

STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

In the Matter of the Proposed
Adoption of Rules Governing
the Resource Planning Process
for Electric Utilities, Minn.
Rules, Parts 7843.0100 to
7843.0600

Issue Date: January 19, 1990

Docket No. E-999/R-89-201

STATEMENT OF NEED AND
REASONABLENESS

I. INTRODUCTION

The Minnesota Public Utilities Commission (Commission) proposes to adopt rules relating to a resource planning process for electric utilities, Minn. Rules, parts 7843.0100 to 7843.0600.

The proposed rules, if adopted, will establish definitions, filing requirements and procedures, filing contents, decision criteria, and relationships to other regulatory processes for resource plans of the affected utilities. A resource plan is the projected use by a utility of its facilities and human resources in some particular combination to meet the service needs of its customers.

II. STATEMENT OF COMMISSION'S STATUTORY AUTHORITY

The Commission's authority to adopt the rules is set forth in a number of statutory provisions. The Commission's general statutory authority to adopt rules is set forth in Minn. Stat. § 216B.08 (1988), which provides general authority for the Commission to adopt rules in order to carry out its authorities and duties. In the specific case of the proposed resource planning rules, this general authority is strongly supported by the statutory subdivisions discussed below.

Minn. Stat. § 216B.03 (1988) states that:

. . . To the maximum reasonable extent, the commission shall set rates to encourage energy conservation and renewable energy use and to further the goals of sections 216B.164, 216B.241, and 216C.05. . . .

Minn. Stat. § 216B.09 (1988) provides that the Commission "may ascertain and fix just and reasonable standards, classifications, rules, or practices to be observed and followed by any or all public utilities with respect to the service to be furnished. . . ."

Minn. Stat. § 216B.13 (1988) indicates that the Commission may require the production by a public utility of "any books, accounts,

papers, or records of the public utility relating to its business or affairs within the state, pertinent to any lawful inquiry. . . ."

One of the Commission's most important authorities and duties is to determine just and reasonable rates for public utilities. Minn. Stat. § 216B.16, subd. 6 (1988) reads as follows:

The commission, in the exercise of its powers under this chapter to determine just and reasonable rates for public utilities, shall give due consideration to the public need for adequate, efficient, and reasonable service and to the need of the public utility for revenue sufficient to enable it to meet the cost of furnishing the service, including adequate provision for depreciation of its utility property used and useful in rendering service to the public, and to earn a fair and reasonable return upon the investment in such property. In determining the rate base upon which the utility is to be allowed to earn a fair rate of return, the commission shall give due consideration to evidence of the cost of the property when first devoted to public use, to prudent acquisition cost to the public utility less appropriate depreciation on each, to construction work in progress, to offsets in the nature of capital provided by sources other than the investors, and to other expenses of a capital nature. . . .

Minn. Stat. § 216B.164 (1988) indicates that the Commission shall encourage cogeneration and small power production to the extent consistent with ratepayer and public interest.

Minn. Stat. § 216B.24, subd. 2 (1988) provides as follows:

Under rules as the commission may prescribe, every public utility shall file with the commission, within the time and in the form as the commission may designate, plans showing any contemplated construction of major utility facilities.

Minn. Stat. § 216B.241, subd. 2, as amended by Laws of Minnesota 1989, chapter 338 indicates that the Department of Public Service (Department) may require a utility to make cost-effective investments or expenditures for conservation improvements and that the Department shall insure that every utility subject to the program makes significant investments in and expenditures for energy conservation improvements. It also provides that the Commission shall set up an appeal process for the conservation improvement program process.

Under Minn. Stat. § 216B.243 (1988), the Commission has authority to review the need for specific large energy facilities proposed for construction in Minnesota. In assessing this need, the Commission is

required to evaluate, among other things, demand forecast accuracy, existing and possible energy conservation programs, overall state energy needs, environmental quality, economic considerations, policies and rules of other regulatory bodies, and alternatives for satisfying the demand for utility services.

Minn. Stat. § 216B.33 provides as follows:

. . . A certificate under the seal of the commission that any order, finding, authorization, or certificate has not been modified, stayed, suspended, or revoked, shall be received as evidence in any proceedings as to the facts therein stated.

Finally, Minn. Stat. § 216C.05 provides that:

The Legislature finds and declares that continued growth in demand for energy will cause severe social and economic dislocations, and that the state has a vital interest in providing for: increased efficiency in energy consumption, the development and use of renewable energy resources wherever possible, and the creation of an effective energy forecasting, planning and education program.

. . .

Therefore, the legislature finds that it is in the public interest to review, analyze and encourage those energy programs that will minimize the need for annual increases in fossil fuel consumption by 1990 and the need for additional electrical generating plants, and provide for an optimum combination of energy sources consistent with environmental protection and the protection of citizens.

. . .

The above-cited statutes point to the authorities and responsibilities of the Commission and state government in the areas of ratemaking, service conditions, energy conservation, alternative energy use, cogeneration and small power production, power plant and transmission line need assessment, and environmental protection, all of which are closely related to or key components of a resource planning process as outlined in the proposed rules. The resource planning process will tie together these various responsibilities in a forward-looking manner to increase the effectiveness and efficiency of other processes and of electric utility regulation as a whole.

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

III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1988) requires the Commission to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the Commission must set forth the reasons for its proposal, and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reasonableness means that the solution proposed by the Commission is appropriate. The need for the rule is discussed below.

"Least cost planning" means a process for the comprehensive evaluation of supply-side resource options (e.g., new power plants and transmission lines) and demand-side resource options (e.g., conservation in a utility customer's home) on an equivalent, integrated basis. While utilities argue that they practice least cost planning, many planning experts argue that utility planning typically gives short shrift to demand-side resources. Even if a utility is knowledgeable about least-cost planning, its executives might be hesitant to implement certain options without a signal from its regulatory authorities that least-cost investments are likely to be viewed favorably in subsequent proceedings, e.g., ratemaking. The planning process created by these proposed rules will provide such a signal before substantial investments are made in any particular planning option.

The need for least-cost planning has become more and more apparent over the past decade or two, as load growth has become less predictable, the number and cost of utility resource options have increased, and concern over the potential consequences of pursuing certain options has multiplied. As a result of these changes, the utility and its ratepayers face a greater chance of adverse consequences from improper planning decisions.

Least-cost planning is receiving attention from an ever-increasing number of states. At its annual convention in 1984, the National Association of Regulatory Utility Commissioners (NARUC) passed a resolution urging state and federal commissions to adopt a "policy mandating electric . . . utilities to develop and submit for approval least-cost resource plans." Several resolutions since then have reinforced and strengthened the basic message of the 1984 resolution. At this time, at least half of the states have a formal least-cost planning process in place, are in the process of implementing one, or are considering one.

In Minnesota, the desirability of a state-administered planning process has been discussed for several years. The need for such a process was reemphasized by the Interagency Task Force on Least Cost Planning/Conservation, which was created by the State Planning Agency

in 1988 to investigate means of assuring the optimum mix of electric energy production and end-use efficiency. In its July 1989 Report, the Task Force recommended that the Commission "continue to develop a Least Cost Planning process to ensure that electric energy services are produced and used at the lowest overall cost" and "adopt rules which require electric utilities to submit resource plans that explain and identify the mix of supply-side and demand-side options the utility expects to utilize to meet its projected energy demand."

The process would facilitate the efforts of the Commission and other state agencies in meeting several goals identified by the Minnesota Legislature. These goals include just and reasonable rates; provision of adequate, efficient, and reasonable service; recovery by the utility of prudent costs in furnishing service; a healthy economy; encouragement of energy conservation, renewable energy use, cogeneration, and small power production, where consistent with the public interest; environmental protection; and the protection of citizens.

There are other practical reasons for having a state-administered resource planning process. The process will serve to counteract any public distrust of utility planning processes and allow for public input in difficult resource policy decisions. In addition, other processes (e.g., need certification and rate cases) will be simplified or shortened as a result of the preliminary reviews done in the planning process. Finally, early consideration of resource plans by state officials will allow them to assist utilities in gaining approval of least-cost options in proceedings in other states.

IV. STATEMENT OF REASONABLENESS

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

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

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

A. Reasonableness of the Proposed Rules as a Whole

Early consideration of resource options achieves as least two very important goals. First, early consideration preserves certain options that may become more expensive or impossible to achieve at a later date. For example, many options for increasing the efficiency of energy use in buildings are cost-effective and prudent at the time of construction but are not feasible once the building is constructed. Second, early consideration gives the utility and the public a clear statement of the direction that the utility is expected to go before large expenditures are made for facilities which might later be judged not to be prudent or used and useful. Further, it is likely that issues considered in the process will not have to be resolved in subsequent processes, thereby making the later processes shorter, less contentious, and less expensive. In summary, the planning process is intended to improve the efficiency by which resources are deployed to meet the service requirements of utility customers.

In the proposed rules, the Commission has outlined a process that it believes to be as fair and efficient as possible, given the important goals of the process. Under the rules, the process would build on filings already required by statute and rule. The covered utilities are required to file extensive forecast and planning information with the Department and the Minnesota Environmental Quality Board (MEQB). (See Minn. Stat. §§ 116C.54 and 216C.17 (1988) and Minn. Rules, parts 7610.0100 to 7610.0600.) The additional information required by the rules is a justification, both quantitative and qualitative, of why a utility's proposed resource plan is appropriate for the state and service area, given the utility's forecast and certain resource limitations. Because selection and use of resource options are fundamental to an electric utility's business, a prudent utility will already have generated most of this information for internal planning purposes. Given the importance of the resource plan to the utilities' customers and the state as a whole, it is reasonable to require those reasons to be shared with the public.

The process would conclude with a decision by the Commission. The decision would consist of findings of fact and conclusions concerning the need for utility services and the resource options most appropriate to meet those needs. While the decision would not limit the utility to following a specific resource plan, it would identify in broad terms the resources and actions likely to meet favorable treatment from the Commission in subsequent processes (e.g., ratemaking, conservation improvement program, depreciation, security issuance, property transfer, and certificate of need). As indicated above, this information will be helpful to utility executives, because it will be available in most cases before large financial commitments are made to new resources.

The process will provide for broad participation by the public, an

approach encouraged both by planning experts and by the Minnesota Legislature for processes involving possible construction of energy facilities. (See Minn. Stat. §§ 116C.58 to 116C.60; 216B.16, subd. 1; 216B.243, subd. 4 and 7; and 216C.18, subd. 2 (1988).) The Commission's intent in proposing the rules is to create a cooperative atmosphere in which the various participants can come to a common understanding of the advantages and disadvantages of the individual resource options.

Now is the appropriate time to be planning for the future service needs of utilities subject to Commission jurisdiction. Data from local and national sources indicate that the amount of excess capacity is dwindling. At the same time, concern is mounting over the environmental implications of using traditional supply-side resources such as coal-fired power plants, nuclear plants, and high voltage transmission lines. Acid rain, global warming, nuclear waste storage, and electric and magnetic field effects are among the concerns receiving national and international attention. New facilities will have to be built soon, unless measures are taken to deal with demand growth in the utilities' service areas. Therefore, it is time to begin an integrated process to evaluate the alternative supply-side and demand-side resources available to meet the service needs of customers of Minnesota utilities.

In summary, the Commission believes the resource planning process as outlined in the proposed rules will be worthwhile, lawful, administratively efficient, and as fair as possible to the various participants.

B. Reasonableness of Individual Rules

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

Part 7843.0100 DEFINITIONS.

This part explains specific words and terms which are used elsewhere in the proposed rules. All of the definitions are intended to clarify the rules and provide guidance to the user.

Subpart 1 indicates that the terms used in these rules are defined in this part. It is reasonable to provide this information so that users know they should not assume other meanings of the terms which may be provided by other information sources in other contexts.

In subpart 2, the proposed rules indicate that the word "commission" refers to the Minnesota Public Utilities Commission. Use of the word eliminates the need to repeatedly use the full name of the agency. This definition is reasonable because it helps eliminate confusion that might be caused by the fact that other entities use the word in their titles.

The next definition, in subpart 3, clarifies the types of activities which would be considered "construction" under these proposed rules. The definition is essentially the same as that used by the Commission in Minn. Rules, part 7849.0010, subp. 9, which defines the term for use in the certificate of need process for large power plants and transmission lines. It is reasonable for those definitions to be the same because the resource planning process is intended in part as a screening process for facilities which would be subject to the need process.

In subpart 4, the Commission defines "contested case proceeding" as a resource plan proceeding which has been referred to the Office of Administrative Hearings (OAH) for resolution of disagreements over factual matters. The resource planning process is intended to be a collaborative effort among utilities, state agencies, and private citizens to select resource options which impose the least overall costs on society. Under the normal situation, the added time and expense associated with contested hearings will not be necessary. However, if important factual disagreements arise, they may be turned over to the OAH for resolution, in accordance with Minn. Stat. §§ 216B.21 and 14.57 to 14.62 (1988). It is reasonable to include this definition because it helps clarify the difference between the contested case proceeding and the process intended to be used in most instances under the proposed rule.

The fifth subpart defines the term "electric utility." The definition is needed to clarify the entities which must file resource plans under the proposed rules. The planning process is intended to look at the three main functions of an electric utility: generation, transmission, and distribution. Of these functions, the generation and transmission aspects are very significant in their direct effects on society, as recognized by the Commission's certificate of need responsibility with respect to large power plants and transmission lines. Another major responsibility of the Commission is setting rates. As a result, the Commission wants to concentrate its efforts on those utilities which are engaged in all three functions and which also are subject to the Commission's ratemaking authority. This definition is reasonable because it limits applicability of the proposed rules to large utilities most likely to have a significant effect on society through their planning decisions.

The definition of "forecast period" in subpart 6 is needed to specify the time frame to be considered in the resource planning process. Fifteen years is a reasonable period, because it coincides with the forecasting period prescribed by the Department and the MEQB and because it extends just beyond the planning and construction periods normally required for large power plants.

Subpart 7 defines "major utility facility." The large power plants and transmission lines included in the term are major concerns in a planning process. These facilities are important because of their rate and environmental impacts. The definition is reasonable because

it merely refers to the definition of the term in Minn. Stat. § 216B.24, subd. 1.

Subpart 8 defines "party," a special type of participant in an administrative process. The definition will help clarify the distinctions between the types of participants in the resource planning process. The definition is reasonable because it is consistent with conventional use of the term in that parties would include the utility filing a resource plan and persons allowed to intervene in the process under Minn. Rules, parts 7830.0100 to 7830.4400.

In subpart 9, the Commission defines the term "resource plan." This definition is needed because the entire process revolves around selection of the resources which would be used to meet the service needs of the utility's customers. The definition is reasonable because it includes as resources all possible means that the utility might choose to meet those needs. The inclusion of both supply-side and demand-side resources is appropriate because both types are critical in meeting customer needs in a reliable, cost-effective, and environmentally sound manner. The ranking of resource options is necessary because of uncertainties inherent in the planning process. Indicating the circumstances under which a particular resource option will be used to meet the service needs of the utility's customers will help clarify the nature and purpose of each resource option.

The next definition, in subpart 10, is needed to represent the various changes in the social and economic environments which may result from a utility's selection of particular resource options. The defined term essentially includes all types of effects other than direct effects upon the natural environment, which are used in the rules as a separate category of effects. The specific examples included reflect the Commission's experience and the areas of concern indicated in the aforementioned statutes. For these reasons, the definition is reasonable.

The definition in subpart 11 is reasonable for the same reasons as given above in the discussion of subpart 5. The definition will allow the elimination of the continual repetition of the word "electric" with no loss in clarity.

7843.0200 PURPOSE AND SCOPE.

Subpart 1 indicates the purpose of the rules. It is reasonable and appropriate to describe this purpose for the benefit of the readers and users of the rules.

Subpart 2 further defines the entities which will be subject to the rules. As indicated, the rules will apply to all electric utilities as defined by Minn. Rules, part 7843.0100, subp. 5, except those with fewer than 1000 retail customers in Minnesota. It is reasonable to exempt the very small utilities, for whom the time and costs of the

process could outweigh the benefits. Further, the Commission believes that the regulatory agencies involved in the process should, at least initially, concentrate on the utilities likely to have resource plans with significant environmental and cost-of-service effects. The threshold number of customers was chosen to avoid any uncertainty regarding the present and future applicability of the process to the various electric utilities with customers in Minnesota; that is, there are no electric utilities with a current Minnesota customer count near 1000.

The last sentence of subpart 2 clarifies that, for combined gas and electric utilities, the rules only affect the entity's electric operations. This is reasonable, because the gas operations of other entities are not covered by the rules. While there are valid reasons to apply least-cost planning principles to gas utilities as well, the cost and environmental characteristics of the electric utility industry strongly imply that the resource planning process should begin with that industry.

7843.0300 FILING REQUIREMENTS AND PROCEDURES.

This part is needed so that electric utilities and other process participants will understand the filing requirements and procedures which will apply to the resource planning process.

Subpart 1 indicates that the general procedural rules of the Commission will apply to the resource planning process, except as otherwise indicated in the proposed rules. It is reasonable to add this provision so that all of the applicable procedural rules do not have to be repeated in these proposed rules. Further, the appropriateness of the procedural rules for proceedings such as the resource planning process has been established in a prior rulemaking. However, the Commission believes that certain special procedures should be applied to the resource planning process to increase its efficiency and effectiveness. Those special procedures will be justified in the following paragraphs.

In subpart 2, the Commission specifies the filing dates for the utility's resource plans. July 1 is an appropriate date for the filings, since it coincides with the filing date for the advance forecasts submitted to the MEQB and the Department. Because the advance forecast comprises a substantial portion of the filing requirements in proposed part 7843.0400, the choice of July 1 is convenient both for the utilities and for the regulatory agencies. The year for the initial filings was chosen because 1991 is the earliest time that would allow for completion of this rulemaking and preparation of a satisfactory resource plan filing by a utility. The rule allows the Commission to delay one or more filings by up to one year, as suggested by the Department in written comments submitted July 21, 1989. The Commission agrees with the Department that the delay provision could substantially enhance the ability of the participants to review and comment on the various filings in a timely

manner and therefore is a reasonable addition to the rules. Under this subpart, the Commission will consider the sizes of the utilities and their need for additional resources in deciding upon the filing schedules. It is reasonable to review first the filings of utilities with the most imminent resource problems. In addition, it may be administratively efficient in a given year to receive filings from a large utility and a smaller utility.

Subpart 3 indicates the procedure for requiring additional information to complete a filing. September 1 is a reasonable deadline for requiring the data, because it allows for time to review the filing while avoiding a substantial delay in the processing of the filing. The subpart also indicates that the completeness procedure will not limit the discovery rights of process participants, and it is reasonable to make it clear that those rights will be protected.

Under subpart 4, the Commission will allow a utility to request exemption from a data requirement upon good cause shown. Grounds for exemption are lack of necessity for certain information and availability of alternative information which may be more suitable than that called for under the rules. The Commission believes that exemptions may be appropriate under certain circumstances, because it is impossible to specify a set of data requirements which would be optimal for every situation. Further, it is not efficient to require preparation of a separate document if an existing document provides sufficient information. Under the rule, the exemption request must be submitted 90 days before the filing date and commented upon within 30 days of the request. This is reasonable to avoid post-filing delays in the planning process. The requirement that the Commission provide written reasons for its decision on the exemption request is reasonable, since the utility and other interested persons have a right to know those reasons.

Subpart 5 will provide guidance to the utility on how to distribute copies of its filing. Fifteen copies are needed by the Commission to provide one copy for each person who will be involved in reviewing or otherwise dealing with the filing. If combined filings are submitted for two or more utilities, up to 10 additional copies may be needed, because different staff members will be working on different utilities. The subpart also indicates that copies must be distributed to those agencies and interested persons who will be involved in the resource plan proceeding. It is reasonable that distribution should occur in this way to ensure efficient processing of each filing. However, it is reasonable that the total number of copies should be limited to prevent copying and production costs from becoming excessive. Experience has shown that 100 copies are ample for the certificate of need proceeding, which is a construction permit process administered by the Commission and of interest to many of the same agencies, companies, and groups as the proposed planning process. It is reasonable that the utility maintain a distribution list so that it can substantiate copying and production expenses and

can provide copies of supplements or corrections to all persons receiving the filing. To prevent any possibility of interested persons not being able to receive information on the filing, it is reasonable to require the utility to satisfy all requests for a summary of its filing.

The sixth subpart will require utilities to mail copies of corrections to all persons receiving the original filing and to clearly mark those pages as revisions as of the appropriate date. This process will be administratively efficient, since it will prevent confusion as to which information is correct and current. For these reasons, the subpart is reasonable.

Subpart 7 will provide guidance to persons who wish to intervene in a resource plan proceeding. Use of the general procedure outlined for intervention in Minn. Rules, parts 7830.0100 to 7830.4400 is reasonable because the procedure is familiar to persons who have participated in previous Commission proceedings. The definition of "petition as of right" indicates that certain entities would automatically receive party status upon filing a petition for intervention. This provision is reasonable because it removes an unnecessary and perfunctory decision from the resource planning process, thereby enhancing administrative efficiency. It is reasonable to allow the Department, the MEQB, and the Residential and Small Business Utilities Division of the Office of the Attorney General to petition as of right because of their statutory responsibilities with respect to electric utility facilities and filings and their special interest and expertise in resource planning. November 1 is reasonable as a deadline for intervention, since it strikes a balance between the time needed for a preliminary determination of concern over the filing and the need of other interested persons to know who the parties will be. Finally, it is reasonable for the Commission to allow late intervention, since it is possible that some persons may not, for good reason, be able to meet the deadline.

Procedures for information requests are given in subpart 8. Since the resource planning process is intended to foster a collaborative effort, it is imperative that the participants freely share information. Commission experience in other processes indicates that 10 days is sufficient to answer a request under normal circumstances. Since administrative efficiency demands that any disputes over information requests must be handled as soon as possible, it is reasonable that the Commission, or the assigned administrative law judge, be empowered to deal with any such disputes in a timely fashion. To avoid duplication of effort, the parties will be expected to provide copies of information requests to the Commission and all known parties and provide answers to parties upon request. To ensure that the record is as complete as reasonably possible, the Commission will require that it receive a copy of each answer to an information request. This procedure will be particularly important in this process, which will not normally involve contested case

hearings. For the above reasons, the subpart is reasonable.

Subpart 9 indicates that the resource planning process will normally be run as an uncontested proceeding, i.e., a proceeding not referred to the Office of Administrative Hearings. The definition is reasonable because it is clear and consistent with the way most dockets are handled by the Commission. The Commission believes this procedure is appropriate for the resource planning process, given the number of utilities involved, the number of other interested persons, the amount of information likely to be in each record, the likelihood that agreement can be reached on many major issues, the recurring nature of the process, and the ability to revisit the issues in subsequent processes (e.g., certificate of need, conservation improvement program, and general rate filings). No construction permits will be issued by the Commission during this process, nor will any particular ratemaking treatments be directly authorized. Finally, process participants are protected by Minn. Stat. § 216B.21 (1988), which indicates that the Commission always retains authority to order a contested case proceeding if sufficient grounds exist. For these reasons, the subpart is reasonable.

Under subpart 10, all participants in the resource plan proceeding will be allowed to comment on the utility's filing and to suggest changes in the proposed resource plan. This procedure is reasonable and desirable because it will enhance the fairness of the process to the participants and provide the Commission with needed cost and benefit information about resource options from a variety of viewpoints. The Commission believes that a four-month period strikes a reasonable balance between time needed for review of the filing and the necessity to move forward toward a conclusion of the process.

Subpart 11 indicates that process participants may submit proposed alternative resource plans to the Commission. As indicated earlier, the alternative plans are needed to ensure that all possible resource plans and all costs and benefits of specific resource options are considered. Alternative plans should be evaluated on the same basis as those filed by the utility. Thus, it is reasonable that the filing participant show in narrative and quantitative form why the alternative plan would be as good as or preferable to the utility's proposed plan, considering the factors in Minn. Rules, part 7843.0500, subp. 3. The Commission cannot and will not find resource options and plans to be in the public interest unless there is adequate and credible evidence supporting such a finding.

Response comments are permitted under subpart 12. Allowing response comments is reasonable and desirable in order to ensure a full record upon which to make a decision. A two-month period for such comments is reasonable because responses are not likely to be as comprehensive and lengthy as initial comments. As indicated above, the Commission is concerned about moving toward a conclusion of the process as quickly as practicable, given the importance of the planning

decisions and subsequent actions which must be taken to implement them.

Subpart 13 indicates that the Commission would maintain the official service list for the proceeding. This is reasonable because the Commission would be in the best position to know all the participants, since it would in normal circumstances receive intervention petitions. It is reasonable that all information filed by participants be sent to other participants so that they all are well informed and, when appropriate, have an opportunity to respond on the issues raised.

7843.0400 CONTENTS OF RESOURCE PLAN FILINGS.

This part of the proposed rules will provide a list of what must be in a resource plan filing. It is reasonable that the rules should provide this list to ensure that needed information is available to all likely participants early in the process. Specification of filing requirements also enhances administrative efficiency because the resulting similarity of filings will aid Commission personnel in the review and decision-making process.

Subpart 1 indicates that one part of the filing will be the utility's most recent annual advance forecast submission to the Department and the MEQB. This is a reasonable provision because it will provide the Commission and other process participants with essential forecast and resource information while eliminating the inefficiency of preparing a largely redundant, alternative document.

As indicated in subpart 2, the utility will be required to supplement the advance forecast filing, as necessary, to describe how it plans to meet the service needs of its customers over the forecast period. This requirement is reasonable because evaluating this information is the main purpose of the resource planning process. Because of the supply and demand uncertainties over the forecast period, it is reasonable that the plan contain not only the resource options the utility believes it might use but also an indication of the circumstances under which the utility will use them. This information will show, for example, how the uncertainty of supply and demand could affect the utilities' revenue requirements and electric rates. Because the resource planning process is forward-looking and may occur substantially in advance of the necessary commitment to a particular facility or program, it is reasonable that resource options be identified generically, unless a specific commitment has been made to a facility or program. It is reasonable that the utility disclose plans to reduce existing resources because of the effect of such planned reductions on the need for additional demand-side and supply-side resources. The given definition of "derating" is reasonable because it is consistent with normal industry use of the term and it helps clarify the subpart.

Subpart 3 requires the submission of information supporting the

utility's selection of a resource plan. It is reasonable to require such information in order to evaluate the thoroughness, appropriateness, and wisdom of the utility's planning process and resource selections. Further, since the information required is necessary for the utility's internal planning process, the requirements of this subpart are not onerous. That is, this subpart requires the utility to submit in an acceptable form information that is already available to the utility.

Item A of subpart 3 requires disclosure of the types of additional resources evaluated by the utility to meet the service needs of its customers. The list of options to be considered is reasonable because it includes all of the potential demand-side and supply-side resources which have been identified as possible resource options in other forums (e.g., certificate of need proceedings, consultant reports, research reports, and regulatory proceedings in other jurisdictions). To ensure that there is no confusion over the types of resources to include, it is reasonable that the utility be able to discuss the resource list with the Commission and its staff prior to the filing date. For those resource options which appear to hold some reasonable promise for supplying a significant amount of the additional service needs identified by the utility, this item requires evaluative information in a number of general areas. It is reasonable for this information to be required, because it bears directly on the prudence of the utility's internal planning process and the utility's resource plan selections. The specific types of information required are reasonable, because they are consistent with requirements of other state rules which bear on resource selection (e.g., Minn. Rules, parts 7849.0250, 7849.0260, 7849.0300 to 7849.0340, 4410.7100, and 4410.7500).

Item B of subpart 3 requires the utility to describe its resource selection process and the types of analytical techniques used in the process. This requirement is reasonable because the information is needed to make an informed judgment on the completeness of the selection process, its objectivity, and its adaptability to changing conditions. The required information is needed by the Commission and others for further inquiry into the specifics of the selection process.

Item C of subpart 3 requires the utility to include a five-year action plan for the acquisition of the additional resources identified in the resource plan. This requirement is reasonable because the information is essential in assessing whether the resources identified by the utility can be acquired in a time frame coincident with customer needs. The information also will assist the Commission and other regulatory agencies in planning their work loads and in answering questions from the public.

Item D of subpart 3 requires the utility to provide narrative and quantitative support for its selection of a resource plan. Basically, the response to this requirement will tie together the

information submitted in response to the other items in the subpart. The response will indicate why the other information shows that implementation of the selected plan will be in the public interest. As indicated earlier, requiring the utility to justify its selection in a public forum is one of the major goals of the planning process. Therefore, since this process is necessary and reasonable for the reasons given earlier, the requirement of this item is also necessary and reasonable.

Subpart 4 requires the utility to prepare and submit a non-technical summary of its filing. The summary is intended for persons who want to be informed of what the utility is planning but do not have the time or expertise to deal with the technical discussions. The Commission has found such a summary to be useful in other proceedings (e.g., the certificate of need process) and has found that a significant amount of relevant information can be provided in 25 pages or less. The requirement strikes a reasonable balance between the public's need for information and the burden of preparing a large number of copies of the entire filing.

Subpart 5 allows two or more utilities to satisfy all or a portion of the requirements of the rules by submitting a common filing, as long as this procedure does not lead to a loss of information. This provision of the rules is reasonable because it is intended to reduce costs and enhance administrative efficiency. It also is reasonable to require a clear indication in the filing as to the applicability of particular sections of the filing to individual utilities; the lack of such an indication could be confusing and lead to inefficiency.

7843.0500 COMMISSION REVIEW OF RESOURCE PLANS.

This part describes the Commission's review of the record assembled in a resource planning process docket. The part describes the document that will be issued by the Commission at the end of the process and indicates the factors that will be considered by the Commission in arriving at its findings and conclusions. The reasonableness of the particular subparts is considered in the following paragraphs.

Subpart 1 indicates that the Commission will issue a decision consisting of findings of fact and conclusions on the resource plans proposed in the proceeding. This feedback from the Commission to the utility and other participants is a major facet of the process. As indicated previously, early consideration of resource options achieves at least two very important goals. First, early consideration preserves certain options that may become more expensive or impossible to achieve at a later date. For example, many options for increasing the efficiency of energy use in buildings are cost-effective and prudent at the time of construction but are not feasible once the building is constructed. Second, early consideration gives the utility and the public a clear statement of

the direction that the utility is expected to go before large expenditures are made for facilities which might later be judged not to be prudent or used and useful. Further, it is likely that issues considered in the process will not have to be resolved in subsequent processes, thereby making the later processes shorter, less contentious, and less expensive. In summary, the planning process in general and this subpart in particular are intended to improve the efficiency by which resources are deployed to meet the service requirements of utility customers. Therefore, issuance of a decision along the lines described is reasonable.

Subpart 1 also allows to Commission to delay a decision in order to receive additional information of a specified type. This provision is reasonable because it will ensure that the decision does not rest upon a flawed information base. Moreover, it is likely that any delay will be short. That information base will include all data, analysis, and argument filed with the Commission.

Subpart 2, which allows the Commission to identify a particular combination of options as a preferred resource plan, is a logical extension of subpart 1. Without a clear specification of the options judged to be most in the public interest, the signal to the utility may not always be clear and the benefits indicated above may not be attained. However, the designation of a preferred plan should be discretionary. The utility may not need additional resources to meet its customers' requirements. Also, in certain instances, it may not be feasible to create a record sufficiently definitive to justify selection of a single plan. Use of the word "shall" could create problems in subsequent processes if parties were to argue that the Commission had failed to designate a preferred plan.

The second sentence of subpart 2 makes it clear that the preferred resource plan may involve more than adopting the proposed plan of the utility or another process participant. This is reasonable because the Commission may find that the preferred plan is actually a combination of options suggested by the participants. It would be unreasonable and irrational to restrict the Commission to adoption of an entire plan when a combination of two or more plans would better serve the public interest.

Subpart 3 identifies the factors which the Commission will consider in its decision. These factors basically are attributes which have been identified by statute or the experience of Minnesota's regulators as important for resource options and resource plans of electric utilities. It is reasonable that selection criteria should be specified in the rules to ensure that the process is open, fair, and objective.

The Commission's selection of qualitative, as opposed to hard-and-fast quantitative, criteria is reasonable in light of the difficulty of formulating a quantitative standard that can be fairly applied to all utilities and to all resource options. A resource which is

significant for one utility may be insignificant to another because of differences in, for example, sizes and types of customers, rate levels and structures, sizes and densities of service areas, and geographical and topographical factors. It would be extremely difficult, if not impossible, to create a quantitative standard for every utility which would account for all of these variables.

The Commission recognizes that the listed factors are not precise "design" criteria which a utility can use to guarantee acceptability of a resource plan. However, subpart 3 establishes a clear procedure for making the resource plan determination and a clear list of factors which are relevant to the determination and which give the utilities guidance in formulating their resource plans. As discussed below, this type of approach to standard setting has been found by the Minnesota Supreme Court to provide sufficiently clear guidance to regulated entities.

The Minnesota Supreme Court has recognized that circumstances exist where quantitative standards are impossible to formulate and has upheld against a challenge of unconstitutional vagueness rules which are similar in nature to the rule proposed here. In Can Manufacturers Institute, Inc. v. State, 289 N.W.2d 416 (Minn. 1979), the court considered the claims of the packaging industry that the Minnesota Pollution Control Agency (MPCA) rules entitled "Regulations for Packaging Review" (hereinafter "Regulations") were so vague and imprecise that prudent persons could not discern how to comply with the regulatory scheme and that, therefore, the Regulations were unconstitutionally vague. The Regulations were adopted pursuant to the requirement of Minn. Stat. § 116F.06, subd. 3 to adopt "guidelines identifying the types of new or revised containers and packaging that are subject to the [MPCA's] review" and addressed the MPCA's authority to prohibit the sale of a new or revised package or container in the state if the MPCA found that the new or revised package constituted "a solid waste disposal problem" or was "inconsistent with state environmental policies."

The Regulations did not establish quantitative standards for distinguishing a "good" package from a "bad" package; such standards were found by the MPCA to be impossible to formulate given the complexity of the subject area. Rather, the Regulations set out a review procedure and ten criteria that the MPCA would consider in reviewing a package. There was not indication as to what weight would be given to each criterion. The court recognized, "[i]t is possible that the relative weights could change for different types of packages" and "[i]t is unlikely that the Regulations could be significantly more precise in this type of regulatory scheme." 289 N.W.2d at 423. In upholding the Regulations against the vagueness attack, the court stated:

While there is a significant amount of discretion in this kind of agency decision, and plaintiffs' concern with their ability to predict whether a particular

package will be approved by the agency is understandable, we are not persuaded that the package review procedure would be overturned. We are impressed by the need for flexibility in the review process. Section 116F.06 and the MPCA's regulations constitute a unique regulatory scheme designed to help alleviate a problem which has only been recently recognized. In the future, knowledge and evaluation tools are likely to change. Different packages might present different kinds of problems, and it would be unwise to require that the same weight be attached to each factor each time a different type of package is reviewed. The criteria established and the decision making provided in the package review process are broad, but the complexity and sophistication of the solid waste generation problem coupled with the other environmental objectives provided in Minn. Stat. ch. 116F mandate the flexibility contained in the statute and the regulations.

Id.

The court was impressed with the fact that the types of factors listed in the MPCA's criteria called for the type of information which was within the knowledge of the packaging industry. The court stated:

Additionally, while plaintiffs may not be able to predict the importance the agency will assign to each of the criteria . . . until the MPCA actually begins to review packages, plaintiffs, because of the criteria, will be aware of the general boundaries of the MPCA's consideration. The packaging industry will, for example, know that the MPCA is concerned with whether components of the package might have potential for biological harm, the kinds of resources used in the package, the potential for recycling of the package, the energy needed to produce the package, and the effect the package might have upon generation of solid waste. These are factors about which the packaging industry should have information or which should be part of any conscientious decision involving the material components of a package.

Id.

The principles which emerge from the court's decision in Can Manufacturers are also applicable to the proposed rules governing the resource planning process. As in the case of the MPCA's Regulations, the resource selection determination involves the balancing of a number of considerations, the need for flexibility, and the exercise of a considerable amount of discretion.

The factors established by the proposed subpart involve evaluation of information of the type which utilities are extremely knowledgeable. Therefore, the proposed factors provide the utilities with sufficient guidance to design a resource plan acceptable to the Commission.

Each of the separate factors will now be considered in turn.

Item A indicates that resource options and resource plans will be evaluated on their ability to "maintain or improve the adequacy and reliability of utility service." The responsibilities of the utilities and the Commission in this area are clearly indicated by Minn. Stat. §§ 216B.01, 216B.04, 216B.09 and 216B.243, subd. 3 (1988). Accordingly, it is reasonable to include this as a factor to be considered.

Item B indicates that resource options and resource plans will be evaluated on their ability to "keep the customers' bills and the utility's rates as low as practicable, given regulatory and other constraints." The importance of "reasonable rates" is stressed in Minn. Stat. §§ 216B.01, 216B.03, 216B.07, 216B.16, 216B.21 and 216B.23 (1988). In this context, rates are reasonable only if the level of rates is not unnecessarily high and the rates are not unreasonably preferential or discriminatory. The Commission recognizes the logical connection between low rates and state goals such as promoting economic development, creating jobs, and minimizing the problems of low-income customers. At the same time, the Commission recognizes there are constraints which may serve to increase rate levels. For example, rates must be consistent with the financial requirements of the utilities, must allow the utility to pay for pollution abatement equipment, and, to the maximum reasonable extent, must encourage energy conservation and renewable energy use. Customers' bills will be minimized when rate levels are minimized, other things being equal. However, a customer's total bill can be lowered even with a rate increase, if total consumption, or the pattern of consumption, is modified sufficiently to make up for the rate increase. For these reasons, the Commission believes it is reasonable to consider both the customers' bills and the utility's rates.

Item C indicates that resource options and resource plans will be evaluated on their ability to "minimize adverse socioeconomic effects and adverse effects upon the natural environment." The Commission has a clear responsibility to recognize that utility actions, including construction and operation of power plants and transmission lines, can have a significant effect on the natural and socioeconomic environments. This responsibility is expressly stated in Minn. Stat. §§ 216B.243, subd. 3, items (5), (6) and (8); 216C.05; and 116D.04, subd. 6 (1988); and the rules promulgated thereunder. The relationship between electricity production and use on one hand and environmental considerations on the other hand is receiving increased attention at state, federal, and international levels. Concern is

mounting over global warming, acid rain, nuclear waste disposal, and electric and magnetic field effects; operation of utility facilities is a key variable in dealing with such environmental problems. For these reasons, the Commission believes that consideration of environmental factors in resource selection decisions is necessary and that item C is reasonable.

Item D indicates that resource options and resource plans will be evaluated on the extent to which they "enhance the utility's ability to respond to changes in the financial, social, and technological factors affecting its operations." The events of the past 15 to 20 years have demonstrated clearly that utilities are affected by a multitude of supply and demand uncertainties. Planning errors across the United States have translated into billions of dollars of plant disallowances and/or rate increases. It is possible to minimize the effect of planning errors if utility plans remain flexible and respond to changing conditions. Utilities have repeatedly stressed the need for such flexibility. Therefore, it is reasonable that each utility's resource options and resource plans should be evaluated with regard to their effect on the utility's ability to retain flexibility and to respond to changing conditions.

Item E indicates that resource options and resource plans will be evaluated on their ability to "limit the risk of adverse effects on the utility and its customers from financial, social, and technological factors which the utility cannot control." Financial factors include the cost of money; social factors include public attitudes (e.g., about nuclear power); technological factors include the development of new energy conversion technologies and the ability to prevent pollutants from entering the air and water. These factors cannot be entirely controlled by the utility or the Commission. Yet, these factors can have a large effect on a utility and its customers (e.g., through rate increases and environmental quality). As a result, it is reasonable during resource planning to assess the risk posed by the various resource options and resource plans.

Finally, the Commission points out that the listed factors are consistent with those contained in the criteria for assessment of need for large energy facilities. See, for example, Minn. Rules, part 7849.0120. This is important, so that contradictory signals are not given by the Commission during two different phases of the regulatory process. It should be recognized, however, that the need process is a more intensive look at a specific facility, possibly much later than a particular planning proceeding. As a result, complete congruence of the findings in the two processes cannot be expected in every instance.

Subpart 4 provides that the Commission may specify issues which the utility should discuss in its next filing. The issues include those not totally resolved in the current filing and those for which the state of knowledge is changing very rapidly. Since it would be impossible to include all future information in the current

proceeding, the utility and the Commission must at some point make a decision based on current knowledge. However, for important issues, the Commission wants to make certain that information that becomes available after the close of one proceeding is brought into the next proceeding. The Commission believes that identification of those issues in the current decision, to the extent possible, is a reasonable and efficient way to ensure that such information is considered in the next proceeding.

Subpart 5 provides that the utility is expected to inform the Commission and other parties of changed circumstances which could have a significant effect on resource plan selection. After receiving the information, the Commission will decide whether the changes are sufficient to warrant additional administrative proceedings before the next resource plan proceeding. Reporting of the changes is reasonable in order that adjustments may be made to the findings and the resource plan, if necessary. The Commission believes the procedure outlined provides a reasonable and efficient method of dealing with changed circumstances.

Subpart 6 indicates that the resource planning decision is not intended to interfere with the statutory responsibilities of other agencies. This acknowledgment is reasonable because it will prevent any confusion which the existence of the process might otherwise cause.

7843.0600 RELATIONSHIP TO OTHER COMMISSION PROCESSES.

Subpart 1 provides that any related Commission proceeding which is started before or during the resource planning process will be completed in a reasonable time frame, unless the Commission determines that completion would not be in the public interest. It would be administratively inefficient to complete a proceeding if it becomes obvious that to do so would be contrary to the public interest. In terminating proceedings, the Commission will, of course, comply with all due process requirements under applicable law. This subpart is intended to assure utilities and other persons that the Commission will not become so involved in the resource planning process that it will fail to deal with its other responsibilities in a timely fashion. For these reasons, subpart 1 is reasonable.

Subpart 2 indicates that findings of fact and conclusions from the Commission's decision in a resource planning proceeding may be used as prima facie evidence in a related subsequent proceeding. The Commission has listed most or all of the proceedings which could reasonably be affected by such findings. The subpart also indicates that substantial evidence may be submitted in such proceedings to rebut the findings and conclusions. Because planning is so fundamental to utility activities and the filings they cause, it is efficient and sensible to use the results from the planning proceeding as a starting point in subsequent proceedings. As long as

circumstances have not changed substantially, use of the planning process findings and conclusions will save substantial amounts of time and money. The provision to allow participants to rebut the findings and conclusions protects their rights to due process in the subsequent proceedings. For these reasons, this subpart is reasonable.

Subpart 3 indicates that utilities will be exempt from filing a construction plan for major utility facilities in accordance with any other rules promulgated under Minn. Stat. § 216B.24 (1988). As indicated earlier, that statute indicates the Commission may require utilities to file plans for construction of such facilities. The Commission is considering a second rulemaking which would affect certain gas and electric utilities not subject to this rulemaking. Since major utility facilities are expected to be discussed in the resource plan proceeding, it is reasonable to exempt utilities from the requirement of a second filing. However, since the resource planning process will not explicitly prohibit construction of facilities, a utility theoretically could construct a major utility facility not discussed in a preconstruction resource planning process. Since a major utility facility can have significant ratemaking consequences, the Commission must be able to review the prudence of construction in some proceeding. Therefore, the provision that the exemption does not constitute a waiver of the Commission's right and responsibility to review the prudence of major utility facility construction is necessary and reasonable. For the foregoing reasons, the Commission's approach to drafting the proposed subpart is reasonable.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1988) requires the Commission, when proposing rules which may affect small business, 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 for 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.

Minn. Stat. § 14.115, subd. 1 (1988) defines small business as:

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

The public utilities affected by these rules do not fall within the statutory definition of small business. The proposed rules apply only to electric utilities known to have more than 50 full-time employees and annual revenues well in excess of \$4,000,000.

For the foregoing reason, Minn. Stat. § 14.115 (1988) is not applicable to this rulemaking proceeding.

VI. CONCLUSION

Based on the foregoing, proposed Minn. Rules, parts 7843.0100 to 7843.0600 are both needed and reasonable.

VII. WITNESSES

The Commission will not present the testimony of witnesses other than Commission staff. The following staff will appear at the hearing on behalf of the Commission: Commissioner Cynthia A. Kitlinski, Richard R. Lancaster, David L. Jacobson, Susan Mackenzie, and Betsy Engelking. Appearing as counsel for the Commission will be Jon Kingstad.



Lee Larson
Acting Executive Secretary