the same as for newly proposed projects; however, if the Public Utilities Commission has material already on file, the utility or interested person submitting an alternative project may incorporate it by reference in its current filing.

The interest of this part is to insure the continuation of high quality programs. In order to insure the continuation of quality programs, existing programs are required to have the same filing requirements as newly proposed programs. It is reasonable that filing requirements for existing programs be neither more nor less rigorous than those for newly proposed programs. Standardized filing requirements for both new and existing programs will insure high standards for existing programs are maintained rather than assumed. Moreover, it is necessary that the Commission have before it a

full-informational filing in order to evaluate existing programs. However, this section avoids the unnecessary filing of duplicate program proposals. The intent is to reduce the burden on those filing proposed programs. This section simplifies the filing requirements for existing programs without jeopardizing the integrity of the filing. For these reasons, the Commission believes this section is both necessary and reasonable.

7840.0800 NOTICE.

At the time it files its conservation improvement or utility renewable resource pilot program with the Public Utilities Commission, the public utility must provide written notice of its filing to persons who participated in the utility's last general rate case or who participated in its conservation improvement program case or utility renewable resource pilot program case during the preceding two years. The notice must state that a copy of the utility's proposed program is available for public inspection at the enumerated business office locations of the utility and at the Public Utilities Commission's office. The notice must also state that the utility will make a copy of the proposed program available to interested persons upon request.

This part requires that the covered utilities provide notice of the availability of its filing to interested persons at the time that it files its conservation improvement program or utility renewable resource pilot program with the Commission. It is necessary to make copies of the proposed programs available for public inspection and available to interested persons upon request to allow for a significant degree of public awareness and participation in the development and analysis of conservation improvement programs and utility renewable resource pilot programs. All persons who can reasonably be expected to have an interest in the matter and who can easily be identified will be provided notice. Persons who participated in a utility's CIP or URRPP process during the preceding two years can be reasonably viewed as having an interest in conservation programs. Persons who participated in a utility's last general rate case can reasonably be viewed as interested in the policies and workings of the utility. Therefore, the requirements of this part are reasonable.

7840.0900 COMMENT; ALTERNATIVE PROPOSALS.

The Public Utilities Commission shall allow 30 days from the date of the filing of the public utility's program for written comments on the program and the submission of alternative projects by interested persons. Proposals for alternative projects must follow the requirements of part 7840.0500 or 7840.0600 except for part 7840.0500, item K. These comments and alternative projects must be filed with the Public Utilities Commission, the Department of Public Service, the Department of Energy and Economic Development and the utility to which they are addressed.

This part allows interested persons to comment on the proposals of utilities or to submit alternative proposals of their own. This is necessary to ensure that all interested persons have a reasonable opportunity to make meaningful contributions to the development of conservation improvement programs or renewable resource pilot programs. This is also necessary to encourage the development and presentation of the best possible CIPs or URRPPs. When a nonutility proposes an alternative program, it is reasonable to require it to meet the same filing requirements a utility must meet in order that the Commission can have all information needed to compare fairly the potentially competing projects. It is reasonable to require that copies of all filings required herein be filed with the Department of Public Service and Department of Energy and Economic Development as well as with the utility to which they are addressed because the Commission expects these organizations to fully participate in this matter.

#### 7840.1000 REQUEST FOR CONTESTED CASE HEARING.

Within ten days following the end of the comment period, a utility or an interested person may file a motion with the Public Utilities Commission requesting a contested case hearing on a proposed program. The motion must set forth with specificity the grounds for a hearing. The motion must be served on persons who filed comments in the proceeding. Replies may be filed within five days from the date of service of the motion. A contested case hearing will be granted when a material, adjudicative fact is in dispute or a substantial liberty or property interest will be adversely affected.

This part establishes the procedure by which a utility or interested person may request a contested case hearing.

The Commission is not required to conduct a contested case hearing in all instances when reviewing conservation improvement programs, but rather need set the matter for hearing only in the limited instances when "the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing." Minn. Stat. § 14.02, subd. 3 (1984). The statute authorizing conservation plans, Minn. Stat. § 216B.241, requires only that the Commission periodically review the plans and does not require a hearing. Thus, the legislature has contemplated informal proceedings rather than formal contested case hearings for conservation plan reviews. See Re Implementation of Utility Conservation Improvement Programs, No. C7-84-2241 (May 28, 1985), slip op. at 8. Any rights to a contested case hearing must be found in general principles of statutory or constitutional law.

These general principles are summarized in the due process clause of the state and federal constitutions. See, i.e., U. S. Const. Amend. 14. The rule sets forth standards under which a motion for a contested case hearing would be granted. These standards follow the fundamental principles of due process, as has been recognized by the following authorities on administrative law:

"[A] party is entitled to a hearing as a matter of constitutional due process where: (1) the agency action is based upon disputed material, adjudicative facts; and (2) the action has or will adversely affect a substantial 'liberty' or 'property' interest." W. Keppel & D. Gilbert, Minnesota Administrative Practice and procedure, § 403 (1982).

"[O]ne who has a sufficiently protected interest is normally entitled to a trial-type hearing on issues of adjudicative fact..." K.C. Davis, Administrative Law Treatises, § 10.1 (2d ed. 1979).

By setting forth these principles as express standards, the Commission not only has informed persons of the showing that they must make to obtain a formal hearing but also has followed the accepted law on the matter.

The time frames established by the rule are necessary and reasonable in that they allow sufficient time for a thorough analysis of a program by utilities and interested persons and also do not unduly delay the entire process. The rule also incorporates a notice requirement to insure that all those who have indicated an interest in a particular CIP or URRPP receive notice of the motion requesting a contested case hearing. Thus, they would be able to participate in the Commission's decision-making process regarding granting a contested case.

The rule states that the motion for a contested case hearing must set forth with specificity the grounds for a hearing. This is reasonable and necessary to allow other persons the opportunity to make a meaningful reply if they wish and to afford the Commission a basis upon which to evaluate and rule upon the motion.

The Commission concludes that it is necessary and reasonable to establish the procedural steps and state the requisite showing a person or a utility must make to be granted a contested case hearing on a CIP or URRPP.

#### 7840.1100 RESPONSES: WRITTEN RECORD.

When a contested case hearing is not required, the Public Utilities Commission may order written responses to comments, oral argument, negotiations, settlement conferences, formal hearing, or other procedures as it deems necessary or helpful to enable it to review, analyze, and select appropriate programs under Minnesota Statutes, section 216B.241. Written papers or summaries of oral meetings for each proceeding filed with the Public Utilities Commission must also be served upon participants and will become part of the record upon which the Public Utilities Commission will decide the case.

This part states the informal procedures that the Commission may use when a contested case hearing is not required. It further provides a standard for informal Commission action. It's reasonable and necessary because it informs utilities and interested persons of procedures that the Commission may



use to fulfill its statutory obligation and implement the goals of Minn. Stat. 216B.241 (1984). The Commission used many of the listed informal procedures for its 1983-84 review of conservation proposals. The Commission found that written comments, a public meeting, and negotiations afforded interested persons an opportunity to participate and reach a consensus on the means of achieving the goals of Minn. Stat. 216B.241 through particular conservation projects. The Commission anticipates that the flexibility afforded by informal processes can further improve and refine the conservation proposal and evaluation procedures in the future.

Further, this part clarifies what information makes up the record upon which the Commission will make its decision. It requires that all written materials and summaries of oral meetings for each proceeding filed with the Commission be served upon all proceeding participants. This is designed to insure a free and complete flow of information to all who are interested and to lead to a well-informed, thorough analysis of CIP and URRPP projects and programs by the Commission.

7840.1200 DISAPPROVAL: ORDER.

If the Public Utilities Commission does not approve a program, project, or evaluation plan or modifies a program, project, or evaluation plan, it shall set forth its reasons in a written order.

The Commission acts only through its Orders, this part merely restates the Commission's obligation pursuant to Minn. Stat. 216B.33 (1984) to make its findings and orders in writing. It is reasonable and necessary to include this part in the rule because it gives a clear and complete picture of the Commission's decision-making process for CIPs and URRPPs.

7840.1300 PROPOSED PROGRAM CHANGES.

Upon its own motion or upon the motion of a utility or other person, the Public Utilities Commission may modify, expand, or terminate an existing conservation improvement program or utility renewable resource pilot program before its expiration date. The moving party must notify all participants in the affected utility's conservation improvement program case or utility renewable resource pilot program case of the motion. Interested persons must be allowed 15 days to submit comments on the proposed program changes. A change may be ordered to make a project more effective, reach more participants, reduce unnecessary or ineffective expenditures, to expand, change, or reduce the geographic area or target group that the project covers, or to change the time period during which the project would be in effect.

The purpose of this part is to allow the Commission to make appropriate and timely changes to a conservation improvement program or a utility renewable resource pilot program. After a conservation program is implemented, additional information concerning ways of improving the program may be available. The Commission needs the ability to modify, expand or

terminate a program in order to reflect any such new information. Also, Minn. Stat. 216B.241 (1984) requires the Commission to monitor the conservation improvement programs. Clearly, the requirement to monitor a program also requires the Commission to make any programmatic changes that are needed to correct any deficiencies found as a result of the monitoring activity. This part establishes standards upon which to judge the changes. Changes may be made in order to make a project more effective, reach more participants, reduce unnecessary or ineffective expenditures, change the time period during which the project would be in effect or expand, change or reduce the size of the geographical area or target group that the project covers. This part is necessary so that the Commission can insure that the covered utilities operate cost-effective conservation programs which make significant investments in and expenditures for energy conservation improvements as required by Minn. Stat. 216B.241 (1984). This part is reasonable because the types of changes that could be made under it are designed to achieve better results from conservation programs.

This part also requires that all participants be notified of the proposed changes and allows for an appropriate comment period. Both provisions are necessary and reasonable because they will allow all participants to fully participate in this matter.

#### 7840.1400 RULES OF PRACTICE.

When not in conflict with this chapter, the Public Utilities Commission's general rules of practice will also apply.

This part is necessary and reasonable because it states that the Commission's Rules of Practice, Minnesota Rules, chapter 7830, will also apply to the CIP and URRPP process when not conflicting with these rules. The rules of practice address the common pleading and practice procedures before the Commission. Making these practices clearly applicable when not in conflict with more specific procedures found in this rule will not only inform, but also assures, utilities and other interested persons of their full rights and duties. Of course, statutory procedures also apply in all cases.