

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE STATE BOARD OF ELECTRICITY

**REPORT OF THE
ADMINISTRATIVE LAW JUDGE**

In the Matter of the Proposed Rules of the State Board of Electricity Governing Adoption of the National Electrical Code, Minnesota Rules, Chapter 1315.

A hearing concerning the above rules was held by Administrative Law Judge Richard C. Luis at 10:00 a.m. on May 13, 2008, at the Minnesota Department of Labor & Industry, 443 Lafayette Road North, St. Paul, Minnesota.

That hearing and this Report are part of a rulemaking process that must occur under the Minnesota Administrative Procedure Act¹ before an agency can adopt rules. The legislature has designed that process to ensure that state agencies — here, the Board of Electricity (Board or Agency) and the Minnesota Department of Labor & Industry — have met all the requirements that Minnesota law specifies for adopting rules.² Those requirements include assurances that the proposed rules are necessary and reasonable and that any modifications that the Agency may have made after the proposed rules were initially published do not result in their being substantially different from what the Agency originally proposed. The rulemaking process also includes a hearing to allow the Agency and the Administrative Law Judge reviewing the proposed rules to hear public comment about them.

Wendy Wilson Legge, Construction Codes and Licensing Attorney, Minnesota Department of Labor & Industry, 443 Lafayette Road North, St. Paul, Minnesota 55155 appeared at the rule hearing on behalf of the Department of Labor & Industry and the Board of Electricity. The members of the Agency's hearing panel were James Freichels, Chair, Board of Electricity, John Schultz, Member, Board of Electricity and Annette Trnka and John Williamson of the Department of Labor and Industry. Approximately 40 persons attended the hearing; 30 signed the hearing register. The hearing continued until all interested persons, groups or associations had an opportunity to be heard concerning the proposed amendments to these rules.

¹ Minn. Stat. §§ 14.131 through 14.20

² Pursuant to Minn. Stat. § 326.2415 (2007), the Board of Electricity is responsible for, among other things, adopting rules including the Minnesota Electrical Code, regulating licensure or registration of electrical businesses and electricians, regulating continuing education for electrical businesses and electricians and a variety of other duties. The commissioner of Labor and Industry coordinates the Board's rulemaking and provides staff support to the board, including legal, technical and clerical staff. In addition, the commissioner, or the commissioner's designee, is a voting member of the Board.

After the hearing ended, the Administrative Law Judge kept the administrative record open for another twenty calendar days – that is, until June 2, 2008 – to allow interested persons and the Department to submit written comments. Following the initial comment period, Minnesota law³ required that the hearing record remain open for another five business days to allow interested parties and the Agency to respond to any written comments. The hearing record closed for all purposes on June 9, 2008.

NOTICE

The Agency must make this Report available for review by anyone who wishes to review it for at least five working days before the Agency takes any further action to adopt final rules or to modify or withdraw the proposed rules. If the Agency makes changes in the rules, it must submit the rules, along with the complete hearing record, to the Chief Administrative Law Judge for a review of those changes before it may adopt the rules in final form.

After adopting the final version of the rules, the Board of Electricity must submit them to the Revisor of Statutes for a review of their form. If the Revisor of Statutes approves the form of the rules, she will submit certified copies to the Administrative Law Judge, who will then review them and file them with the Secretary of State. When they are filed with the Secretary of State, the Administrative Law Judge will notify the Board, and the Agency will notify those persons who requested to be informed of their filing.

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

FINDINGS OF FACT

I. Nature of the Proposed Rules

1. This rulemaking proceeding involves a proposal by the Minnesota Board of Electricity to amend rule provisions currently set forth in Minnesota Rules Chapter 1315 of the Minnesota State Building Code, which contains the Minnesota Electrical Code. The amendments adopt by reference the 2008 edition of the National Electrical Code (NEC).

2. Minnesota Statutes § 326.2411, subd. 2 (3) requires that “the Minnesota Electrical Code shall be the most current edition of the National Electrical Code upon its adoption by the board and any amendments thereto as adopted by the board.”

³ Minn. Stat. § 14.15, subd. 1

3. These rules are meant to assure that:

All electrical wiring, apparatus and equipment for electric light, heat and power, technology circuits or systems shall comply with the rules of the department . . . and the board and be installed in conformity with accepted standards of construction for safety to life and property. For the purposes of this chapter, the rules and safety standards stated at the time the work is done in the then most current edition of the National Electrical Code as adopted by the National Fire Protection Association, Inc. and approved by the American National Standards Institute, shall be prima facie evidence of accepted standards of construction for safety to life and property. . . .⁴

4. Minnesota Rules part 1300.0050 adopts into the State Building Code the NEC copyrighted by the National Fire Protection Association (NFPA), One Batterymarch Park, Quincy, Massachusetts.⁵

5. The 2008 edition of the NEC was developed by the National Electrical Code of the NFPA.⁶ In amending the NEC, the NFPA allows anyone to participate by submitting proposals and comments. In 2008, 3,688 proposals for amendments were submitted. Forms and instructions on how to submit proposals are included in the back of each copy of the NEC and are available on the NFPA's website.⁷

6. Any proposed changes must be approved by not less than two-thirds of the voting members at each step of the process. The NEC technical committee and code panels are made up of individuals representing a wide range of interests and perspectives, including installers and maintainers, users, labor, applied research or testing laboratories, enforcing authorities, manufacturers, insurance companies, consumers, special experts, and electrical and communication utilities.⁸

7. Particular areas within the code are overseen by specific code panels. Each panel has 10-20 principal members along with one alternate member for each principal member. Panels are permitted to also have one or more non-voting members. Not more than one-third of panel members can represent any one special-interest category.⁹

⁴ Minnesota Statutes § 325.243 (2007).

⁵ Hearing Exhibit 3, Statement of Need and Reasonableness (SONAR) at page 1.

⁶ *Id.*

⁷ Testimony of John Schultz (Schultz) Hearing Transcript (T.) at pages 19-20.

⁸ *Id.* at page 19.

⁹ Schultz, T. at page 19-20.

8. Each proposal submitted in 2008 was acted on by the appropriate code panel by being rejected, accepted, accepted in part, accepted in principle or accepted in principle in part.¹⁰

9. The NFPA published a report on the proposals and the proposals' code panel actions and comments. A total of 2,349 responses were submitted to the proposals. These comments were acted on by the appropriate code panels and a second report, this one on the comments, code panel actions and code panel comments, was then published.¹¹

10. The NFPA technical correlating committee then reviewed all panel actions before submitting amendments to the annual association meeting. At that meeting, there was further review and debate on the proposed changes, which remained subject to amendment.¹²

11. After the association technical meeting, the standards council resolved any appeals filed regarding amendments. The standards council then issued the 2008 NEC, which was published in August 2007.¹³

12. Based in part on the extensive process used by the NFPA to amend the NEC, the Minnesota Electrical Board determined that the recommended changes are well documented and substantiated. Therefore, the Board determined that the NEC should be adopted without further amendment in Minnesota.¹⁴

13. The Board has historically adopted the NEC in Minnesota without amendment.¹⁵

14. After publishing its dual notice for this proposed rule on March 31, 2008, the Board received a number of comments regarding adoption of the 2008 NEC without further amendment.¹⁶ Because of the comments it received, the Board held a special meeting on April 25, 2008 for the purpose of hearing objections to its intent to adopt the 2008 NEC without amendment.¹⁷

15. At the April 25, 2008 meeting, numerous parties presented their points of view, both proposing amendments and opposing amendments to the 2008 NEC. The Board asked questions and entertained discussion of various amendment options but ultimately concluded that the proposed amendments to the 2008 NEC would jeopardize life and property. At the April 25, 2008 meeting, the Board voted not to amend the 2008 NEC.¹⁸

¹⁰ Schultz, T. at 20.

¹¹ *Id.*

¹² Schlutz, T. at 20-21.

¹³ *Id.*

¹⁴ Schultz, T. at 21.

¹⁵ Testimony of James Freichels (Freichels), T. at 15.

¹⁶ Freichels, T. at 16.

¹⁷ Freichels, T. at 16-17.

¹⁸ Freichels, T. at 17.

II. Rulemaking Legal Standards

16. Under Minn. Stat. § 14.14, subd. 2, and Minn. Rule 1400.2100, one of the determinations which must be made in a rulemaking proceeding is whether the agency has established the need for and reasonableness of the proposed rule by an affirmative presentation of facts. In support of a rule, the Agency may rely on legislative facts, namely general facts concerning questions of law, policy and discretion, or the Agency may simply rely on interpretation of a statute, or stated policy preferences.¹⁹ The Board prepared a Statement of Need and Reasonableness ("SONAR") in support of the proposed rules. At the hearing, the Board primarily relied upon the SONAR and upon the NFPA's process for developing the NEC as its affirmative presentation of need and reasonableness for the proposed amendments. The SONAR was supplemented by comments made by the Agency Panel and other witnesses at the public hearing.

17. The question of whether a rule has been shown to be reasonable focuses on whether it has been shown to have a rational basis, or whether it is arbitrary, based upon the rulemaking record. Minnesota case law has equated an unreasonable rule with an arbitrary rule.²⁰ Arbitrary or unreasonable agency action is action without consideration and in disregard of the facts and circumstances of the case.²¹ A rule is generally found to be reasonable if it is rationally related to the end sought to be achieved by the governing statute.²² The Minnesota Supreme Court has further defined an agency's burden in adopting rules by requiring it to "explain on what evidence it is relying and how the evidence connects rationally with the agency's choice of action to be taken."²³ An agency is entitled to make choices between possible approaches as long as the choice made is rational. Generally, it is not the proper role of the Administrative Law Judge to determine which policy alternative presents the "best" approach since this would invade the policy-making discretion of the agency. The question is rather whether the choice made by the agency is one a rational person could have made.²⁴

18. In addition to need and reasonableness, the Administrative Law Judge must also assess whether the Board complied with the rule adoption procedure, whether the rule grants undue discretion, whether the Board has statutory authority to adopt the rule, whether the rule is unconstitutional or illegal,

¹⁹ *Mammenga v. Department of Human Services*, 442 N.W.2d 786 (Minn. 1989); *Manufactured Housing Institute v. Pettersen*, 347 N.W. 2d 238, 244 (Minn. 1984).

²⁰ *In re Hanson*, 275 N.W. 2d 790 (Minn. 1978); *Hurley v. Chaffee*, 231 Minn. 362, 367, 43 N.W. 2d 281, 284 (1950).

²¹ *Greenhill v. Bailey*, 519 F.2d 5, 19 (8th Cir. 1975).

²² *Mammenga*, 442 N.W. 2d at 789-90; *Broen Memorial Home v. Minnesota Department of Human Services*, 364 N.W. 2d 436, 44 (Minn. Ct. App. 1985).

²³ *Manufactured Housing Institute*, 347 N.W. 2d at 244.

²⁴ *Federal Security Administrator v. Quaker Oats Co.*, 318 U.S. 218, 233 (1943).

whether the rule constitutes an undue delegation of authority to another entity, or whether the proposed language is not a rule.²⁵

III. Compliance with Procedural Rulemaking Requirements

19. On July 2, 2007, the Board published a Request for Comments pertaining to the proposed rules in 32 State Register 21.²⁶

20. On March 12, 2008, the Board requested the scheduling of a hearing regarding the proposed rules and filed the following documents with the Chief Administrative Law Judge:

- a. a copy of the proposed rules certified by the Revisor of Statutes;
- b. a copy of the Dual Notice of Hearing proposed to be issued; and
- c. a draft of the Statement of Need and Reasonableness (“SONAR”).

21. By letter dated March 18, 2008, the Administrative Law Judge approved the Board’s Dual Notice of Hearing and Additional Notice Plan.

22. On March 24, 2008, the Board mailed a copy of the SONAR to the Legislative Reference Library as required by law.²⁷

23. On March 27, 2008, the Board mailed the Dual Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing and Notice of Hearing If 25 or More Requests for Hearing Are Received (Dual Notice) to all persons and associations on the Department of Labor and Industry’s rulemaking mailing list for electrical rules, established pursuant to Minnesota Statutes, section 14.14, subdivision 1a.²⁸

24. On March 27, 2008, the Board mailed the Dual Notice to all persons and associations on the Additional Notice List for Electrical Rules.²⁹

25. On March 27, 2008, the Board e-mailed the Dual Notice to all persons and associations on the Board’s list of interested parties and to all members of the Board.³⁰

²⁵ Minn. R. 1400.2100.

²⁶ Hearing Exhibit (Ex.) 1.

²⁷ Ex. 4 ; Minn. Stat. § 14.131 and Minn. R. 1400.2220, subp. 1(E).

²⁸ Ex. 8.

²⁹ Ex. 9.

³⁰ Ex. 10.

26. On March 25, 2008, the Board mailed the Dual Notice to certain legislators as required by Minn. Stat. § 14.116.³¹

27. On March 31, 2008, a copy of the proposed rules and the Notice of Hearing were published at 32 State Register 1810.³²

28. The Board published the proposed rules, the Statement of Need and Reasonableness and the Dual Notice on the Board's web page on the Department of Labor and Industry's website.³³

29. Approximately 110 persons requested that a hearing be held on the proposed rules.³⁴

30. On May 1, 2008, the Board mailed a Notice of Hearing to all persons who requested a hearing and who provided their mailing address.³⁵

31. On the day of the hearing, the Board placed the following documents into the record:

- a. the Request for Comments as published in the State Register (Exhibit 1);
- b. copies of the proposed rules as certified by the Revisor of Statutes, the SONAR, along with certificates of mailing to the Legislative Reference Library, the Dual Notice as mailed and published in the State Register and the Certificates of Mailing the Notice of Hearing and of Accuracy of the Mailing List, the Certificate of Additional Notice and Certificate of E-mailing the Dual Notice to interested parties and Board members. (Exhibits 2-10);
- c. the Certificate of Sending the Dual Notice and the Statement of Need and Reasonableness to Legislators (Exhibit 11);
- d. copies of the written comments on the proposed rules received by the agency during the comment period (Exhibits 12-115);
- e. copies of comments received after the close of the comment period (Exhibits 116-119; and 123);
- f. Certificate of Mailing a Notice of Hearing to Those Who Requested a Hearing (Exhibit 120);
- g. February 13, 2008 Letter to Department of Finance (with attachments) (Exhibit 121);
- h. March 12, 2008 Memorandum From Department of Finance (Exhibit 122);
- i. Zoeller Pump Company, installation instructions (Exhibit 152).

³¹ Ex. 11.

³² Ex. 5.

³³ SONAR at page 7,

http://www.doli.state.mn.us/pdf/rulemaking_1315_docket_natl_elec_code.pdf

³⁴ Ex. 19, 21, 23-87, 89-119.

³⁵ Ex. 120.

32. Other documents introduced into the hearing record on the day of the hearing included:

- a. Alternate Language Proposed by the Builders Association of America; and various commentaries from the Builders Association of America submitted by Karen Linner (Exhibits 124 – 125; 128; 139);
- b. Amendments to NEC 210.8 proposed to the Board by Department of Labor & Industry submitted by Karen Linner (Exhibit 126);
- c. Amendment to NEC considered by State of Washington submitted by Karen Linner (Exhibit 127);
- d. Letter from National Association of Home Builders supporting amendment of NEC submitted by Karen Linner (Exhibit 129);
- e. Photographs submitted by Mike Wilson of installation of residential air-to-air exchangers (Exhibits 130-131);
- f. Graphs submitted by Steve Minn regarding cost of housing (Exhibits 132-133);
- g. Lightning Report submitted by Richard Owen (Exhibit 134);
- h. Sump pump manufacturer's tag submitted by Richard Owen (Exhibit 135);
- i. Building Official's Newsletter from Lubbock, Texas submitted by Karen Linner (Exhibit 136);
- j. Municipality's Code-Effectiveness Classification (ISO Online) submitted by Karen Linner (Exhibit 137);
- k. NFPA information on electrical circuit-interrupters submitted by Karen Linner (Exhibit 138);
- l. Fire in Minnesota – annual reports of the State Fire Marshal 2002 – 2006 submitted by Karen Linner (Exhibits 140-144);
- m. Fire Protection Research Foundation, Residential Electrical System Aging Research Project submitted by Karen Linner (Exhibits 145a-145u);
- n. An Analytical Study of Some Physical Properties of Wire and Cable Samples Collected from Older Homes submitted by Karen Linner (Exhibit 146);
- o. Some History of Residential Wiring Practices in the U.S. submitted by Karen Linner (Exhibit 147);
- p. Handwritten chart illustrating analysis of efficacy of using AFCI to save lives submitted by Karen Linner (Exhibit 148);
- q. Minnesota Safety Council, Minnesota Injury Facts 2007 submitted by Karen Linner (Exhibit 149);
- r. Building Radon Out Guide submitted by Karen Linner (Exhibit 150);
- s. Minnesota Rules, Chapter 1322, Residential Energy Code, Working Draft dated 11-27-07 submitted by Karen Linner (Exhibit 151).

33. The Administrative Procedure Act requires that proposed rules be published in the State Register, that persons on the agency rulemaking mailing list be notified of proposed rules, along with the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules, and that the agency make “reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule being proposed by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication.” By publishing the proposed rule in the State Register on March 31, 2008, providing required notice to certain members of the Legislature, notifying all the individuals and organizations who had asked the Board to notify them of rulemaking, providing additional notice to a broad variety of other persons and organizations as detailed above, publishing the proposed rules, the Statement of Need and Reasonableness and the Dual Notice on the Board’s web page on the Department of Labor and Industry’s website, and sending information about the hearing to all persons who requested that a hearing be held, the Administrative Law Judge finds that the Board satisfied the notice requirements set forth in the Minnesota Administrative Procedure Act.

34. The Administrative Law Judge finds that the Board met all of the procedural requirements established by statute and rule.

A. Statutory Authority

35. As statutory authority for the proposed rule changes, the Board cites Minn. Stat. § 326.2415, subd. 2(a)(3) which requires that the Board “shall adopt the most current edition of the National Electrical Code and any amendments thereto pursuant to chapter 14 and as provided in subdivision 6, paragraphs (b) and (c).”

36. It is found that the Agency has established its statutory authority to adopt the proposed rules.

B. Impact on Farming Operations

37. Minn. Stat. § 14.111 imposes an additional notice requirement when rules are proposed that affect farming operations. In essence, the statute requires that an agency must provide a copy of any such proposed rule change to the Commissioner of Agriculture at least thirty days prior to publishing the proposed rule in the State Register.

38. The proposed rules do not impose restrictions or have a direct impact on fundamental aspects of farming operations. The Administrative Law Judge finds that the proposed rule change will not affect farming operations in Minnesota, and thus finds that no additional notice is required.

C. Additional Notice Requirements

39. Minn. Stat. § 14.131 requires that an agency include in its SONAR a description of its efforts to provide additional notification to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made. The Board made appropriate efforts to inform and involve interested and affected parties in this rulemaking, submitting an additional notice plan to the Office of Administrative Hearings which reviewed and approved it on March 18, 2008. The Board mailed the Request for Comments to all persons who had registered to be on the Department's rulemaking mailing list under Minnesota statutes, section 14.14, subdivision 1a; posted the proposed rules, the dual notice, and the SONAR on its web page located on the Department of Labor and Industry's website at http://www.doli.state.mn.us/pdf/rulemaking_1315_docket_natl_elec_code.pdf; and provided a copy of the dual notice and the SONAR to the following trade associations:

- a. Associated Builders and Contractors
- b. National Electrical Contractors Association
- c. Minnesota Electrical Association
- d. Local chapters of the International Brotherhood of Electrical Contractors (IBEW Local 23, 110, 160, 242, 292, 294, 343, 949, and 1999)
- e. Local chapter of the Association of Minnesota Building Officials (AMBO)
- f. National Association of Elevator Safety Authorities (NAESA)
- g. Minnesota Mechanical Contractors Association
- h. Association of General Contractors of Minnesota
- i. Minnesota Utility Contractors Association
- j. Minnesota chapter of the International Association of Electrical Inspectors (IAEI)
- k. Contract Electrical Inspector Association (CEIA)
- l. Communication, Control, Alarm, Remote, Signaling Association (CCARSA)
- m. Minnesota Municipal Utilities Association
- n. Minnesota Electronic Security and Technology Association
- o. Builders Association of Minnesota (BAM)
- p. Builders Association of the Twin Cities
- q. Minnesota State Fire Chiefs Association
- r. Minnesota Plumbing, Heating and Cooling Contractors Association
- s. American Society of Plumbing Engineers – Minnesota Chapter
- t. American Society of Civil Engineers – Minnesota Section
- u. Association of Minnesota Counties
- v. Building Owners and Managers (BOMA)/St. Paul
- w. League of Minnesota Cities
- x. American Council of Engineering Companies of Minnesota
- y. Minnesota Pipe Trades Association

- z. Minnesota State Fire Marshal Division
- aa. Minnesota Association of Townships
- bb. North Central Electrical League
- cc. Metropolitan Council

40. The Administrative Law Judge finds that the Board fulfilled its additional notice requirement.

D. Cost and Alternative Assessments in the SONAR

41. Minn. Stat. § 14.131 requires an agency adopting rules to include in its SONAR:

- a. a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
- b. the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;
- c. a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule;
- d. a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;
- e. the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals;
- f. the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals; and
- g. an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

42. With respect to the first requirement, the Board indicated in the SONAR that building owners, equipment suppliers, contractors and code enforcement authorities will be affected by the proposed rule.

43. The Board addressed the second requirement in the SONAR, acknowledging that it only adopts the NEC but does not enforce it, so the Board will not incur any costs with the adoption of the 2008 NEC. The Board recognized that the Department of Labor and Industry will incur certain costs with the adoption of the 2008 NEC, including “purchasing code books for state employees who deal with electrical code questions as well as the cost of revising license examinations to reflect the updated code.” The SONAR states that the updated code will not affect state revenues.

44. In addressing the third requirement, the SONAR states “incorporating a model code by reference is the least costly method for adopting a national model code, in accordance with statutory requirements.” The SONAR also notes that Minnesota has historically adopted the NEC without any state amendments and that this avoids the cost of having to purchase separate amendments with the new code book.

45. With respect to the fourth requirement, the SONAR states that the NEC is the only electrical code that is generally accepted and in use throughout the United States and, therefore, no other methods were considered for achieving the purpose of the rule.

46. The SONAR addresses the fifth requirement, stating that contractors, inspection departments and designers will bear the cost of purchasing copies of the 2008 NEC. In addition, there will be costs associated with updating training to reflect new or changed provisions in the code, although the significance of that cost is diminished because electricians are required to participate in continuing education as a condition of licensure. Finally, the SONAR acknowledges that a typical new home will cost approximately \$250 as a result of the changes requiring “all 15 and 20 ampere receptacle outlets to be of the tamperproof type and . . . all 15 and 20 ampere branch circuits that supply outlets in habitable rooms and areas to be provided with arc-fault circuit interrupter protections.”

47. With respect to the sixth requirement, the SONAR states that failure to adopt the 2008 NEC would result in the state continuing to rely on the 2005 edition of the NEC. The 2005 NEC fails to incorporate the latest technologies and methodologies, which is the purpose of updating the national model codes. This would also violate the requirement of Minn. Stat. § 326.243 that the most recently published version of the NEC be incorporated.

48. The SONAR states, with respect to the seventh requirement, that there are no applicable federal regulations addressing electrical code issues in non-federally owned buildings.

49. Minnesota statutes section 14.131 also requires that the SONAR must “describe how the agency, in developing the rules, considered and implemented the legislative policy supporting performance-based regulatory systems set forth in section 14.002.”

50. The SONAR includes a discussion of the analysis that was performed by the Board to meet the requirements of this statute, pointing out that Minn. Stat. § 16B.61 requires the building code to “conform insofar as practicable to model building codes generally accepted and in use throughout the United States” and that “the code must be adopted in terms of desired results instead of the means of achieving those results.” The SONAR then states that the 2008 NEC implements performance-based standards to the extent practicable.³⁶

51. Minn. Stat. § 14.131 also requires that the agency consult with the Commissioner of Finance to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government. The Board noted in its SONAR that it sent to the Commissioner of Finance copies of the documents sent to the Governor’s office for review and approval by the Governor’s Office prior to the Board publishing the Notice of Intent to Adopt. The documents were sent on February 13, 2008. In a letter dated March 12, 2008, Keith Bogut, Executive Budget Officer of the Department of Finance replied “In my opinion, the proposed changes will not impose a significant cost on local governments.”³⁷

52. The Administrative Law Judge concludes that the Board has met the requirements set forth in Minn. Stat. § 14.131 for assessing the impact of the proposed rules.

E. Cost to Small Businesses and Cities under Minn. Stat. § 14.127

53. Effective July 1, 2005, under Minn. Stat. § 14.127, agencies must “determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for: (1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees.”³⁸ Although this determination is not required to be included in the SONAR, the statute states that the agency “must make [this] determination . . . before the close of the hearing record” and the Administrative Law Judge must review the determination and approve or disapprove it.³⁹ In the SONAR, the Board states that it has considered whether the cost of complying with the proposed rules in the first year after the rule takes effect will exceed \$25,000 for any small business or small city and determined that it will not. The Board states that costs to small cities that have adopted a local electrical inspection ordinance include the costs of purchasing code books, which cost \$75 per book with an analysis of changes available for \$60. City

³⁶ SONAR, p. 6.

³⁷ SONAR, p. 7; Ex. 121-122.

³⁸ Minn. Stat. § 14.127, subd. 1.

³⁹ Minn. Stat. § 14.127, subd. 2.

electrical inspectors are required to be licensed and required to take 16 hours of continuing education for the license renewal. The Department provides annual inspector training, including 16 hours of code-related training for less than \$200. This will provide city inspectors with training on the 2008 NEC.⁴⁰

54. The Administrative Law Judge concludes that the Board has met the requirements set forth in Minn. Stat. § 14.127 for determining whether the cost of complying with the proposed rule in the first year after the rule takes effect will exceed \$25,000 for any small business or small city.

IV. Analysis of the Proposed Rules

55. This Report is limited to the discussion of the portions of the proposed rules that received critical comment or otherwise need to be examined. Accordingly, the Report will not discuss each comment or rule part. Many sections of the proposed rules were not opposed by any member of the public and were adequately supported by the SONAR. For these reasons, it is unnecessary to engage in a detailed discussion of each part and subpart of the proposed rules in this Report. The Administrative Law Judge specifically finds that the Agency has demonstrated the need for and reasonableness of all rule provisions not specifically discussed in this Report by an affirmative presentation of facts. He also finds that all provisions not specifically discussed are authorized by statute and there are no other problems that would prevent the adoption of the rules.

A. Objections to the Proposed Rules

56. A number of individuals and organizations submitted written comments and testified at the hearing. The comments dealt with three concerns with the NEC and urged amendments to deal with each of those three issues.

57. The first issue focused on section 210.8 of the NEC, which states:

210.8 Ground-Fault Circuit-Interrupter Protection for Personnel

(A) Dwelling Units. All 125-volt single-phase, 15-20 ampere receptacles installed in the locations specified in (1) through (8) shall have ground-fault circuit-interrupter protection for personnel.

(5) Unfinished basements – for purposes of this section, unfinished basements are defined as portions or areas of the basement not intended as habitable rooms and limited to storage areas, work areas and the like.⁴¹

⁴⁰ SONAR, p. 8.

⁴¹ The Builder's Association of Minnesota initially raised concerns about the GFCI requirement applying to freezers or other larger appliances in garages pursuant to section 210.8 (A)(2), but it dropped that concern prior to the hearing. Ex. 17-18.

The concern expressed about the first issue (Issue #1) was that sump pumps, sewage pumps and air-to-air exchangers, all of which are important to maintaining healthy environments in homes, would be at risk of having their power cut without the knowledge of the homeowners if lightning tripped the Ground Fault Circuit Interrupter (GFCI) receptacles into which they were plugged.

58. The second issue (Issue #2) focused on section 210.12 of the NEC which requires:

210.12 Arc-Fault Circuit Interrupter Protection.

(B) Dwelling Units. All 120-volt, single phase, 15- and 20-ampere branch circuits supplying outlets installed in dwelling unit family rooms, dining rooms, living rooms, parlors, libraries, dens, bedrooms, sunrooms, recreation rooms, closets, hallways or similar rooms or areas shall be protected by a listed arc-fault circuit interrupter, combination-type, installed to provide protection of the branch circuit.

Concerns about Issue #2 were primarily related to cost. Those who objected to the requirement that Arc-Fault Circuit Interrupters (AFCI) be located through a home stated that the requirement would add a significant cost where existing requirements for fire sprinklers already provide state-of-the-art protection.

59. The third issue (Issue #3) focused on section 210.70 of the NEC which requires:

210.70 Lighting Outlets Required.

Lighting Outlets Required: Lighting outlets shall be installed where specified in 210.70 (A)(1), (A)(2), and (A)(3).

(3) Storage or Equipment Spaces. For attics, underfloor spaces, utility rooms, and basements, at least one lighting outlet containing a switch or controlled by a wall switch shall be installed where these spaces are used for storage or contain equipment requiring servicing. At least one point of control shall be at the usual point of entry to these spaces. The lighting outlet shall be provided at or near the equipment requiring servicing.

Those who expressed concerns about Issue #3 focused particularly on Minnesota's proposed residential energy code, which will require a passive radon system to be installed in all new homes, including a passive vent stack and a pre-wired outlet in the attic near the radon vent pipe in case a continuously exhausting fan is installed to vent excess radon. This concern was also primarily a cost issue. Because only approximately one-third of homes might need a fan, and a fan, if installed, will need little if any maintenance, it was suggested that a pre-wired radon fan outlet should not require a lighting outlet as well.

60. BAM asserted that each of the three amendments it recommended meet the intent of Minnesota Statute section 16B.59, which requires:

The State Building Code governs the construction, reconstruction, alteration, and repair of buildings and other structures to which the code is applicable. The commissioner shall administer and amend a state code of building construction which will provide basic and uniform performance standards, establish reasonable safeguards for health, safety, welfare, comfort, and security of the residents of this state and provide for the use of modern methods, devices, materials, and techniques which will in part tend to lower construction costs. The construction of buildings should be permitted at the least possible cost consistent with recognized standards of health and safety.

61. Of the many pre-hearing comments submitted, approximately 40 supported BAM's proposed amendments to articles 210.8(5) (GFCIs) and 210.70 (Lighting Outlets); approximately 68 supported BAM proposed amendments to article 210.12 (AFCIs). Although the comments came from many different individuals, most of the letters appeared to be based on the same couple of form letters, and were identically worded.⁴²

62. Gary Thaden, Government Affairs Director for the National Electrical Contractors Association and Minnesota Mechanical Contractors Association, representing the National Electrical Contractors Association for Minnesota and the Dakotas (NECA) spoke in support of the Board's position opposing amendments to the 2008 NEC. Specifically, Mr. Thaden pointed out that, if Minnesota adopts the NEC without amendments, national publications, videos, websites and other resource information would be available for Minnesota contractors to use and rely on.⁴³

63. Mr. Jeffrey Sargent of the NFPA spoke in support of the Board's position opposing any amendments to the 2008 NEC. Mr. Sargent agreed that the NFPA does not perform a cost-benefit analysis when considering language for the NEC. He stated that, instead, the NFPA performs a risk hazard analysis evaluated by the NFPA technical committee.⁴⁴

64. Anthony Toft, a member of the Board of Electricity, a master electrician and trainer of electrical apprentices and journeymen, spoke in support of the Board's position opposing amendments to the 2008 NEC.⁴⁵

⁴² Ex. 19, 21, 23-87, 89-119

⁴³ Testimony of Gary Thaden (Thaden), T., pp. 22-23.

⁴⁴ Sargent, T. at 131-132.

⁴⁵ Testimony of Anthony Toft (Toft), T., pp. 167-168.

65. Ron Beldo, with the Contract Electrical Inspectors of Minnesota, spoke in support of the Board's position opposing amendments to the 2008 NEC.⁴⁶

66. On behalf of the International Brotherhood of Electrical Workers, Dan McConnell submitted a letter in support of the Board's position opposing amendments to the 2008 NEC.⁴⁷

67. Mr. Jeffrey Sargent, with the National Fire Protection Association (NFPA) explained that GFCI protection protects personnel against shock while AFCI protection protects wiring in concealed spaces against fire.⁴⁸

68. The Builder's Association of Minnesota submitted a number of written comments and provided extensive testimony at the hearing regarding their concerns about sections 210.8(5), 210.12 and 210.70 of the NEC.⁴⁹ In addition, BAM submitted several post-hearing comments and responses.⁵⁰

B. GFCI Protection Requirement: Article 210.8(5)

69. BAM's strongest focus at the hearing, and in post-hearing comments, was in support of its recommended amendment to article 210.8(5) to provide an exception to the GFCI requirement for sump pumps and air-to-air exchangers. BAM argued that lightning causes transient power surges frequently enough that the benefit of GFCI protection on a piece of equipment that will not be moved or unplugged is far outweighed by the risk of a sump pump or air-to-air exchanger shutting off when the GFCI is tripped by the surge. Such a shutdown of a sump pump could result in wet basements, with the attendant risk of electrocution and with the health threat caused by growth of mold in the home.⁵¹

70. BAM proposed an amendment to article 210.8(5) which would allow for exception to that article to apply to "[a] single receptacle located within dedicated space for a sump pump, sewage pump or air-to-air exchange . . . and a readily accessible GFCI receptacle is provided within 6 feet of the receptacle not provided with GFCI protection."⁵²

71. Mike Wilson with Shelter Supply Company, a residential and commercial wholesaler of heating, ventilation and air conditioning (HVAC) products, supported BAM's recommendations to amend article 210.8(5). Mr. Wilson and his company install residential air-to-air exchangers. Mr. Wilson explained that air-to-air exchangers function as the "lungs" to a house, insuring that fresh air will circulate through the house and preventing buildup of excess

⁴⁶ Testimony of Ron Beldo (Beldo), T., pp. 168-173.

⁴⁷ Post-hearing Comments, letter from Dan McConnell dated May 20, 2008.

⁴⁸ Testimony of Jeffrey Sargent (Sargent), T. p. 128.

⁴⁹ Ex. 17-19; 124-129; 136-151. Testimony of Karen Linner (Linner), T., pp. 23-63; 76-89; 104-112; 124-154; 164-166; 181-184; 197-227.

⁵⁰ Letters from BAM of May 16, 2008, June 2, 2008, June 4, 2008 and June 9, 2008.

⁵¹ Ex. 125 at pages 3-6.

⁵² Ex. 124.

moisture and condensation and the growth of mold in the house that can result. This is an especially important issue in Minnesota where new houses, especially, are built to be “tight” against the cold and where the building code now requires air-to-air exchangers in new construction. Because they must often run continuously, air-to-air exchangers are designed to run essentially silently, so that the residents of the home are not aware when they are on. If a GFCI receptacle were tripped and an air-to-air exchanger turned off as a result of that trip, the residents of the home might not be aware that it was off until after moisture and mold damaged the home.⁵³

72. John Ploetz, representing the Minnesota Electrical Association, spoke in support of BAM’s proposed amendment to article 210.8(5). Of approximately 450 electrical contractors surveyed about the 2008 NEC, 72 people responded. Approximately 88 percent of those 72 contractors expressed concerns about the 2008 NEC, and 71% of responders did not favor the new GFCI requirements. Mr. Ploetz also stated that the risks to health and property due to increased water and sewage in basements outweighed any safety advantages offered by an improved GFCI and that 91% of those who responded to the survey “cited safety and damage concerns caused if sump pumps or other appliances are shut off due to a GFI tripping.”⁵⁴

73. Mike Swanson, Vice President and Corporate Risk Manager of Rottlund Homes, also spoke in favor of amending the 2008 NEC consistent with BAM’s recommendations. Mr. Swanson disputed the statement by Cari Williamette that basement floors generally contain rebar, stating that that practice ceased to be standard in the industry long ago. Mr. Swanson stated that his company frequently has to replace GFCIs in homes which remain under warranty; and that sump pumps are “very active” in Minnesota, especially in the springtime. Mr. Swanson indicated that basement flooding is a much larger problem than fire in new homes, although that flooding has been due to a malfunction of the sump pump rather than a GFCI interruption. Mr. Swanson also stated that an AFCI unit costs the homeowner approximately \$75-\$100.⁵⁵

74. The Board asserted that concerns about GFCIs being tripped by lightning were speculative and exaggerated, especially given improvements in GFCIs. In addition, the Board argued that BAM and other supporters of an amendment to article 210.8(5) ignored the likelihood that people would unplug or remove their sump pumps and plug faulty appliances into unprotected receptacles. The Board also pointed to the sump pump manufacturers’ recommendations that GFCI receptacles be used with their pumps, along with the option of hard wiring sump pumps.⁵⁶

⁵³ Testimony of Mike Wilson (Wilson), T., pp. 63-73; Ex. 31, 31a.

⁵⁴ Testimony of John Ploetz (Ploetz), T., pp. 86-87, 227-228; Post-hearing Comments, letter from Ploetz of May 20, 2008.

⁵⁵ Testimony of Mike Swanson (Swanson), T. pp. 175-183; pp. 188-189.

⁵⁶ Board’s letter of May 30, 2008 at pages 5-7.

75. Several people spoke at the hearing opposing BAM's proposed amendments. Mr. Maghrak with the Joint Apprenticeship Training Committee stated that typically a humidistat is located near the thermostat in a home and provides a visual indication of when an air-to-air exchanger is running. Mr. Maghrak also pointed out that a GCFI has a simple reset button on it that a homeowner can easily reset when she realizes that her air-to-air exchanger is not running.⁵⁷

76. David Dini, a research engineer with Underwriters Laboratory in Northbrook, Illinois, also spoke in support of the Board's position opposing amendments to the 2008 NEC. Mr. Dini was a member of the electrical code making panel responsible for article 210 of the 2008 NEC. Mr. Dini stated that, since 2003, there are new requirements in place that make it less likely that the transient voltage from lightning will trip a GFCI.⁵⁸

77. Randy Dollar with Siemens, Energy and Automation Division, Inc., of the Residential Productions Division from Norcross, Georgia, spoke in support of the Board's position opposing amendments to the 2008 NEC. Mr. Dollar stated that Minnesota is not a high density lightning area.⁵⁹

78. Cari Williamette, with the International Association of Electrical Inspectors, is also an electrical inspector for the City of St. Paul and a past contractor. Ms. Williamette holds a journeyman's and master electrician's license. She stated that most concrete basement floors have rebar in them and that standing on such a floor, whether it is wet or dry, is dangerous if a person comes in contact with an energized system. Ms. Williamette also stated that a 2003 Consumer Products Safety Commission report states that, in the United States in 2003, four people died from electrocution from sump pumps and four people died from electrocution from drills. Finally, Ms. Williamette stated that, as a contractor, she has seen a number of sump pumps that are hard wired and that do not need GFCI protection.⁶⁰

79. Richard Owen, a member of the Board of Electricity, an NEC electrical code panel member, an NEC technical correlating committee member and an NEC wiring methods and materials panel member, spoke in support of the Board's position opposing amendments to the 2008 NEC. Mr. Owen submitted into evidence a sump pump manufacturer's label which included the manufacturer's recommendation that a GFCI protected circuit be used with the pump.⁶¹

⁵⁷ Testimony of Mr. Maghrak (Maghrak), T., pp.130-131.

⁵⁸ Testimony of David Dini (Dini), T., pp. 99-118.

⁵⁹ Testimony of Randy Dollar (Dollar), T. pp.133-137; see Testimony of Richard Owen (Owen), T., pp. 158-159 and Ex. 134.

⁶⁰ Testimony of Cari Williamette (Williamette), T., pp. 148-150; see Post-hearing comments, letter from Cari Williamette dated May 28, 2008.

⁶¹ Owen, T., pp. 159-160; Ex. 135.

80. The states of Ohio, Oregon and South Dakota have amended article 210.8 of the 2008 NEC to exclude sump pumps from GFCI protection. In Ohio, a challenge to the amendment is still unresolved.⁶²

81. The states of Arkansas, Colorado, Iowa, Kentucky, North Carolina, Texas, Utah and Wyoming have adopted the 2008 NEC without amendment.⁶³

82. The Administrative Law Judge finds that the Board has demonstrated the reasonableness of its decision to adopt Article 210.8(5) without amendment. The Board's decision to require the GFCI receptacle protection required by Article 210.8(5) without exception has a rational basis, which is to protect personnel from electrocution. Although there is evidence that persons or property could be harmed due to the use of a GFCI receptacle with a sump pump or air-to-air exchanger, the evidence showed that there are also risks associated with a failure to require the GFCI protection. The Board's policy decision to adopt this provision is reasonable, particularly given the extensive process by which the NFPA developed the 2008 NEC.

C. AFCI Protection Requirements: Article 210.12

83. BAM's reasoning for the recommended amendment to Article 210.12 was that expanding the existing AFCI protected circuit requirements from bedrooms only to most other portions of homes would prove so costly that it would make homes unaffordable to some. BAM argued that Minnesota already requires that new construction incorporate fire sprinkler systems in homes and that the AFCI requirement is unreasonable and duplicative. Finally, BAM asserted that most electrical fires occur in older homes which are much more likely to have faulty wiring. Therefore, BAM reasons, it is excessive to require AFCI protection in new homes which are much less likely to have faulty wiring.⁶⁴

84. BAM proposed an amendment to article 210.12 which would allow for exception to the AFCI requirement in that article for "[a] dwelling unit with a NFPA 13 sprinkler system installed according to the Minnesota State Building Code."⁶⁵

85. Steve Minn, principal with Lupe Partners in Minneapolis, spoke in favor of the exception to NEC 210.12 proposed by BAM, which primarily develops affordable housing. Lupe Partners develops an average of 100-200 units of residential housing each year. Mr. Minn favors providing an exception to the AFCI requirement for homes which have sprinkler systems because the sprinkler systems provide effective fire safety protection and addition of AFCI

⁶² E-mail letter from Jeff Fecteau, National Electrical Manufacturers Association, dated May 29, 2008.

⁶³ *Id.*

⁶⁴ Ex. 125 at pages 7-8.

⁶⁵ Ex. 124.

circuits throughout a home will further increase the cost of housing which is escalating beyond the point of affordability.⁶⁶

86. Mike Swanson, Vice President and Corporate Risk Manager of Rottlund Homes, stated that an AFCI unit costs the homeowner approximately \$75-\$100.⁶⁷

87. The Board pointed out that, while sprinklers prevent the spread of fires, AFCIs can prevent the fires from occurring in the first place.⁶⁸ The Board noted that “dwellings that are new now will become older dwellings. To decrease the risk of fire in older buildings in the future, protective devices need to be installed in newer buildings as they are constructed.” The Board referred to the analogy made during the hearing by John Schultz, who asked “When is the best time to plant a tree?” It would have been better to plant the tree 20 years ago, but since that is not possible, the best alternative is to plant the tree now. The Board asserts that, since it is not possible to retrofit all old dwellings with AFCI protection, the best that can be done is to require the protection in all new dwellings.⁶⁹

88. John Schultz, Electricity Board member, also disputed Mr. Swanson’s cost estimate for an AFCI unit, stating that a more accurate price is approximately \$37 per unit.⁷⁰ James Freichels, Electricity Board Chair, stated that, other than the cost of the circuit breaker itself, an AFCI protected circuit breaker should not cost more to install than a non-protected circuit breaker.⁷¹

89. In addition, Mr. Dini addressed the need for the AFCI protection even in a home which has sprinklers, saying that, while sprinklers will help to put out a fire, AFCI circuits prevent the fire from occurring in the first place.⁷²

90. Jeff Fecteau of the National Electrical Manufacturers Association submitted a post-hearing letter strongly opposing BAM’s amendment to article 210.12.⁷³

91. The Administrative Law Judge finds that the Board has demonstrated the reasonableness of its decision to adopt Article 210.12 without amendment. The Board’s decision to require the AFCI protection required by Article 210.12 without exception has a rational basis, which is effective fire protection. Although the proposed exception would have insured some degree of protection from fire with sprinkler systems, the Administrative Law Judge finds that it is reasonable to require AFCI protection as well, because AFCI protection

⁶⁶ Testimony of Steve Minn (Minn), T., pp. 90-99; Ex. 132-133.

⁶⁷ Testimony of Mike Swanson (Swanson), T. pp. 175-183; pp. 188-189.

⁶⁸ Testimony of David Dini (Dini), T. pp. 99-118.

⁶⁹ Board letter of May 30, 2008 at page 8. See Schultz, T. 226-227.

⁷⁰ Schultz, T., pp. 184-186.

⁷¹ Freichels, T., p.186.

⁷² Dini, T., pp. 99-118; see *also* Post Hearing Comments, David Dini’s e-mail letter of May 19, 2008.

⁷³ Post-hearing Comments, letter from Jeff Fecteau dated May 29, 2008.

is designed to prevent fires from starting at all. In addition, while BAM's argument that electrical fires occur most often in older homes may be correct, it is rational to require initial installation of an AFCI that will protect the homes and their occupants as the homes age. The Board's policy decision to adopt this provision is reasonable, particularly given the extensive process by which the NFPA developed the 2008 NEC.

D. Lighting Outlets Required: Article 210.70

92. Finally, BAM recommended that article 210.70 be amended to include an exception for a radon control system in an attic. BAM points out that the radon system wiring likely to be required by Minnesota's residential energy code will be unique in the United States, so this is not an issue other states have had to consider. BAM also asserts that, because only about one-third of homes will actually need a radon fan installed, the lighting outlet will be wasted in two-thirds of the homes. Even where a fan is installed, it will rarely need servicing so the lighting outlet is not necessary.⁷⁴

93. BAM proposed an amendment to article 210.70 which would allow for an exception to the lighting outlet requirement in that article for "[a] lighting outlet . . . for the service of a radon control system located in an attic."⁷⁵

94. The Board emphasized that the 2008 version of article 210.70 has not changed from the 2005 version and that BAM was seeking to amend language which is not changing from existing language. The Board also noted that Minnesota has not yet adopted a new residential energy code and that the language on which BAM relies in requesting its amendment is part of a rough draft only. The Board asserts that nothing in article 210.70 requires that a lighting outlet be installed if a radon fan is not installed. Finally, the Board states that Minnesota's mechanical code would require both an outlet and a light to be installed if radon vent fans were installed. To specifically create an exception in the NEC to this requirement would be to create a conflict in the codes.⁷⁶

95. John McConnell, a former building inspector, spoke in support of the Board's position opposing amendments to the 2008 NEC. Mr. McConnell pointed out that the Radon Out system for which BAM seeks an amendment to article 210.70 is part of a draft energy code which remains subject to change.⁷⁷

96. The Administrative Law Judge finds that Article 210.70 in the 2008 NEC is identical to the language of Article 210.70 in the 2005 NEC, which was previously adopted in Minnesota. Therefore, Article 210.70 is an existing rule which is not affected by the 2008 amendments. Minnesota Rule part 1400.2070, subpart 1 provides:

⁷⁴ Ex. 125 at pages 10-11.

⁷⁵ Ex. 124.

⁷⁶ Post-hearing Comments, Board's letter of May 30, 2008 at pages 9-10.

⁷⁷ Testimony of John McConnell (McConnell), T., pp.173-175.

If an agency is amending existing rules, the agency need not demonstrate the need for and reasonableness of the existing rules not affected by the proposed amendment.

97. Because Article 210.70 is not affected by the amendments under consideration, the ALJ need not revisit the reasonableness of this provision.

98. Even if the ALJ were to consider the reasonableness of Article 210.70, he finds that the Board has demonstrated the reasonableness of its decision to adopt Article 210.70 without amendment. The Board's decision to require the lighting outlet required by Article 210.70 without exception has a rational basis, which is to provide a safe and convenient source of light for individuals servicing equipment in attic spaces.

V. Effective Date of the Proposed Rules

99. Minnesota statutes section 16B.64, subdivision 8 states:

A rule to adopt or amend the state's building code is effective 180 days after the filing of the rule with the secretary of state under section 14.16 or 14.26. The rule may provide for a different effective date if the commissioner or board proposing the rule finds that a different effective date is necessary to protect public health and safety after considering, among other things, the need for time for training of individuals to comply with and enforce the rule.

100. After consideration of the requirements of section 16B.64, subdivision 8 at its December 11, 2007 meeting, the Board determined that an effective date of July 1, 2008, or five days after the Notice of Adoption in the State Register, whichever is later, is the most effective way of protecting public health and safety. The reasons for the Board's decision are that: (1) the most current version of the NEC is typically adopted on July 1 of the relevant year; (2) training is developed and scheduled based on a July 1 date for adoption; (3) the National Electrical Contractor's Association (NECA) supports a July 1 adoption date so that electrical installations will be done consistently and safely; and (4) by December 2007, the NECA had already begun training people on the 2008 NEC.⁷⁸

101. Karen Linner, speaking on behalf of BAM, supported the Board's decision regarding the effective date, stating that the training concerns that prompted the six-month effective date for building code rules generally does not apply with these rules because training period for electrical code rules is adequate and people generally expect the effective date to be July 1.⁷⁹

⁷⁸ SONAR at pages 8-9.

⁷⁹ Linner, T. at pp. 240-242.

102. In post-hearing comments, Cari Williamette also supported the July 1 effective date, stating

The 2008 NEC has been in print and available since Sept. 2007. Many electricians have already taken their code-update classes and are aware of the changes. The state has usually adopted the new code on July 1 of the code-change year. Delaying the enactment date only confuses contractors and makes it more difficult to bid work.⁸⁰

103. It is important to implement the 2008 NEC because portions of it which are entirely new deal with national security threats. Article 708, for example, addresses Critical Operations Power Systems (COPS), which are defined as “[t]he power systems for facilities or parts of facilities that require continuous operation for the reasons of public safety, emergency management, national security, or business security.”⁸¹

104. No testimony or written comments were submitted opposing the earlier effective date.

105. The ALJ finds that the Board has demonstrated that it met the criteria set forth in Minn. Stat. § 16B.64, subd. 8 when it ordered that the 2008 NEC shall become effective on July 1, 2008 or five days after the Notice of Adoption in the State Register, whichever is later.

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

CONCLUSIONS

1. The Minnesota Board of Electricity and the Department of Labor and Industry gave proper notice in this matter.

2. The Board has fulfilled the procedural requirements of Minn. Stat. § 14.14 and all other procedural requirements of law or rule.

3. The Board has demonstrated its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat §§ 14.05, subd. 1, 14.15, subd. 3, and 14.50 (i) and (ii).

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

⁸⁰ Post-hearing Comments, letter from Cari Williamette dated May 28, 2008 at page 3.

⁸¹ 2008 NEC, section 708.2; see Post-hearing Comments, letter from Board dated May 30, 2008 at pages 4-5.

5. Any Findings that might properly be termed Conclusions and any Conclusions that might properly be termed Findings are adopted as such.

6. A Finding or Conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Board from further modification of the proposed rules based upon an examination of the public comments, provided that the rule finally adopted is based upon facts as appearing in this rule hearing record.

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the proposed rules be adopted, with an effective date five days after publication of the Notice of Adoption in the State Register.

Dated: July 8, 2008

/s Richard C. Luis
RICHARD C. LUIS
Administrative Law Judge

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