

STATE OF MINNESOTA

DEPARTMENT OF ENERGY AND ECONOMIC DEVELOPMENT

ENERGY DIVISION

In the Matter of Proposed Rules
Governing Distribution of Community
Energy Council Grant Funds
(4160.5100-4160.5900)

Statement of Need
and Reasonableness

I. INTRODUCTION

The 1984 Legislature established a community energy program and appropriated funds for grants to communities. Laws of Minnesota 1984, chapter 654, article II, section 106, codified as Minnesota Statutes 116J.381, established a community energy program in the Department of Energy and Economic Development, provided for the creation of community energy councils with certain powers and duties by cities and counties, and empowered the commissioner to provide assistance to communities.

(Hereafter in this statement the phrase "the statute" refers to Laws of Minnesota 1984, Chapter 654, Article II, Section 106.)

The 1984 Legislature also made an appropriation for community energy councils in Laws of Minnesota, Chapter 654, Article II, Section 15, of which \$145,000 is for "grants to communities."

Laws of Minnesota 1984, Chapter 604, Section 2, Subdivision 2 [Minn. Stat §116J.035] empowers the Commissioner of Energy and Economic

Development to adopt rules pursuant to Chapter 14 as necessary to carry out his duties and responsibilities pursuant to this Chapter [Minn. Stat. §116J]. This Statement of Need and Reasonableness describes the manner in which the department will provide financial assistance to cities and counties in support of community energy council activities. The proposed rules are modelled on the rules of the department and other state agencies which operate similar types of financial assistance programs.

II. IMPACT ON SMALL BUSINESS

The proposed rules create a program of state financial assistance to cities and counties in support of community energy council activities, and as such have no direct affect on small businesses. Rules covering areas such as this are exempted from Minnesota Statute §14.115 by Minnesota Statute §14.115, Subdivision 8 (b).

Nonetheless, there are two particular instances in the proposed rules relating to small business that merit discussion in this statement. Proposed part 4160.5500, subpart 1, item A states "Community energy councils must include representatives of labor, small business, volunteer organizations, senior citizens, and low and moderate income residents, and may include city and county officials, and other interested parties." (The need and reasonableness of this item is discussed later in this statement. As discussed later in this statement, this is a requirement from the statute, and the department believes it is crucial to the ability of those affected by the rule to comprehend its meaning and effect.) This item will have a beneficial affect on small business because it provides small business a voice in determining the activities of community energy

councils. This item establishes no compliance or reporting requirements or performance, design or operational standards for small businesses.

Proposed part 4160.5600, subpart 1, item B allows grant funds to be expended for the planning, promotion, coordination, and implementation of business energy conservation activities. This item may have a beneficial impact on small businesses, which may receive energy conservation assistance from those grantees that choose to undertake business energy conservation activities. This item establishes no compliance or reporting requirements or performance, design or operational standards for small businesses. This item is permissive rather than mandatory, and as such grantees and/or small businesses may choose whether or not to participate in business energy conservation activities, thus "exempting themselves" from this section of the rules.

III. NEED AND REASONABLENESS OF EACH RULE PROVISION

A. DEFINITIONS

Proposed part 4160.5100 defines terms which have a distinct meaning when used within the context of these rules. Subpart 2 defines "commissioner" as the commissioner of the Department of Energy and Economic Development, and subpart 4 defines "department" as the Department of Energy and Economic Development. These terms are defined for purposes of designating a short-hand terminology to afford greater readability to the rules when the terms are used in context. The need and reasonableness of these shorthand definitions are self-evident.

Proposed part 4160.5100, subpart 3, defines the term community energy council to include all bodies formed by local governments to accomplish the

purposes of the legislation. This definition is needed to clarify that the community energy council function may be fulfilled by a body named according to existing local government practice. This definition is reasonable because it provides for the conformance of community energy council designations with existing local government practice.

Proposed part 4160.5100, subpart 5 defines eligible applicant to be a Minnesota city or county. This definition clarifies and administratively interprets the statute, which provides for the creation of community energy councils by cities and counties. This definition is needed to identify those entities which are eligible to apply for funds, and it is reasonable because it relies on the administrative capacities of cities and counties.

B. PURPOSE

Proposed part 4160.5200 states the purpose of the proposed rules, citing statutory authority for the financial assistance program. This part is needed to introduce the proposed rules, and its reasonableness is self-evident.

C. GRANT PROGRAM

Proposed part 4160.5300 describes the application schedule, review process, and local match requirements of the program. Proposed part 4160.5300, subpart 1 establishes an announcement by the department in the State Register that applications will be accepted and provides that only applications received by the deadline announced in the State Register shall be considered for funding. This subpart is needed to establish an official

means of communicating when applications will be accepted by the department, and it is reasonable because it provides notice to the public and potential applicants of the department's intention to accept applications.

Proposed part 4160.5300, subpart 2 describes the application review process and the respective roles of the commissioner and the review committee selected by the commissioner. The review committee shall score applications according to criteria in proposed part 4160.5500 and transmit its recommendations to the commissioner, who shall approve, disapprove or return for further consideration applications recommended by the committee. This subpart also provides for negotiation of a grant agreement in accordance with proposed part 4160.5800 upon approval by the commissioner. This proposed subpart is needed to define the roles and responsibilities of the commissioner and the review committee. Further, it is needed to define a mechanism - the grant agreement - to award funds to approved applications. This proposed subpart is reasonable because it recognizes the statutory authority of the commissioner to provide assistance for community energy council activities and provides the commissioner assistance, in the form of a review committee, in evaluating applications. Furthermore, this proposed subpart is reasonable because it specifies the use of a grant agreement, which is a legally binding agreement frequently employed in other state administered grant programs (e.g. Small Cities Development Program, District Heating Grant Program, Land & Water Conservation Fund), as the vehicle by which funds are awarded to grantees.

Proposed part 4160.5300, Subpart 3 establishes \$15,000 as the maximum amount of a community energy council grant and requires at least a ten

percent local match. It is necessary to restrict the maximum size of grant awards to prevent a single applicant from receiving the total amount of funds available. The proposed grant limit is reasonable because it allows for at least nine applicants to receive funds from the Legislature's \$145,000 grant appropriation for the program. The limit is also reasonable because it allows for grants of sufficient size to significantly contribute to grantee expenditures incurred in the conduct of eligible activities. Community energy council grants are not likely to cover all expenditures incurred in the conduct of local activities, however, and thus it is necessary to include the ten percent local match requirement to demonstrate to the department that the applicant will make a financial commitment to contribute its own resources under the grant so that the combination of state and local funds will provide sufficient resources to carry out the applicant's work plan. The ten percent local match requirement is reasonable because it sets a minimum matching requirement the department believes applicants can meet. While it could be argued that a different grant limit or local match requirement be proposed, the department believes that this proposed subpart achieves the reasonable objective of maximizing the number of grants in such a manner that combined state and local resources will be provided to accomplish applicant work plans.

D. APPLICATION FOR COMMUNITY ENERGY COUNCIL GRANT

Proposed part 4160.5400, subpart 1 requires applications to be submitted in a form prescribed by the department. This subpart is necessary to provide a consistent format for all applications. It is reasonable because, in providing for application forms rather than describing a laundry list of required information, the proposed subpart

establishes a structure and format to assist the applicant in identifying, organizing and presenting the necessary information. As the granting authority, it is also reasonable for the department to develop the required form.

Proposed part 4160.5400, subpart 2 prescribes the required content of applications. This subpart is necessary to inform prospective applicants of the contents of the application and the documentation requirements. This subpart is reasonable because the information required is only that which is necessary for evaluation of the application.

Proposed part 4160.5400, subpart 2, item A requires documentation of the existence of a community energy council. This item is necessary to enable the commissioner and the review committee to determine whether a community energy council exists in the applicant community and whether the community energy council's membership includes the representation required in Laws of Minnesota 1984, Chapter 654, Article II, Section 106, Subdivision 2. This item is reasonable because it requests information necessary to determine whether representation on applicants' community energy councils is in compliance with this statute.

Proposed part 4160.5400, Subpart 2, item B requires that applicants include a work plan that explains how the applicant intends to undertake program planning and implementation during the grant period. This item is necessary to provide the review committee and the commissioner with information on which to evaluate the proposed activities for which grant funds would be used. It is reasonable because the information requested, on tasks to be undertaken and results expected, is germane to evaluating the applicant's proposed activities.

Proposed part 4160.5400, subpart 2, item C requires a budget that identifies major expenditure categories and amounts and the amount and source of the local match. This item is necessary to provide information on the proposed use of grant funds and provision of the local match required in proposed part 4160.5300, subpart 3. It is reasonable because it requires only that information necessary to determine how the applicant proposes to spend grant funds.

Proposed part 4160.5400, subpart 2, item D requires that applicants submit a copy of the resolution or resolutions that authorize submission of the application to the department. This item is necessary to indicate whether submission of the application resulted from an official action of the applicant, and it is reasonable because it demonstrates support for the application.

E. EVALUATION OF GRANT APPLICATION

Proposed part 4160.5500 describes the criteria on which applications will be evaluated and the points the review committee may award for each criteria. This section is necessary to describe the basis on which applications will be judged. It is reasonable because it provides a clear method for decision making that is known to all parties.

Proposed part 4160.5500, subpart 1 enumerates the evaluation criteria. Item A recites the sentence in Laws of Minnesota 1984, Chapter 654, Article II, Section 106, Subdivision 2 regarding community energy council membership requirements. This item is necessary and crucial to communicate to affected parties the specific directive given by the statute on membership requirements. The statute states that community energy councils must include

representatives of labor, small business, volunteer organizations, senior citizens, and low and moderate income residents, and may include city and county officials, and other interested parties. This statutory language is quite specific on membership requirements, and the department believes that it is reasonable, given this specificity, to include the statutory language on membership requirements in the rule so that prospective applicants will clearly understand this statutory requirement.

Item B states that the criteria for evaluating applicant work plans is the work plan's potential for reducing energy use and costs in the applicant community. This criteria is needed to provide a basis for evaluating the applicant's proposed activities. It is reasonable because it contains a basis for evaluation that reflects and administratively interprets the legislative purpose of this financial assistance program, which is to encourage programs that are described in the statutory findings as "an effective means of implementing improved energy practices including conservation, greater efficiency in energy use, and the use of alternative resources." A common standard for evaluating the likely effectiveness of proposed energy conservation and alternative energy activities is the proposed activity's potential to reduce energy use and cost.

Subitems 1,2 and 3 state indicators of a workplan's potential to reduce energy use and cost. These subitems are necessary to delineate work plan features that indicate this potential so that applicants and the review committee will have a common understanding of the meaning the phrase "potential to reduce energy use and costs" has in this program. The first indicator (subitem 1) is a work plan that implements one or more eligible activities during the grant period. This indicator is reasonable because it

is based on the relationship between reducing energy use and costs and implementing activities. Although the planning of activities is an allowable part of a grantee's work plan, it is only the actual conduct of activities that can reduce energy use and costs. The second indicator (subitem 2) is a work plan that demonstrates how the applicant will coordinate activities undertaken with grant funds with activities of other energy service providers. This indicator is reasonable because it provides for consideration that greater reduction in energy use and cost can potentially be achieved with community energy council grant funds if proposed applicant activities are undertaken in coordination with other providers. The third indicator (subitem 3) is a work plan that indicates efforts that are underway or planned to secure funds in addition to a community energy council grant for project implementation. The reasonableness of this subitem is similar to that of subitem 2, in that it provides for consideration of applicant efforts to supplement state grant funds in order to provide an optimal level of resources for project implementation to obtain the greatest reduction possible in energy use and costs.

Item C states the criteria that past or current experience in conducting energy-related community programs will be considered as an indicator of the applicant's capability and commitment to energy programs. This item is necessary to inform prospective applicants that the review committee will consider capability and commitment in its evaluation of applications so that applicants have an opportunity to provide information on this subject. It is reasonable to include this criteria so that a determination can be made whether the applicant has the capability and commitment to make

effective use of limited state resources to accomplish the purposes of the statute. Cities and counties are not and have not been required to operate community energy programs in Minnesota. Communities with experience conducting community energy programs have conducted these programs in addition to performing their required and usual duties, and the department believes that such experience is a reasonable indicator of capability and commitment.

Item D provides that grant applications must be clear, concise and complete. This item is necessary to inform prospective applicants that the substantive information in the application must be clearly communicated and presented completely and concisely. This requirement is reasonable because it encourages applications that will lend themselves to accurate interpretation and evaluation.

Proposed part 4160.5500, subpart 2 establishes the maximum points the review committee may award to applications as it evaluates applications according to the criteria established in subpart 1. Since the department expects more applications for funds than will be available for distribution, it is both necessary and reasonable to provide a procedure so that applications can be ranked for purposes of making grant award decisions. Applications which, upon evaluation by review committee members, closely approach each criteria will receive higher numerical scores than those which do not as closely approach each criteria.

The proportional weighting of each criteria is necessary to indicate the relative emphasis which the department will give to each criteria. It makes it possible for potential applicants to know, prior to the decision to

apply, the general manner in which their applications will be evaluated. The highest point value, up to a maximum of 40 points, is assigned to item B, adequacy of applicant work plan. This item is reasonable because the work plan, in which the applicant states how grant funds will be used, is the section of the application that best indicates the potential for a grant award to accomplish the purpose of the statute - the implementation of improved energy practices. The next highest point value, up to a maximum of 35 points, is assigned to item A, representation of community energy council membership. This item is reasonable because the statute contains specific membership requirements, and establishes community energy councils as the vehicle to develop and implement community based energy programs. The relatively high point values assigned to items A and B reflect the judgment of the department of the primary importance of a strong work plan and a broadly representative community energy council to successfully undertake effective energy programs. Item C assigns up to a maximum of 15 points for energy-related program experience. This item is reasonable because it provides for recognition of the experience of applicants without unduly restricting the opportunity for inexperienced applicants to receive a grant. Item D assigns up to a maximum of 10 points for clarity, conciseness and completeness. This item is reasonable because it recognizes the relatively small but important factor in the application evaluation process that is contributed by the applicant's ability to communicate accurately and unambiguously. The department believes that the point values contained in this subpart are based on a reasonable combination of the purposes of the statute, understanding based on the department's experience in community energy program development, and common government grantmaking practices.

F. CLASSIFICATION OF ELIGIBLE AND INELIGIBLE GRANTEE ACTIVITIES

Proposed part 4160.5600 classifies eligible and ineligible grantee activities. This part is needed to indicate to prospective applicants and to eventual grantees which activities or types of activities are permitted or prohibited in this program. Proposed subpart 1 describes eligible activities. This subpart is consistent with the statute, which permits community energy councils to "plan, coordinate, advertise, and provide energy programs to minimize negative social and economic impacts," and as such is a reasonable provision of these rules. Items A through G of this subpart further define the "energy programs" of the statute. The energy conservation activities listed include all energy use sectors, energy planning activities, and alternative energy activities. The department believes this subpart to be a reasonable interpretation of the statute, as the statute specifically addresses "conservation, greater efficiency in energy use, and the use of alternative resources" in its findings. This subpart is also reasonable because, in addition to naming eligible activities, items A through G provide examples of common components of each activity to prospective applicants and other readers.

Proposed part 4160.5600, subpart 2 lists ineligible activities. Item A prohibits projects conducted outside a grantee's corporate boundaries by the grantee alone. This item is reasonable because it assures that activities undertaken with grant funds will benefit the grantee community, while at the same time leaving grantees the flexibility to conduct projects jointly with other communities. Item B prohibits real property acquisition. This prohibition is reasonable to insure that the limited amount of state funds provided for in this program can be used to provide as much benefit to as

many communities as possible. This would not be the case were the department to allow grantees to undertake the extremely expensive activity of property acquisition and the associated relocation obligations that may be incurred as a result. This item is not intended to prohibit the grantee from undertaking property acquisition and relocation with other resources as might be necessary to complete various energy projects.

G. CLASSIFICATION OF ELIGIBLE AND INELIGIBLE GRANTEE EXPENDITURES

Proposed part 4160.5700 classifies eligible and ineligible grantee expenditures. This part is needed to inform affected parties of the types of expenditures for which grant funds may be used in the conduct of eligible activities. Subpart 1 lists eligible grantee expenditures. This subpart allows personnel and energy program support expenditures. This subpart provides for a reasonable range of eligible expenditures given the limited state funds provided. The department has designed this grant program in order to stretch limited state funds as far as possible. Thus the department has provided as eligible expenditures a combination of personnel and program support items which grantees can use to conduct eligible activities. The department believes this approach achieves efficient use of state funds and provides a basis for grantees to leverage additional resources.

Proposed part 4160.5700, Subpart 2, lists ineligible grantee expenditures. The reasonableness of this subpart is complementary to that of proposed subpart 1, in that its purpose is again to direct the use of the grant in such a way as to provide the maximum benefit from limited state funds. Item A, which prohibits out-of-state travel unless specifically approved, is reasonable because it prohibits a type of expenditure that is

not likely to have a direct local benefit while providing flexibility to allow this type of expense in those instances where both the department and the grantee determine it to be appropriate. Items B and C prohibit the purchase of real property and equipment, except for consumable supplies. These items are reasonable because they prohibit the purchase of items that are relatively expensive given the amount of state resources provided and the purchase of which may absorb a high proportion of a grant for a small reduction in energy use and cost. As in subpart 1, the intention in this subpart is to make grant funds available in a manner that encourages grantees to secure additional resources to maximize the benefits obtained from a relatively modest expenditure of state funds. It is necessary and reasonable to include both real property acquisition as an ineligible activity and purchase of real property as an ineligible expenditure, because the property acquisition process involves several steps. These rules provide that neither the expenditure of grant funds nor any other property acquisition activities are to be undertaken in this program.

H. GRANT AGREEMENT

Proposed part 4160.5800 provides the contents of the agreement between the department and each grantee and details other administrative requirements of the program. This part is needed to inform the prospective grantee that an agreement will be entered into by the grantee and the department for purposes of formalizing the duties, activities and obligations of the grantee and the department. This part is reasonable because grant agreements are the standard legal documents used by the department for grantmaking purposes.

Proposed part 4160.5800, subpart 1 details the contents of the grant agreement. It is both needed and reasonable to specify the amount of the grant and its duration, as these are basic components of the contractual arrangement between the department and the grantee. Similarly, it is needed and reasonable that the grant agreement include assurance that the local share will be provided and the agreed upon work plan carried out by the grantee. These assurances affirm the grantee's intent to use the grant in a manner consistent with the application on which the grant award was made. It is reasonable to require that a grant agreement based on a joint application be executed by the applicant directly managing the grant so that the most direct link is established with the department for accountability purposes. It is also reasonable for the department to allow for amendment and extension of grant agreements because of problems or situations which may necessitate program changes. At the same time it is needed and reasonable that amendments and extensions be made in writing and approved by the department and the grantee so that both parties remain aware of their responsibilities and obligations under this program.

Proposed part 4160.5800, subpart 2 provides that grants will be approved for a period of up to one year, unless other terms are agreed to by the Commissioner. This subpart is needed to inform grantees of the duration of the grant agreement. This subpart is reasonable because all scheduled work can likely be completed by the grantee in one year, and because this subpart provides the Commissioner flexibility to agree to a different funding period in those instances where both the department and the grantee agree a different funding period is preferable.

Proposed part 4160.5800, subpart 3 details the disbursement schedule of funds to grantees. This subpart is needed in order for affected parties to

understand the timing and number of payments to grantees. The disbursement of 80 percent of a grantee's funds at the beginning of the grant period is reasonable because of the sudden increase in costs directly associated with the beginning of grant activities, and because this initial disbursement will provide the grantee a sufficient portion of the grant to enable grantee flexibility in meeting the expenses of grant activities as they occur. It is also reasonable for the department to withhold 20 percent of the grant amount until the grantee work program is complete and the department receives a satisfactory final report. This provides the department assurance that the grantee has completed all of the agreed upon work and satisfied all grantee obligations.

Proposed part 4160.5800, subpart 4 requires grantees to submit monthly and final reports to the department. This subpart is needed to keep the department informed of the status of grant activities and to summarize grantee experience and account for expenditures at the conclusion of the grant. The requirement for monthly reports is reasonable because it will provide information to the department on a timely basis, yet the one to two page length provided for will not be unduly burdensome to grantees. The information on activities undertaken, planning and implementation steps, and parties involved that is required as part of the final report is reasonable because it provides information that will be useful to the department and to other Minnesota communities interested in undertaking similar activities. It is reasonable to require three copies of the final report so that one copy can be duplicated for distribution to interested communities and other parties, in addition to the one copy each required for department program management and fiscal management files.

Proposed part 4160.5800, subpart 5 covers financial recordkeeping and records retention. This subpart is needed to insure that grantees are fully aware of their financial recordkeeping and records retention obligations under this program. The requirement to maintain records according to generally recognized accounting methods for a period of not less than three years is reasonable because it reflects commonly accepted standards of accounting and length of records retention used by the department in grantmaking programs.

Proposed part 4160.5800, subpart 6 covers grant agreement deviations. This subpart is both needed and reasonable because it informs the grantee that it is bound by the grant agreement to fulfill the requirements of that agreement. It also indicates to prospective applicants and grantees that the grant application and grant agreement should accurately state the activities they wish to undertake. It is reasonable to require that any deviations to the agreement be made in writing to assure the department that any deviations are allowable under these rules. It is also reasonable to prohibit grantees from employing consultants to undertake all activities without the department's written agreement in order to encourage cities and counties to directly involve local staff in the grant to at least some extent. Local staff involvement in grant activities is more likely to lead to continuing commitment and ongoing implementation of energy conservation and alternative energy activities than if consultants were the only paid professionals involved, thus stretching the benefits of the department's limited grant funds beyond the end of the grant.

I. GRANT CLOSE-OUT

Proposed part 4160.5900 covers evaluation and review of the grantee's final report and financial documents, and provides for disbursement of the final twenty percent of the grant upon completion of a satisfactory evaluation by the department. This part is needed to determine if the grantee has met all its obligations under the grant agreement before disbursing the remaining grant funds and closing out the grant.

Proposed part 4160.5900, subpart 1 provides for an evaluation of grantee final reports, and all required reports and financial documents within 60 days of their receipt by the department. This subpart is reasonable because it insures that the required reports and work program have been completed and that the agreed upon local share was contributed. It is also reasonable to determine whether the final report has been reviewed by the grantee's governing body because the governing body is responsible for fulfilling the obligations of the grant.

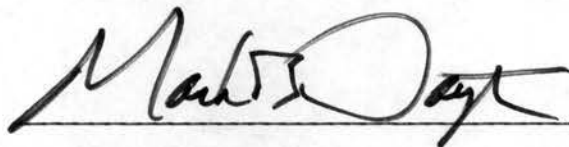
Proposed part 4160.5900, subpart 2 provides that the department shall disburse the remaining twenty percent of the grant to the grantee upon completion of a satisfactory application. This provision is reasonable because it guarantees that all grantee obligations have been satisfied before final payment is made. It is also reasonable to allow grantees to request the commissioner to review an evaluation that is unfavorable and with which the grantee disagrees because this review can provide an opportunity to revise any incorrect evaluation findings.

IV. CONCLUSION

For the reasons stated above, the Department of Energy and Economic Development believes that each of the proposed parts is reasonable to effec-

tively administer the financial assistance program provided in Laws of Minnesota 1984, chapter 654, article II, section 106 and Laws of Minnesota 1984, chapter 654, article II, section 15. It is further believed that the proposed rules are necessary to effectuate the purpose and intent of the statutory authorization.

Dated: Jan 20, 1984

A handwritten signature in black ink, appearing to read "Mark B. Dayton", written over a horizontal line.

Mark B. Dayton

Commissioner of Energy and
Economic Development