STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SERVICE

In the Matter of the Proposed Amendments to Rules Governing Conservation Improvement Programs and Utility Renewable Resource Pilot Programs, Minn. Rules Chapter 7840, to be recodified as Minn. Rules Parts 7690.0100 - 7690.1500.

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The Department of Public Service (Department) proposes to amend and recodify the Public Utilities Commission's rules governing Conservation Improvement Programs (CIP) and Utility Renewable Resource Pilot Programs (URRPP), now codified at Minn. Rule, parts 7840.0200 - 7840.1400. By adopting these amendments the Department will take over the responsibility for approving, modifying, or disapproving CIP/URRPP programs, a responsibility currently carried out by the Minnesota Public Utilities Commission (Commission) but now reassigned to the Department by virtue of 1989 Minn Laws, ch. 338, sect. 3. Minn. Laws ch. 338, sect. 3 has been codified as Minn. Stat. 216B.241, subd. 2 (Supp. 1989).

On July 24, 1989, the Department of Public Service published a Notice of Solicitation of Outside Opinion and Comments on Proposed Rules Governing Utility Conservation Improvement Programs in the State Register. The Notice asked that written comments be submitted to the Department by September 22, 1989. In response to the Notice, the Department received comments from the Commission, the City of Hastings, Minnesota, Minnegasco, and Northern States Power Company. The Department has reviewed and incorporated these comments where feasible as indicated throughout the Statement of Reasonableness below.

II. STATEMENT OF STATUTORY AUTHORITY

The Department's statutory authority to adopt these rules is set forth in Minn. Stat. 216B.241, subd. 2 (Supp. 1989), which provides, in part:

> The department may by rule require public utilities to make investments and expenditures in energy conservation improvements, explicitly setting forth the interest rates, prices, and terms under which the improvements must be offered to the customers.

Under this statute the Department has the necessary authority to adopt the proposed rule amendments.

III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1988) requires the Department to make an affirmative presentation of facts establishing the need for and reasonableness of the rules proposed. In general terms, this means that the Department 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 Department is appropriate. The need for the proposed rules is discussed below.

The need for these rule amendments came about as a result of passage of the Low Income Energy Bill (1989 Minn. Laws, Chapter 338). Among other things, the bill transfers the authority for the approval of CIP/URRPP programs from the Public Utilities Commission to the Department of Public Service; requires that at least half the money spent on residential CIP programs be devoted to programs that directly address the needs of renters and low income families and individuals; authorizes the Department to approve programs covering two-year periods beginning in 1990; and, provides that parties to the CIP/URRPP process may petition the Commission to modify or revoke a decision made by the Department. The bill provides that until the Department has adopted rules and approves programs to cover a two-year period beginning in 1990, the Commission may continue to approve programs. 1989 Minn. Laws, ch. 338, sect. 9.

Accordingly, most of the amendments to the existing rule are needed to accomplish the requirements of the new legislation. There are, however, some amendments that are proposed as a result of comments received by interested parties or as a result of the Department's experience with the CIP/URRPP review and approval process before the Commission. These amendments are needed to clarify and streamline the process to be followed by utilities in proposing, and by the Department in analyzing and selecting CIP/URRPP programs.

The transfer of approval authority from the Commission to the Department creates the need for an approval process different from the current process. The original CIP statute grants the Commission specific authority to order implementation of CIP programs by the utilities covered by the statute. The amendments to Minn. Stat. 216B.241 give the Department rulemaking authority to establish procedures under which utility CIP programs will be approved, modified, or rejected by the Department. The amended statute further contemplates an appeal of a contested Department decision to the Commission for review.

The proposed rule, therefore, contains language, at part 7690.1000, to establish a procedure whereby the Department will, after reviewing a utility's program and comments to it, prepare a proposed decision. The proposed decision will be served on the

affected parties for review and comment within ten days. Thirty days after receiving the parties' comments, the Department will render a final decision. Part 7690.1500 of the proposed rule directs appeal petitions to the Commission as required by the amended statute. The contested case language in the existing rule is proposed to be repealed; however, the Department believes that during the appeal process the parties may still ask the Commission to hold a contested case hearing to resolve issues of material fact. These amendments are needed to implement the approval authority granted to the Department in the amendments to Minn. Stat. 216B.241. Parties affected by the amended statute will have the same obligations and due process rights under the proposed rule as they have now under the existing rule. Parties will have the advantage of being able to review and comment on a proposed decision before it becomes binding on them.

Part 7690.1300 identifies the process the Department will use for issuing a final decision after a review of the proposed program and parties' comments on the proposed decision is complete. As suggested by several commentors during the solicitation process, the Department is proposing a specific time frame - thirty days from the date that comments are due on the proposed decision - in which a final decision will be issued. Establishing a time frame is desirable to give parties some certainty about the length of time necessary to complete the CIP process. This information is especially important when CIP projects involve third party contractors who may need to hire and train staff to meet their contractual obligations; timing considerations are similarly important for projects that are geared to address seasonal energy conservation needs (e.g. weatherization programs to conserve heating energy).

It should also be noted that the Department is proposing only housekeeping amendments to part 7690.1200, the interpretive portion of the rules. While the Department agrees with several commentors that this portion of the existing rules needs to be reexamined, there appears to be no ready consensus on the policy direction or substance of changes to these rules. The Department notes that the amendments to Minn. Stat. 216B.241 do not require nor imply the need for changes to this part. The strong message sent by the legislature with the passage of the Low Income Energy bill is that the amendments to require greater low income involvement in CIP and a shift of CIP administrative authority should be implemented as quickly as possible. This is clear from the language in the bill requiring the Department to adopt rules and approve new programs beginning in 1990. It is the Department's clear sense that the interpretive rules should be carefully reviewed by a task force comprised of representatives from the various affected parties before amended rules are proposed. Clearly, however, there is not sufficient time to allow a task force to meet and recommend appropriate changes to the interpretive rules, adopt such rules, and review and approve new programs by the end of next year.

Realizing the need for changes to the interpretive rules, the Department is committed to the establishment of a rules task force shortly after new two year programs are approved in the latter half of 1990.

III. STATEMENT OF REASONABLENESS

The Department is required by Minn. Stat. ch. 14 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 Department's proposed action. The reasonableness of the proposed rules is discussed below.

A. Reasonableness of the Rules as a Whole

As discussed in the Statement of Need above, the need for these rule amendments results from the passage of legislation which amends, but does not fundamentally alter, the existing CIP legislation. It is reasonable, therefore, to propose recodifying and amending the existing rule to implement the statutory amendments, rather than proposing all new rule language. Accordingly, the following discussion of reasonableness will focus on the proposed amendments to the existing rule rather than on the whole rule.

While the focus of this section will be on the Department's proposed amendments, the Department believes the newly amended rule is reasonable in its entirety. Again, the thrust of the proposed rule amendments is to incorporate the amendments to Minn. Stat. 216B.241, adopted by the legislature during the last session.. Most of the changes to the existing rule, including the proposed approval process described above, fall into this category of changes required by the amended statute. Such changes to the existing rule are reasonable given the Department's obligation to follow legislative intent as closely as possible.

The other category of changes mentioned above are those that have been suggested by interested parties during the solicitation process, or that the Department finds are necessary given its extensive experience with the CIP/URRPP process. This category of amendments, though, has been strictly limited to minor procedural adjustments. These changes are reasonable since they should help to clarify and streamline the CIP/URRPP process while not fundamentally altering the existing rules.

B. Reasonableness of Individual Rules

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

Change of "Public Utilities Commission" to "Department"

In many rule parts, the Department proposes to change the words "Public Utilities Commission" to "department." This change is reasonable because the amendments to Minn. Stat. 216B.241 enacted as a part of 1989 Minn. Laws, ch. 338, section 3, transfer the CIP/URRPP program from the Commission to the Department. This change, which will not be discussed further in this Statement of Reasonableness, affects the following parts of the rule amendments: 7690.0200; 7690.0500, subp. 1 and subp. 2(K)(5) and (L); 7690.0600; 7690.0700; 7690.0800, subp. 2; 7690.0900; 7690.1100; 7690.1200; 7690.1300; and 7690.1500.

Part 7690.0100 DEFINITION

This definition section is new language to clarify the terms "department" and "low income" mentioned throughout the rule. It is reasonable to define "department" as the Department of Public Service because the shorter term can then be used throughout the rules.

The proposed definition of "low income" incorporates by reference the definition of "low income" in Minn. Stat. 216B.241, subd. 2. Minn. Stat. 216B.241, as amended, specifically defines low income to mean " an income less than 185 percent of the federal poverty level." This language was added to the statute to clarify the requirement that "at least half the money spent on residential programs is devoted to programs that directly address the needs of renters and low income families and individuals ..." Using a guideline of 185 percent of poverty is also consistent with the Cold Weather Rule (Minn. Stat. 216B.095) and the federally funded Low Income Home Energy Assistance and Weatherization Assistance Programs. Adding this definition section to the rule is reasonable given the new statutory directive to target and account for specific funding proportions to low income persons served by CIP-covered utilities.

Part 7690.0400 PROJECTS IN EFFECT

This part of the rule was originally adopted by the Commission during the transition to the adoption of formal procedural rules for CIP/URRPP programs. The Commission had approved a number of programs prior to having rules in place and this part of the rule explained the terms under which these programs would remain in effect. The existing rule states that those programs continued in effect for 60 days or until their expiration date, whichever occurs later. The Department faces a similar situation now with the transition of program authority from the Commission. As 1989 Minn. Laws ch. 338, section 9 makes clear, the Commission will continue to approve programs under its existing authority until the Department formally adopts its new rule. It

is the Department's intent that it would begin approving new programs on a regular schedule as identified under part 7690.0500 of its proposed rule. Accordingly, the Department proposes to amend the rule to state that projects approved by the Commission on the effective date of the rule amendments shall continue in effect until their expiration date. It is appropriate and reasonable that existing projects remain in effect until their expiration date to coincide with the date for approval of new projects, as discussed below. In the event that adoption of these rules is delayed, it is clear from the statute that the Commission will be required to approve new projects or issue orders extending existing projects in 1990. The Department plans to work closely with the Commission in this event to assure that project expiration dates coincide with expected rule adoption and subsequent Department action.

Part 7690.0500 CONSERVATION IMPROVEMENT PROGRAM FILING

Subpart 1. This subpart establishes the deadlines for filing CIP programs. The Department is proposing several changes to this subpart. First, the Department proposes to change the date for first filings from May 1, 1986, to the following new dates: for public natural gas utilities, April 1, 1990; for public electric utilities, September 1, 1990. The change from 1986 to 1990 is reasonable because of the passage of time and because 1989 Minn. Laws ch. 338 contemplates that the Department approve two-year programs beginning in 1990. Also, the Department proposes that natural gas utilities file two-year programs during even-numbered years and that electric utilities file two-year programs in odd-numbered years.

These changes allow for staggering the CIP filings from utilities. There are several reasons why this is reasonable. First, it has been the Department's experience with the CIP/URRPP process to date that the review of multiple utility filings simultaneously within a relatively short review period (currently 30 days) compromises the thoroughness of the review. Second, there are significant differences between gas and electric utility conservation efforts and issues related to these efforts which make simultaneous review of both types of filings complex and disjointed. Finally, changes to the definition of utilities covered by the statute (see Minn. Stat. 216B.02, subd. 4 (Supp. 1989)) will have the effect of adding at least five new utilities to the CIP process. To attempt to review these five concurrently with the seven annual filings already receiving review would only compound the difficulties mentioned above. Further, recent experience suggests that gas utilities desire an approval process timed to allow for early autumn (October 1) project start-up dates to mesh with the seasonal nature of most of their projects. Electric utilities prefer a calendar-year cycle to accommodate their internal budgeting processes.

Given all of these considerations, it is reasonable to stagger gas and electric utility filings in two different ways. First, gas utility filings will be made on or before April 1 of the year in which they are due to allow for an October 1 project start date. Electric utility filings will be due on or before September 1 of the year they are due to accommodate a January 1 to December 31 funding cycle. Second, gas utility filings will be due in even-numbered years beginning in 1990, while electric utilities will also file in 1990, but then in every odd-numbered year thereafter. This creates a somewhat greater burden on electric utilities that must file in both 1990 and 1991 in order to get on the odd-even staggered cycle, but no greater than the current annual filing requirement. Further, the Department expects an expedited approval process in 1991 given that two year projects will have been approved in 1990.

Subpart 2, Item D.

Paragraph D. under part 7690.0500 outlines one of twelve filing requirements for all CIP annual plans and deals with budgets. The first budget documentation required is for the utility's upcoming program. This will require a two-year budget to match the two-year approval cycle outlined in the statute. Therefore, it is reasonable to amend this part to require submission of a budget for each project for the next two years. It is anticipated, however, that within a utility's complete program, some projects will be planned for less than a two year duration. If this is the case, utility's will simply indicate this in the narrative accompanying each project's budget. The second requirement under this paragraph is for a projected budget past the current funding cycle. It is reasonable to amend the rule to set a four year (as opposed to the five-year budget in the existing rule) time parameter to capture a complete funding cycle after the one under immediate review.

Subpart 2, Item F.

This paragraph requires utilities to provide a description of the marketing plans for each of their proposed projects. The amendment proposed here is to add a requirement that utilities include in their plans an estimate of target participation rates, which refers to the total number of participants for each project. The Department's experience with the process suggests that such participation estimates are critical to accurate cost-benefit analyses. Requiring participation estimates with proposed marketing plans is reasonable given language in the statute relative to approval based on cost-effectiveness considerations.

Subpart 2, Item H.

Originally, Minn. Stat. section 216B.241 required that utilities "give special consideration" to the needs of their low

income and renter customers when designing residential CIP projects. The amended statute strengthens this requirement considerably by requiring that half the money spent by a utility on residential projects be devoted to low income and renters. The Department proposes to amend item H. to reflect this change in emphasis by eliminating the "special consideration" language and adding the requirement that the plan ensures that at least half the money spent on residential projects is devoted to projects that directly address the needs of low income and renter customers. This amendment is reasonable because it conforms the rule to the requirements of the statute. In order to meet this more precise requirement, it is both necessary and reasonable to require budget data supporting the explanation of how the utility's CIP will meet the 50 percent rule. The amendments to this section of Minn. Stat. 216B.241 also allow for the possibility that "an insufficient number" of projects for low income and renters will be available to meet the 50 percent requirement. Accordingly, the rules provide for the option of a statement to this effect in lieu of the explanation described above. Such a statement will need to be substantiated with "supporting documentation" so that the Department will have a clear basis for waiving the 50 percent requirement. This is reasonable given the legislative directive in this regard.

Subpart 2, Item K.

Paragraph K. relates to the filing of status reports while projects are under approval. The existing rule required that status reports on approved projects be filed with the next annual plan. However, in practice, the Commission customarily ordered that status reports be filed at the 6 month interval after projects were approved. This allowed the Commission to determine in a timely manner whether changes to existing projects were necessary before they would otherwise be completed. The Department is similarly convinced of the need for interim status reports and proposes to amend item K to require interim status reports. Given the two-year approval cycle contemplated under the rule, it its reasonable to require that status reports be filed in the year between approval cycles. For gas utilities this means a status report should be filed on or before April 1 in odd-numbered years; for electric utilities, status reports will be due on or before September 1 in even-numbered years. These timing requirements are reasonable because they are consistent with part 7690.0500.

Subpart 3.

The Department proposes to add a new subpart 3 which provides for a review of the completeness of the CIP filing. This section was added on the recommendation of the Commission and the Department's own recent experience with the CIP process. Given the considerable scope of the filing requirements and the increasing complexity of some of the projects, it is often the case

that utility filings are found to be incomplete. When this happens, it is difficult for the Department and other interested parties to comment adequately on the proposed plan. This problem is compounded by the fact that the utility may be required, as a result of a lack of completeness, to file additional supporting information. In such cases, other parties may not know whether to wait for the additional information to be filed before commenting and risk missing the deadline established for their comments.

Accordingly, it is reasonable to conduct a completeness review upon receiving a utility's filing. This completeness review will determine whether all necessary information to meet the filing requirements (i.e., Part 7690.0500. paragraphs A. through L.) has been submitted, but will not go to the merits of the proposed plan. Upon completing this review, the Department will inform the utility of what additional information is necessary to make the utility's plan complete, and a date by which this additional information must be filed. After receiving the additional information, the Department will serve a written "notice of completion" on the utility and interested persons. New language at part 7690.0900 addresses the fact that the comment time period will commence when the Department issues its notice of completion. This is a reasonable way to address the concerns noted above without unduly delaying the review process.

7690.0800 NOTICE

This part of the rules sets forth the formal notice procedures for parties involved in CIP/URRPP processes. The Department has found, and several commentors agreed, that the existing rule is not clear about what parties must be noticed nor about how a list of interested parties should be maintained and updated. The Department proposes to add a new subpart 1 of part 7690.0800 to establish that the Department will establish service lists for each of the covered utilities; to specify which parties shall automatically be on each service list (i.e., the Commission and the Residential and Small Business Utilities Division of the Attorney General's Office); to identify types of parties that will be on individual utility service lists by virtue of their participation in that utility's previous CIP and/or rate case with respect to conservation programs, and any parties the Department believes are interested in the utility's CIP. Finally, subpart 1 specifies that the Department will update service lists 30 days prior to a utility's program filing date.

This section of the proposed rule is reasonable in that it makes it clear to all parties how service lists will be created and maintained. A periodic updating of the service lists should preclude the possibility that interested parties will fail to be notified of a particular filing, or that uninterested parties will remain indefinitely on CIP service lists.

Subpart 2 addresses the issue of when a utility must notify the parties on its service list (established under subpart 1) of a particular filing. This part has simply been reorganized to fit with the service list language added in subpart 1, and does not alter the basic notice requirements of the existing rule. This is reasonable to maintain the clarity and readability of the rule.

7690.0900 COMMENT; ALTERNATIVE PROPOSALS

This part of the rule outlines two processes: commenting on utility programs, and filing alternative project proposals. The Department is proposing several changes to this section that will give parties to the CIP/URRPP process a reasonable amount of time in which to prepare comments and alternative project proposals; that will expand the scope of third party involvement in CIP/URRPP as required by the statute; that clarifies when comment periods begin relative to the Department's proposed completeness reviews; and, exempts alternative project proposers from filing information about ratemaking treatment for their project proposals.

It has been the Department's experience that the deadlines for comments and alternative project submissions in the existing rule are too short to allow full participation from interested parties.
The existing rule allows 30 days from the date a utility's program is filed for parties to file comments and/or submit an alternative project proposal; it allows just 15 days for parties to file comments on alternative project proposals.

The 30 day comment period on utility programs is quite brief considering the level of complexity these programs are now including, and the several days lost at the beginning and ending of the comment period for mailing. The 30 days allowed for filing alternative project proposals is even tighter if the proposing party has initiated the alternative project only in response to the utility's plan. In this case, one month is not an adequate amount of time for a third party to plan a new project, discuss/negotiate the idea with the utility, and prepare a complete filing. Similarly, the 15 day comment period for comments on alternative proposals is too short given the need to compare the proposal to the utility's total program. It is common now for parties, including the Department, to have to ask for extensions to the deadlines in order to complete comments and/or proposals. This creates a great deal of additional paperwork for all the parties and tends to discourage third party involvement in the process.

For all of these reasons, it is reasonable to extend the comment and alternative project proposal deadline to 45 days, and the alternative project deadline to 30 days. Adding 15 days to each of these timeframes will allow adequate response periods in most instances, cut down on the number of requests for time

extensions, while not unreasonably delaying the overall CIP/URRPP process.

The amendments to Minn. Stat. 216B.241 contain the following new language: "The department shall consider and may require a utility to undertake a program suggested by an outside source, including a political subdivision or a nonprofit or community organization." The existing rule addresses the opportunity for involvement of "interested persons" other than utilities. Groups that have participated in the CIP process to date have typically been nonprofit community organizations with some experience providing energy conservation services, especially to low income persons. The proposed amendment to the existing rule simply reiterates the emphasis that the legislature has placed on the involvement of such groups. The amended rule language in this regard is therefore reasonable since it captures legislative intent without fundamentally altering the degree of participation allowed in the rule.

Part 7690.0500, subpart 3 of the proposed rule establishes the completeness review procedure the Department will use when evaluating utility program filings (see discussion of reasonableness of this part above). Parties that wish to comment on a utility's program or submit an alternative project proposal need to know when the 45 day time period allowed for such filings begins. The proposed language in this regard at part 7690.0900 specifies that the comment period begins "on the date of mailing of the Department's finding of completeness..." This is a reasonable way to notify parties that the comment period has begun since all parties on the service list will receive the dated notice. Even though mail may not reach every party on the same date, the comment period as proposed is long enough to mitigate any minor differences in when parties receive notification. Comments and alternative proposals will be filed by the same date by all parties so that the Department's review of these submittals can begin in a timely fashion.

The proposed language in this section adds a filing requirement exemption for parties filing alternative project proposals. The Commission's existing rule exempts alternative project filers from completing status reports as outlined under 7840.0500, item K. The reason for this is that the status report requirement applies to all projects within a utility's CIP program. It makes sense for the utility's status report to update the status of any alternative project it may be funding within its CIP program. It also makes sense, where possible, to reduce the amount of paperwork necessary for approval of an alternative project since these are most often proposed by nonprofit organizations with very limited resources. In this spirit, the Department proposes to also exempt alternative project filings from the requirements of 7690.0500, item E. This item asks the utility filer to describe its proposed ratemaking treatment and cost recovery methodology.

Since most alternative project filers will have no way of knowing what the utility's preferences might be in these regards, it is reasonable to exempt them from this requirement. The Department expects that it would be able to ask for and receive this information from the utility to whom the alternative proposal is addressed during the review of the alternative proposal.

Finally, the Department proposes to eliminate the existing rule's requirement that comments, alternative projects, and responses be filed with the Department of Energy and Economic Development (DEED). This is reasonable because DEED no longer exists.

7690.1000 PROPOSED DECISION

The need for, and a description of, the Department's proposed approval process was discussed at some length in the Statement of Need above. To summarize, the Department will review the utility's program and comments on it, and will prepare a proposed decision. The proposed decision will be served on interested parties who shall have 10 days to file written comments. Within 30 days from the receipt of these comments, the Department will issue a decision. This approval process is reasonable for several reasons. First, the amendments to Minn. Stat. 216B.241 require the Department to review and approve utility CIP/URRPP programs. The proposed approval process accomplishes this function in a strait-forward manner while protecting the due process rights of the participants. Second, the process includes clear time parameters for interested parties and the Department thereby eliminating the open-ended nature of the existing approval process. Finally, the process allows for a review of the Department's proposed decision before it is binding on the utility, thus giving parties considerable opportunity for input during the decision-making process. The specific subparts of the proposed rule are discussed below.

Subpart 1 states that, after reviewing the comments submitted under part 7690.0900, the Department staff shall prepare a proposed decision approving, disapproving, or modifying a program, project, evaluation plan, or alternative project proposal. Under subpart 2, the proposed decision is then mailed to the utility and to all commentors and interested persons. These provisions are reasonable because they will give the utilities and other interested persons an opportunity to see the Department staff's preliminary reaction to the proposal before it goes to the Commissioner for a final decision. Subpart 3 allows 10 days for any person to submit written comments on the proposed decision. This is reasonable because it allows the utilities and other interested persons the opportunity to point out any errors in the proposed decision or to raise arguments against all or part of the proposed decision before it goes to the Commissioner for decision.

7690.1100 RESPONSES; WRITTEN RECORD

Consistent with the repeal of the contested case hearing language (discussed below), the reference to contested case hearings in this part has been deleted. This is reasonable because if contested case hearings are appropriate, they will be ordered by the Commission during the appeal procedure and not by the Department. Therefore, references to contested case hearings are irrelevant to this part of the CIP/URRPP procedural rules.

7690.1200 APPROVAL, DISAPPROVAL, MODIFICATION

Subpart 3 of this part contains a minor wording change from the existing rule. The word "require" is substituted for "order" in reference to the Department's action on "a program that will result in significant investments in and expenditures for energy conservation improvements." It is reasonable to make this wording change to be consistent with the language of Minn. Stat. section 216B.241 authorizing the Department to "require" CIP programs.

7690.1300 DECISION

The Department proposes two types of changes to this part. First, a wording change similar to that discussed above has been made to clarify that the Department will issue a "decision" as opposed to an "order." This again is reasonable to avoid confusion with the Commission's order-writing authority. Second, the rule now states that the Department will issue its decision within 30 days from the date that comments are due under part 7690.1000. In the event the decision will not be issued within this period, the Department must notify parties on the service list of the date on which the decision will be issued. This provision is reasonable because it gives parties an idea of how long they should generally expect to wait for a decision to be made and, if the deadline cannot be met, gives them prompt notice of how much additional time they will have to wait. Also, as discussed in the Statement of Need, it is desirable to give parties some certainty about the length of time necessary to complete the CIP process, especially when projects involve third party contractors who may need to hire and train staff to meet their contractual obligations.

7690.1500 PETITION TO THE COMMISSION

This part has been added to make a clear reference to the appeal process to be administered by the Public Utilities Commission as outlined in the amendments to Minn Stat. 216B.241, subdivision 2. It is the Department's understanding that the Commission will adopt specific appeal procedural rules pursuant to this authority. It is reasonable to make this reference in these rules to notify the parties that appeal procedures are available.

REPEALER

7840.1000, REQUEST FOR CONTESTED CASE HEARING

This part of the existing rule sets forth the procedures to request a contested case hearing prior to the Commission's final decision on a program. The Department proposes to repeal this part because the Department does not intend to conduct contested case hearings prior to making its decision. Instead, to be consistent with the appeal language in the amendments to Minn. Stat. 216B.241, it is reasonable that the Commission be the state agency to order a contested case hearing if necessary. The Commission will be in the best position to determine the need for a hearing after reviewing a particular Department decision on appeal. The Department would expect to be a party to both the Commission's appeal process and to any contested case hearing pursuant to an appeal. Therefore, it is reasonable to repeal this part in order to keep contested case hearings in the Commission's jurisdiction.

7840.1400, RULES OF PRACTICE

This section of the existing rule is a reference to the Commission's general rules of practice. The Department does not have such rules and it is therefore reasonable to repeal this part.

V. SMALL BUSINESS CONSIDERATION IN RULEMAKING

Minn. Stat. 14.115, subd. 2 (1988) requires the Department, 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.

In general, the CIP/URRPP rules do not impose requirements on small businesses because the utilities who are required to implement CIP and URRPP programs are not small businesses. However, the rules provide an opportunity for interested persons, some of whom may be small businesses, to participate in the CIP/URRPP programs. Therefore, the Department has considered the

above-listed methods for reducing the impact of the rule on small businesses. The proposed amendments have some features which will facilitate interested persons' participation in the CIP/URRPP process. One example of this is the lengthening of time (from 30 to 45 days) for interested persons to submit comments on proposed utility programs and to submit alternative project proposals. Another example is the elimination of a filing requirement (describing a proposed ratemaking treatment for the project) for persons submitting an alternative project proposal. Both of these changes facilitate the involvement of interested persons who may be small businesses, particularly nonprofit organizations with very limited resources. Further, the proposed procedural amendments to the rule are generally intended to help clarify and streamline the CIP/URRPP process. Therefore, the proposed rule amendments should have a positive impact on small businesses.

VI. CONCLUSION

Based on the foregoing, the proposed amendments to Minn. Rules Chapter 7840, to be recodified as Minn. Rules parts 7690.0100 to 7690.1500, are both needed and reasonable.

Dated: Nov 22 1988

Tony Perpich
Commissioner