MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, June 13, 1978, 9:15 a.m.

Place of Meeting: Senate Committee Room 24, Statehouse, Des Moines, Iowa.

Members Present: Representative W. R. Monroe, Jr., Vice Chairman, Senators Minnette Doderer and E. Kevin Kelly, Representatives Donald V. Doyle and Laverne W. Schroeder.
Not present: Senator Berl E. Priebe, Chairman, on vacation, having notified the Committee prior to the meeting.
Also Present: Joseph Royce, Administrative Coordinator.

MINUTES

Schroeder requested unanimous consent to dispense with the reading of the May 18, 1978 minutes and approval of same. No objection.

HEALTH
7.7(1)

Peter Fox, Hearings Officer and Mr. Gary Hogan, represented the Health Department for review of the following:

HEALTH[470]	
Reporting, immunization, 7.7(1)	5/31/78
Residential care facilities, rescind 57.24(4), 57.24(5)	5/31/78
Intermediate care facilities, rescind 58.27(4), 58.27(5)	5/31/78
Skilled nursing facilities, rescind 59.32(4), 59.32(5)	5/31/78
Residential care facilities, mentally retarded, rescind 63.22(4), 63.22(5)	5/31/78
Intermediate care facilities, mentally retarded, rescind 64.35(4), 64.35(5)	5/31/78
HEALTH[470]	
Podiatrist continuing education, 139.100—139.109	5/31/78
Cosmetology, examinations, rescind 149.7(4)	5/17/78
Barbers, continuing education, 152.100—152.109	5/17/78
Health planning, 200.1	5/17/78

Monroe advised the committee that the Health Department representatives had requested discussion of immunization, then, the filed rules concerning continuing education.

Peter Fox noted that the rule change would clarify the existing immunization rules and would require the reporting of the date of immunization and the source. In response to a question by Monroe, Fox stated that the admitting official would be the Superintendent of Schools or the Principal. Fox advised the committee the Department of Health has a public hearing scheduled. Schroeder challenged the use of the word "assured" in the rule and noted that the school, to be safe, could require notarization of the immunization dates and source. Gary Hogan replied that the Certificate of exemption is the only document which requires notariza-

HEALTH
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tion. The Department of Health feels that dates are important. Schroeder stated that the language should state that the admitting official shall see to it that all information is filled out on the form. Fox responded that the old language did state it that way. Hogan noted that, without dates, there is no way of guaranteeing that children have had the shots. Schroeder commented he would like the language changed to include the words "if known".

Hogan feels that the memory of parents is not accurate and the Department of Health needs the dates of immunization from the doctor or from the baby book.
No further discussion or action taken on immunization.

139.100-
139.109

Fox noted that the continuing education rules are essentially the same as those of the other examining boards. The podiatrists decided not to permit the carry-over of courses.

Monroe noted that the podiatrists could delay the effect of the Act until 1979 by not requiring it until then. No one could be an accredited sponsor unless they have two years of history and Monroe commented this could preclude any innovative continuing education programs. Fox said that was not the intent. Monroe made reference to page 2 of Joseph Royce's memorandum to the Administrative Rules Review Committee dealing with the matter of continuing education. Monroe called attention to a response by Assistant Attorney General Larry Blumberg and commented he disagrees with Mr. Blumberg's points as stated in the letter.

Cosmetology

Fox stated that the rule change was rescinding the required licensure in other states for licensure in Iowa which had been requested by the Rules Review Committee. In response to a question by Monroe asking about the date cosmetology rules would go out, the committee was advised September. Mr. Fox stated that the rules for barber continuing education are the same as those for the other licensing boards. He advised the barber board does permit the carry-over of credits.

Schroeder questioned the fact that the Code Supplement showed 149.7 as being reserved. Phyllis Barry advised that the number was reserved when the rule was rescinded in order to maintain continuity in numbering and to have

HEALTH
Cont'd

the number available for future use.

Royce advised that he did not call the Health Department on the rule for residential care facilities as the four rescissions are to overcome the objections placed by the Rules Review Committee. The Committee no longer has to go through the Health Department before making an investigation.

ENGINEERING EXAMINERS
1.9, 1.10

Ms. Shirley Houvenagle, Secretary to the Engineering Examining Board, discussed the following:

ENGINEERING EXAMINERS[390]
Examination applications, cutoff date, fees, 1.9, 1.10 5/31/78

Houvenagle commented that the rule applies to the cutoff date for applications to take the examination. The board is asking that the fall date be set as September 8 and February 15 as the cutoff date for the spring exam, which is given in mid-April. The board is also asking for a nonrefundability clause on fees. In reply to Doderer's question as to the amount of the fee, Houvenagle replied they will be $20, $25 and $35 dollars. Doderer inquired if this was the common practice around the state. Royce noted that the real estate brokers have the same practice. Monroe advised the committee that the board has been following the practice but it was not in the rules, therefore, the reason for this rule.

Schroeder expressed a concern about an application arriving late because of delay in mailing and suggested a statement that in extreme hardship cases, the board could waive the mandatory date.

CITY FINANCE COMMITTEE
Ch. 4

Mr. James Dysart and Mr. Darol J. Schweer, Comptroller's Office, appeared on behalf of the City Finance Committee.

CITY FINANCE COMMITTEE[230]
Employee benefits, Ch 4, filed emergency 5/17/78

Dysart commented that two rules were being presented, one on employee benefits, whereby rules were written in response to legislation, Senate File 2151. Dysart advised that public hearings will be held in Carroll and Cedar Rapids in July. Vice Chairman Monroe informed Dysart that only Chapter 4 was being considered at this time. The rule has been adopted and Dysart stated it would probably be modified after the public hearings. Doderer asked if this was a usual practice--writing the employees' benefits into the rules. Dysart noted

CITY FINANCE Cont'd

that this rule affects the cities.

Monroe asked Mr. Schweer to comment on a letter sent by the City of Burlington pertaining to a difficulty for those who might be employed under revenue sharing or CETA, could be forced into the city general fund.

Schweer commented that they feel 4.3 simply says, budgeting, other than general fund, mandatory budgeting benefits for those being paid from any fund other than city will occur in the fund from which the employee is being paid. Monroe asked if the office had corresponded with the Burlington City Finance Department and Schweer had not. Monroe requested them to do so. The discussion centered around the letter from Burlington's City Finance department and its problem with budgeting.

Mr. Edwin Allen, League of Iowa Municipalities, spoke on a problem cities are having with subsection 4 of 4.3 as a compulsory item. Cities are faced with such an increase in mandatory costs that problems are being created. Schroeder reminded Allen that the rule says "may". General discussion of the budgeting problems facing cities.

Doderer commented that the rule was a loophole to get around the ceilings. Monroe asked the City Finance Committee to notify the standing Cities Committees of the House and Senate as to the location of the proposed public hearings.

No further discussion on city finance.

SOCIAL SERVICES

Judith Welp, Methods and Procedures, submitted the following rules to the Committee:

SOCIAL SERVICES[770]	
Organization, 1.5	5/31/78
Petition for adoption of rules, 4.1, 4.3, filed without notice	5/31/78
Declaratory rulings, 5.1, 5.3, filed without notice	5/31/78
Hearings and appeals, 7.1(15), 7.4(1), 7.4(3), 7.4(4), 7.6(1), 7.6(2)"j", 7.7, 7.11, 7.13(7), 7.14, 7.15(3), 7.15(4), 7.17	5/31/78
General provisions, 130.2(5), 130.3(1)"b", 130.3(5), 130.4, 130.4(2)—130.4(4), 130.5	5/31/78
Abuse of children, 135.2, 135.4, 135.5, 135.7	5/31/78
Income from providing room and board, 51.7	5/31/78
Supplementary assistance, payment, 52.1(3)"e", see also filed emergency	5/31/78
Supplementary assistance, payment, 52.1(3)"f"	5/31/78
Medical assistance, 78.1(1)"e", 78.8	5/31/78
SOCIAL SERVICES[770]	
Oral presentations, 3.2, see also filed emergency	5/31/78
Penitentiary, visits, 17.3, see also filed emergency	5/31/78
Riverview release center, visits, 21.2(3)"b"	5/31/78

SOCIAL SERVICES Cont'd

Ms. Welp commented that the rule on oral presentations was created in response to a court decision. Oral presentations will be held in the district which requests the presentation. Schroeder noted that in 3.2(1), the presentations could be held in Des Moines all of the time. The Committee discussed the method of requesting oral presentations and expressed concern for the district scheduling of presentations.

Mr. Pat McClintock, Legal Services Corporation of Iowa stated that 3.2(2) seems to be directed at the Legal Services Corporation and expressed an objection to the rule.

OBJECTION 3.2

Schroeder moved and it was unanimously agreed to object to rule 3.2 as follows:

> The Committee objects to rule 3.2, providing for oral hearings on proposed rulemaking, on the grounds that it is unreasonable. The Committee feels subrules one (1) and two (2) tend to limit hearings to a single district, rather than increasing the number of hearings, as mandated by Schmitt v. DSS.
>
> Subrule 3.2(1) provides that when 25 interested persons petition for a hearing, a single hearing will be held in the district containing the largest number of petitioners. If 13 petitioners were from northeast Iowa, 12 from the southwest, and ten were from Des Moines, under this subrule the hearing would be held in the northeast, although a majority of petitioners were from other districts.
>
> Subrule 3.2(2) provides that when a request comes from an organization, the hearing will be held at the organizations principal place of business. The Committee does not find a rational basis for this provision; the hearing should be held in the district from which the hearing was requested.
>
> It is the opinion of the Committee that indigents, who can ill afford the cost of travel, should not be forced to travel great distances to make their views known. The Committee feels that it is unreasonable for the department to limit the number of hearings, when, as expressed in the Schmitt case, a single employee armed with a tape recorder, could easily journey to several districts to collect statements to be later reviewed by the department.

17.3

These rules expand the number of places where visits can be held at the penitentiary and also expands the hours that visiting will be allowed. Representative Doyle asked in what chapter could be found the general visiting rules. He was informed they are in 17.2. Doyle noted that 17.3 gives no discretion to the Warden or Superintendent regarding the number of visits. Welp commented that was in the general rule and Doyle commented this rule seems to override the general rules. In reply to Doderer's question of the hours for visiting, Welp advised 9:00 a.m. to 2:00 p.m. daily. Doderer commented there was no point in extending the hours to 7:00 p.m. if the rule states a visit cannot be

SOCIAL SERVICES Cont'd OBJECTION

started after 5:00 p.m. Doderer moved to object to 17.3(4a) saying the rule should provide that visits be be completed by 7:00 p.m.

Discussion continued and Welp indicated willingness to review the matter and amend accordingly.

OBJECTION WITHDRAWN

Doderer asked unanimous consent to withdraw her motion. So ordered.

21.2(3)

Welp commented that the change was made at the request of the Committeee in that visiting privileges for adults only was too restrictive at the Riverview release center.

51.7

Welp advised the rule was a method of determining a profit from providing room and board for a state supplementary assistance recipient. Rather than requiring the person to keep receipts, the person will be given a flat fee of $89 per month.

52.1

Welp said that this rule did have a notice on it and it was also filed emergency. This allows extended visitation to a person in a residential care facility. At the present time, a visitation cannot exceed 30 days per year. No discussion on 52.1(3). 78.1(1)"e" has been rescinded.

78.8

The rule requires chiropractors to keep X-rays on file except for pregnant women and children under five years of age, before they may qualify for medicaid payment. Mr. Len Norris, Attorney, Dr. John Quinlan, President, Iowa Chiropractic Society and Dr. Dow Bates, Iowa Chiropractic Society, appeared to voice an objection to the rule. Norris noted that the notice was received last week and the society intends to file an objection. He stated that Title XVIII of the Social Security Act and rules of the Health, Education and Welfare Department would require chiropractors to X-ray certain persons (with the exceptions noted). Chiropractors would not be compensated for those X-rays and he said the rule does not make sense in that area. The Society feels the rule violates a couple of provisions of the United States Constitution and the Medicaid statute of the Iowa Code (249A). The Society will be filing a formal objection to this rule.

Welp advised they are looking into the possibility of giving compensation in this area, but the money would have to derive from state funds.

SOCIAL SERVICES Cont'd 1.5

The rule under Organization, Ch 1, allows Social Services to exempt certain rules from public participation. Welp advised the department made the changes requested by the Committee.

7.1 -- 7.17

Ms. Welp stated that the rules on hearings and appeals have been before the committee previously. She introduced John Terrill, hearing officer. The changes were made to bring the Department more in line with 17A and make the hearing procedures more specific.

130

Welp commented these rules list the eligibility requirements for the service programs as set forth in the new Title XX plan. The Department did make an exception for persons who have a very consistent income. They will be reviewed once a year rather than every 6 months. Income limitations for some services were changed. Some amending was done on the fee schedules and increased the maximum amount for homemakers. Welp advised that since federal regulations will not allow the Department to reduce or waive a fee because of undue hardship, a change has been made so services can be continued if there is a hardship and if the person can't pay.

Schroeder questioned the use of the word "gross" in the limitation charts in the rule for persons needing benefits. He feels that many people will be penalized by the limitation charts and asked what were the chances of the change being made. He noted an objection should be filed.

Welp stated that the federal Title XX regulations use the word "gross". She commented that the federal government has a list of certain exemptions.

Monroe suggested the problem could be in 130.3(3) which defines gross income. Royce commented he agrees with Schroeder that the objection should be filed to 130.3(1)b.

OBJECTION

Schroeder moved an objection to 130.3(1)b on the grounds that it is arbitrary and capricious. No action taken on the motion. Discussion continued and Senator Doderer moved an objection to the fee schedule. The committee directed Joseph Royce to draft the objection and bring it to the Committee for a vote in the afternoon meeting. The vote was deferred.

VOTE DEFERRAL

SOCIAL SERVICES (cont'd)

Welp commented that the Department is improving on the rules for abuse of children; i.e., they have made clear where reports can be made, a reporter has the option of using the Department's form, they are more specific on what information can be disseminated. The statement of public record is included.

Doyle asked about the fiscal impact of going to photographs and Ms. Welp did not have the information.

10:45 a.m.

Representative Doyle in the chair.

PRISON INDUSTRIES ADVISORY BOARD

PRISON INDUSTRIES ADVISORY BOARD[635]
Organization, Ch 1 5/31/78

Mr. Don Page, Chairperson, Prison Industries Advisory Board, advised they were organized August 31, 1977, and submitted rules through the Department of Social Services in error. They have revised their rules which are basically organizational rules.

Discussion ensued about the number of times the board has met and Mr. Page said they have met eight times. Kelly suggested striking the word "formal" from the language. Discussion of requirement for making a formal presentation and Doderer stated this would preclude certain people from making presentation. It should be a request, not a requirement.

Mr. Page said their hope was they could have the material far enough in advance to get it out to the board members, but their intent was certainly not to preclude anyone from being heard. Schroeder suggested the language "one week in advance, if at all possible". Kelly suggested changing "chairperson" to "any member of the board". Schroeder asked Page to make the changes without the necessity of the Committee filing an objection. The Board will be having a hearing on the 23rd of June and the Committee suggested Page contact Royce for assistance in preparing the rules.

Monroe assumed the chair.

JUDICIAL NOMINATING COMMISSION

Mr. William J. O'Brien, Court Administrator, appeared to discuss the following:

JUDICIAL NOMINATING COMMISSION(STATE)[525]
Rules of procedure, Ch 1, see also filed emergency 5/31/78

The Committee was informed by O'Brien that the

JUDICIAL NOMINATING COMMISSION Cont'd

Nominating Commission has amended its rules, as requested by the Rules Review Committee. The amended rule will eliminate closed balloting on nominees for the commission.

Vice Chairman Monroe called the Committee's attention to page 2 of the memo from Joseph Royce wherein Mr. Royce discussed subrule 1.5(6). The discussion centered around the secrecy of balloting and whether or not the rule would create an unconstitutional encroachment upon the Governor's power if he is denied a full accounting of the activities of the Judicial Nominating Commission.

Monroe reminded the Committee the rules are under notice and that the Governor will have an opportunity to post an objection.

O'Brien stated that there is no longer any voting in Executive Sessions. Doderer reminded that the Commission will have picked their two nominees by January 1, 1979, and thus circumvent the new law and she discussed the possibility of filing an objection on the basis of secrecy. Schroeder reasoned that the Commission would not be circumventing until the bill becomes a law. Doderer stated she thought it was arbitrary to close the voting for the two nominees pending. She added that the Legislature does not get to vote in secret.

Royce brought up the point that lawyers could have unwillingness to vote against a lawyer-candidate who they might have to practice against in future years. Doderer responded that she has never felt lawyers should be on the Commission which makes the selection. Kelly commented the problem he had with the matter is that it reverses the current law, which states meetings are supposed to be open. O'Brien pointed out that the meetings are open.

Monroe stated there is a possible conflict with 28A when the segment under closed sessions is read.

O'Brien explained there is a ballot on which all of the nominees for appointment appear. The commissioners place an "X" behind the name and turn in the ballot. Monroe asked if that ballot would be considered final action and O'Brien agreed it was. Monroe reminded that the law states that final action must not be taken in a closed meeting, but an open meeting. O'Brien stated

JUDICIAL NOMINATING COMMISSION Cont'd

there are spectators in the court room and they know what votes certain individuals receive. General discussion again of the need for the public to be informed.

MOTION OBJECTION

Senator Doderer moved the following objection:

> The Committee objects to subrule 1.3(7), providing that the selection of candidates shall be in open meeting by a secret ballot, on the grounds that it is arbitrary and capricious. The Committee notes that section 28A.3, The Code requires that all final action be taken in an open session. While this section does not forbid a secret ballot, the Committee feels this subrule violates the spirit, if not the letter of the law. The purpose of Chapter 28A, The Code, is to allow citizens the right to examine and evaluate the activities of governmental bodies, this purpose is best served by requiring commissioners to cast their ballots openly, and thus be held accountable by the citizens for their decisions.

Royce reminded the Committee that the rule is both on notice and filed emergency.

The Vice Chairman ruled that the motion applied to both. Short form voting was requested, no objection, and the motion carried unanimously.

Doyle reminded that all of the "he" and "his" words were to be removed and this has not been done. He asked if the Court has a WATS line for outside calls and was advised they did not. O'Brien stated that the Nominating Commission does not have a budget. The Court has an outgoing but not incoming WATS line. General discussion of the problem.

CONSERVATION

Mr. Les Fleming, Superintendent, Grants-in--Aid, State Conservation Commission, discussed the following:

> CONSERVATION[290]
> Land and water, grants-in-aid, Ch 72, see also filed emergency 5/31/78

Fleming stated the Conservation Commission was filing a rule covering the administration of a Land and Water Fund to local entities--under a federal grant program.

Mr. Ned Chiodo, State Representative, Polk County, spoke stating he had questions about page 3, 72.4, and 72.5. He said the awarding of funds was very arbitrary and he feels no consideration is being given for the amount of people being served by a particular municipality. Chiodo commented that a rating system was developed whereby the number of people served does not have enough of a weight considering the money being distributed belongs to the people and should be appropriated on the basis of the number of people served.

CONSERVATION
Cont'd

Chiodo noted that the point system used throughout the rule is very arbitrary in the way the funds are awarded.

Schroeder suggested that Chiodo and other interested persons could petition for a change in the rules to wording they would like to have. The Commission would have 60 days to accept the proposed change or show cause why the change is rejected. Kelly noted there would be a public hearing June 28, 1978.

Fleming responded that the rating system is based on ten years of experience and they feel it is working pretty well. He commented that the City of Des Moines, during the life of the program, has received almost twice as much in grants as the next closest city. The next recipients receiving the most aid are Black Hawk and Johnson Counties, Urbandale, Linn County and the Polk County Conservation Board. Fleming said the money is going where the population is and the system is working. Des Moines has a static population and their needs might be being met better than those of other communities--this must be considered also, not just the number of people to be served.

Monroe asked about the rule dealing with the penalty points for prior assistance. He questioned the meaning of "fair share" (based on population) and he feels this to be an arbitrary statement. Monroe asked if the Commission has defined "fair share".

Fleming replied they did not define "fair share" but advised that each year they take the total amount of money which has been apportioned to Iowa, during the life of the program, and divided it by the population of the state, and come up with a dollar figure per person. That is then multiplied by the population of the city or the county to determine what their full "fair share" would have been. He stated that perhaps it is a little arbitrary but the Conservation Commission feels it is an important consideration.

Monroe said that not all counties, or cities, would apply and he recommended they examine the history of the Department of Social Services in the home health care. That Department distributed the money so much per population, but, three-quarters of the way through the period, the remainder of the money was divided again.

CONSERVATION Cont'd

Monroe took objection to the use of the words "fair share".

Chiodo stated that one point was being missed and that being, a municipality could have three or four smaller dollar amount programs, and would be given penalty points, because the programs did not have the larger dollar amounts.

Fleming replied the reason for the penalty points is to help encourage the completion of projects. Human nature being what it is, sponsors tend to procrastinate in completion of projects. This is an attempt to get the sponsors to complete projects expeditiously.

Schroeder stated the Conservation Commission, in using the discussed procedure of penalty points, is encouraging a conglomerate of corporations, and each project which is smaller and stands on its own merit is at a disadvantage. Schroeder suggested placing a penalty if a project is not completed within a specified time and reduce the amount of the grant by about 10 percent.

Chiodo was advised by Schroeder to attend the public hearing June 28 and if satisfaction is not achieved there, then file a petition for specific wording changes.

Vice Chairman Monroe reminded that the rules are filed under both notice and emergency and the attention of the Committee was drawn to 72.7 "a" and "b". Monroe noted they are arbitrary.

OBJECTION

Schroeder moved the following objection:

> The Committee objects to 72.7(3), establishing an application rating system for the allocation of recreation funds, on the grounds that it is arbitrary in that it lacks uniform application. The committee notes that the subrule penalizes applicants for the number of active projects, thus encouraging cities to combine projects into one large request, rather than to apply for each project on its own merits. The committee further notes that such terms as 'fair share' [of assistance money] and 'past performance based on grant administration and quality of development; such terms are arbitrary in that they are undefined and therefore subject to varying interpretation and application.

The objection was adopted with 4 aye votes and 1 nay. Schroeder, Doyle, Kelly and Monroe voted "aye" and Dodgrer voted "no".

CONSERVATION
Cont'd

Royce asked if the objection should be filed to both sets of rules and Schroeder asked for and received unanimous consent for the objection to be placed to both filed and emergency rules.

In response to a question by Fleming as to what effect the objection had on the rules, Royce advised that there is no direct effect right now. It has an effect if it is ever taken to court. Then, the burden of proof would change and the Conservation Commission would have to prove that the rule is reasonable.

John Stokes, Lands and Waters Administrator, appeared before the Committee to discuss the following:

45.2(b)

CONSERVATION[290]
Camping fees for aged, handicapped and blind, 45.2 5/31/78

Doyle questioned the definition of blind and handicapped and Stokes advised that blind is a definitive handicap in itself. Doyle made the point that it is lumped into one definition in 45.2(b). Doyle feels the definition could be worded better. Stokes did inform that two things requested by the Committee had been inserted, one being the established fees as they now stand, and what the reduction would be, and the other, the basic camping unit. Stokes stated a public meeting was held on April 6 and an objection was raised to the lack of facilities in camping for the handicapped. Stokes said the Commission is working to improve facilities for the handicapped and advised that a ramp has been built at Big Creek for wheelchairs.

General discussion of fees for camping and the possible reduction of fees for handicapped. Stokes said legislation had been introduced but was not acted upon. Stokes advised that anyone who wishes to pay the full fee may do so.

Doderer out of the room.

Stokes commented that the Commission is interested in stimulating use of camp grounds during the early part of the week, thus benefiting the Commission. This would serve to alleviate some of the heavy traffic at the camps on weekends. He advised that the reason for having a fee for the elderly and/or handicapped removes the "freeloading" stigma which could be there. Doyle commented he had been contacted by campers who are being charged for having two units when they pitch a tent for their children. Stokes said he would investigate and get back to Doyle with an answer.

AGRICULTURE

Ms. Betty Duncan, Attorney, Department of Agriculture, discussed the following:

AGRICULTURE[30]

Raw milk for pet food, 7.8	5/17/78
Pesticides, 10.30	5/17/78
Veterinarians, rescind Ch 19, filed emergency	5/31/78

7.8

Schroeder expressed an objection to color being added to raw milk for pet food.

Ms. Duncan advised the statutory provision for adding the color to raw milk for pet food is found in 198.14, coloring unlawful milk. This is done to prevent the unlawful milk from being used in any form for human consumption. Duncan stated that at the public hearing, no objection had been raised.

Schroeder commented that the raw milk should be labeled "not fit for human consumption" and the color should not be added. The Vice Chairman reminded Schroeder that these rules are under notice.

Ms. Duncan opined there will probably be some revision to all of the rules published under Notice of Intended Action and Schroeder asked that this be done or an objection will be filed.

10.30

Duncan advised they have classified the restricted use of pesticides as mandated in 206.20. She stated they have tried to promulgate rules so there would be no overlapping with the Department of Environmental Quality.

General discussion of herbicides, pesticides and insecticides. Duncan notified the Committee that a public hearing is scheduled for June 14, 1978, and if objections are raised, they will be taken into consideration before the rule is filed.

Ch 19

Duncan said that pursuant to chapter 169, rules were promulgated relating to the Veterinary Medical Examiner Board. Some of their duties as enumerated in 169 were to supervise the veterinary lay assistants. The rule was to remove a section which was duplicated.

8.6

Duncan continued that, subsequent to the Notice of Intended Action, the Department of Agriculture held a public hearing and some of the provisions relating to the distance requirements of container locations

AGRICULTURE
Cont'd
16.150(2)

were changed and she said that has already been filed.

OBJECTION

Schroeder moved to restate the motion of objection by the committee. (See the Administrative Rules Review Committee minutes, 4-11-78, page 539).

Ms. Duncan asked for and received the opportunity to give argument as to why the Department of Agriculture would like the Committee to reconsider its objection. Duncan noted that under 17A.4, it was recognized that the Committee can file an objection but, in order to be effective, it has to be timely objected to. Aujeszky's disease rules were effective and there were no objections that were lodged against the provisions of the rules. Duncan said that, subsequent to the effective date of those rules, the Department amended subrule 16.150, subsection 2, said amendment going to two minor provisions of the rule.

Duncan reviewed the rule in its various forms since it was originally drafted.

Duncan distributed a copy of a letter to Senator Berl E. Priebe of April 17, 1978 from Robert H. Lounsberry, Secretary of Agriculture.

Duncan stated that if the Schroeder objection is to the entire substance of 16.150(2), then it is not a timely objection. She advised the Committee that the subject of Aujeszky's disease is being reviewed by federal authorities.

Dr. Lang informed the Committee that there will be a public hearing in Des Moines, June 21.

Delay

Senator Kelly asked for and received unanimous consent that the effective date be delayed until July 12. So ordered.

No action taken on the Schroeder motion.

REGENTS

Wayne Richey, Executive Secretary, Board of Regents, discussed the 70-day delay granted by the Committee concerning the accessibility of the agenda and materials used in the meeting of the Board. (11.1(3).

BOARD OF REGENTS Cont'd

Ritchey advised a public hearing had been held and 4 students attended. The students requested the book, called the docket, which is quite thick and explicit. Ritchey told the Committee that the book, after considerable review, is assembled in his office. The book is mailed on Friday night, hopefully, before 9:00 p.m. Twenty-five docket books are mailed and the student organization would like its own docket book. In response to a question by Schroeder, Ritchey advised that a copy is placed on file in the Board of Regents office at 1:00 p.m. Mondays, before the Board Meeting. Simultaneously, it is received through the mail by the Board members, and the docket is placed at each of the five institutions, where it is available for anyone's use.

Ritchey stated they had not had other requests for the book, but he assured the Committee that the Regents will receive requests as soon as a copy is made available to the student organization now requesting a copy.

Royce mentioned a problem created under 68A, in that the Board is required to supply the material, but is not allowed to charge for it.

Ritchey retains four copies of the book in the Board office. General discussion of the disposition of the books, and the cost of same. In answer to Schroeder's question as to what the cost might be for printing a docket book, Ritchey advised about $25.

Monroe suggested the problem could be settled by Ritchey amending the rule to provide simple agendas be mailed to members of the Board and list the other 17 persons to receive agendas, and any other persons subscribing at a prescribed rate may receive the agenda. Ritchey saw a problem in that charges vary, depending upon the machine used.

Monroe reminded Ritchey that the right of the public to copy public material is stated in chapter 68A and Ritchey stated he could not see why a rule was needed if it is in the law. Monroe advised that was the problem, in that the Board was not complying with the law.

Monroe suggested the rule could read that the agenda would be available three days prior to the meeting.

BOARD OF REGENTS Cont'd

Vice Chairman Monroe reminded that the rule is delayed 70 days from June 7 and stated he thought the Committee should hear comments from the Superintendent of Printing. He requested from Ritchey a copy of the docket book, in order for the Committee's review of same.

Ritchey commented that his office is being faced with an unreasonable request by a student organization. Monroe advised he would be willing to meet with Ritchey the following day to seek a solution to the problem. The Committee, if the matter is on a future agenda, will contact the Superintendent of Printing.

RECESS

At 12:45 p.m., the meeting recessed until 1:30 p.m.

CONVENE

The meeting reconvened at 1:55 p.m. Doderer not present.

SPECIAL REVIEW Athletic Unions

Mr. Wayne Cooley, Executive Secretary, Iowa Girls High School Athletic Union, Mr. Robert B. Smiley, Assistant Executive Secretary and Mr. Bernie Saggau, Executive Secretary, Mr. Dave Harty, Assistant Executive Secretary, Iowa High School Athletic Association, were present to discuss Athletics Commissioner rules.

Schroeder inquired if any of the wishes of the Committee had been adhered to and commented that he had not been made aware of a change in the rules concerning the ineligibility of the wrestler in the Waterloo Schools. He stated it may be necessary to request the standing committees of the Legislature to implement legislation to have the Department of Public Instruction take over all of the rule-making process for the Athletic Unions. He said he would like to find out that something had been done.

Saggau discussed the ineligibility situation as it occurred in Waterloo, where the young wrestler was declared ineligible, and the school informed the Athletic Association that the boy would not be competing in the State Wrestling Tournament. The Association has a rule which states if a young man becomes ill, or injured, and cannot compete in the state tournament, the third place boy can go to the state tournament in his place. The third place young man was notified by the Association that he would be going to the state tournament. Saggau advised that, two days before the state tournament, a Waterloo Judge ruled that the school

ATHLETIC COMMISSIONER Cont'd

administration had erred. About 10:00 p.m. the night before the tournament, the Athletic Association was called and informed that the boy had now been declared eligible by the court's ruling. Saggau stated there was no way the Association could then tell the boy from Mason City that he could not enter the state tournament. The Association met with the Judge in Des Moines the day of the tournament and, at that time, would not grant an injunction to the young man from Waterloo. In reply to a question by Schroeder, Saggau advised that the young man from Waterloo had requested the injunction. The wrestler from Mason City participated in the state tournament and since that time, the insurance companies, along with the Waterloo School Board and the young man's lawyer have talked and all are to appear in Des Moines on June 26, 1978.

Mr. Saggau reiterated that the boy was not declared ineligible by virtue of Athletic Association rule, but the Association took the word of the Waterloo School Administrator. Schroeder inquired if the Association is suing the administrator and was informed they were not.

Doderer present.

The Athletic Association did not question the reason for the ineligibility of the Waterloo wrestler, because the reason could have been most anything; academic, illness, or anything. Schroeder expressed concern for the fact that the Association did not question the reason for the boy's ineligibility. Saggau responded that the Association's rules state that each local school determines the eligibilty of every student.

Schroeder asked if Saggau thought there should be standard regulations applying to all schools and Saggau stated that, in his personal opinion, the rules should be standard. However, he said the courts told them they couldn't. The Athletic Association did have, but the Supreme Court told them they could not make eligibility rules for conduct for students. For fifteen years, the Athletic Association had uniform rules which were highly controversial. Saggau said the Supreme Court ruling is why the local school district establishes rules and regulations regarding student conduct. Saggau commented that the Supreme Court case

ATHLETIC COMMISSIONER Cont'd

alluded to was the Bunger case at Waverly, Iowa.

Schroeder indicated that such a situation could happen again and Saggau agreed it was a possibility. Saggau stated about fifty percent of the school boards throughout Iowa may have the same standards. Schroeder suggested that had the Athletic Association had a rule to cover such a possibility, or a time frame which would allow investigation, the Waterloo ineligibility problem possibly could have been resolved prior to the state wrestling tournament.

Further discussion of the Waterloo situation. Saggau informed the Committee that the Athletic Association had worked with lawyers and school boards to have due process put in for the benefit of the students. The schools are advised by the Athletic Association to follow the due process procedure. Saggau stated it is not possible for the Association to over react to a school board who rules a boy ineligible. He noted that most school boards have rules re students ineligible for athletics, music or speech and felt it would be impossible to check the reason behind the ineligibilties.

Saggau assured the Committee that the action by the Waterloo administrator was not intentional. Schroeder asked whether or not legislation should be recommended to prevent this situation from occurring again. Discussion concerning the possibility and problems if legislation would be introduced.

The Committee discussed probation time periods with Saggau and he informed the Committee that schools have different amounts of time for probationary periods.

Doderer questioned action which might have been taken upon requests made by the Committee previously. Monroe advised that action had been taken regarding an all-star rule concerning out-of-state tournaments. Another rule change was made which dealt with chaperones.

Monroe reminded regarding chaperone rules, that the Athletic Association could not take independent action because the Department of Public Instruction rules (9.18(9) mandate for chaperones, also. Saggau suggested they would present the rules for a vote of their constituents and then present them to the DPI.

ATHLETIC COMMISSIONER Cont'd

Senator Doderer inquired as to the progress made by the Iowa Girls High School Athletic Union and its constituents in increasing the number of women coaches for girls' sports. Mr. Cooley advised that the percentage of women coaches had increased, in every sport, from last year, with the synchronized swimming being 100 percent. He advised that the voting is completely controlled by the superintendents in the state, of which one is a woman.

He informed the Committee that the Board of Control has ten members, so each area is mandated a representative. They are in the process of rewriting rules now and language can be changed.

Monroe questioned Cooley about the reimbursement practice for participation in sports events and he advised they refund travel allowances in every school, on every level, in every competition. In reply to a further Monroe question dealing with rates being equitable for each sport, the Committee was advised the reimbursement rate is not the same for each sport. The Association justifies this because there is not sufficient money. The original intent was to reimburse only for travel, but each year they have been successful, financially, they have tried to increase the expenditures reimbursed to the sports.

The Committee discussed the method by which referees are chosen for state tournaments and they were informed that the 500 schools vote for officials out of the approximately 2600 officials eligible to officiate.

The Committee discussed the vehicle to correct the inequities as mentioned and Monroe suggested that the standing committees of the Legislature be presented copies of these minutes, plus those of the previous meeting containing information about the Athletic Associations, with the possibility that an Interim Study could be made.

MOTION

Schroeder moved that the secretary be instructed to forward the information to the Education Committees of the House and Senate prior to June 29, 1978. The motion carried.

No further discussion about the Athletic Unions.

PROPOSED RULE CHANGE

Schroeder moved to adopt the following proposed rule to the Administrative Rules Review Committee rules of procedure (15). The adoption is contingent upon approval of Senate File 244 by the governor:

(15) Pursuant to the authority of 17A.8(10) the committee may, by two-thirds vote, delay the effective date of a rule until forty-five calendar days after the convening of the next regular session of the general assembly. Before imposing a delay pursuant to this subsection the committee shall, upon request by the affected agency, instead impose a seventy-day delay pursuant to 17A.4(5), to allow the affected agency time to submit written and, if desired, oral arguments to the committee in support of the rule. These arguments shall be considered by the committee at its next scheduled meeting. The committee may then impose the delay authorized by 17A.8(10) or take any other action authorized by statute.

Royce's rationale: The Iowa Supreme Court has stated that authority delegated by the legislature must contain 'adequate procedural safeguards', to guard against arbitrary agency action. I believe this rule would meet this requirement, by allowing agencies a period of time to prepare a defense for their rules and providing a 'cooling off' period for the Committee to insure that its final action is taken in a well-informed and deliberative manner.

The motion carried unanimously.

Mrs. Barry sought the Committee's guidance as to the appropriate method of publishing the voluminous proposed rules of the Soil Conservation Commission. The Committee concurred with Mrs. Barry that only a summary would be necessary to comply with the statutory requirements in 17A.

Doyle asked unanimous consent that the minutes report there was a phone call motion made two weeks ago to authorize members of the Committee and Joseph Royce to attend the Iowa Hearing Officers Meeting. No objection.

MOTION

Seminar

Doyle moved to approve Joseph Royce's attendance at the National Conference on State Legislatures to be

MOTION Cont'd

held in Denver, July 5, 1978. Motion carried.

Senator Doderer recommended that Mrs. Barry be given approval to attend the NCSL, but Mrs. Barry declined.

DEPARTMENT OF ENVIRONMENTAL QUALITY

David Bach introduced George Osborn, Air Quality Commissioner, to discuss the following:

ENVIRONMENTAL QUALITY[400]

Anaerobic lagoon, 1.2(7)	5/17/78
Odors, 3.1(1), 3.1(1)"e", 3.1(2)"a", 3.1(3)"d", 3.1(3)"h"	5/17/78
Animal feeding operations, 4.5	5/17/78

Bach requested the Committee to look at the rule concerning anaerobic lagoons (1.2(7). He advised that the rule does not include runoff basins which collect and store precipitation, or waste storage basins or an anaerobic treatment station.

Schroeder questioned Bach as to the impact of the rule on feeding operations of 600 cattle and Bach advised that not every feeding operation is subject to the rules, only those who have an anaerobic lagoon, by definition and he stated the packing houses with anaerobic lagoons are covered by the rule.

Doyle assumed the chair.

Osborn discussed the fact that he was a livestock producer, who did not build a lagoon, because he spent time studying the procedure in Illinois and Indiana and was advised by those persons who had lagoons that they had trouble with the neighbors complaining about them. Discussed the fact that he had not used a commercial fertilizer since 1968 and that he uses pits for the waste.

Mr. Clark Knowles, Lauritzen Foods, discussed the advantages of anaerobic lagoons and he informed the Committee that Denison, Iowa, has a very extensive anaerobic area for a slaughter house, located on the southwest edge of town. To his knowledge, there have not been complaints about odors.
He advised that a motel is being built on the eastern edge of the lagoon. Mr. Knowles quoted from the letter Dr. Stanek, Department of Environmental Quality, wrote on the subject.

Separation distances and management of the lagoons

ENVIRONMENTAL QUALITY Cont'd

were discussed by Mr. Knowles and Mr. Osborn.

Bach advised that when the legislature created the Departments of Environmental Quality and the Air Quality Commission, they did not give authority for setting of management practices or to define standards. This places the Air Quality Commission in a "tough" position.

Monroe back in the chair.

Bach stated they had had extensive public participation prior to presenting these rules to the Committee. He does not feel there is a good answer to the problem of separation distances so long as the Air Quality Commission is limited in authority to regulate feed lots and odors.

Bach indicated that further review of the statutory authority would be advisable. Another suggestion would be to refer the rules to the General Assembly.

Mr. Irwin Buck, attorney, representing Lauritzen Foods, spoke in support of what Mr. Knowles stated and called attention to a letter he had mailed to the Committee dealing with the problem. He contended that when the DEQ states that a slaughterhouse or farmer must not place a lagoon within 1/2 or 3/4 of a mile from an occupied dwelling, the DEQ is then endeavoring to tell the packer or farmer where he can build. He stated the effective date of this proposed rule should be postponed.

MOTION TO DELAY

Schroeder moved to suspend three rules, 1.2(7), 3.1 and 4.5(3) of the Department of Environmental Quality for seventy days beyond their effective date of June 21, 1978.

As a result of the motion, Bach advised they would probably have to ask the Air Quality Commission to delay the start of the July 1 permit. Bach advised the whole process was began on the basis of trying to eliminate nuisance complaints and the DEQ asked the legislature for funding on the whole program dealing with this matter, but the legislature did not act on the funding in the appropriations committee. Bach

ENVIRONMENTAL QUALITY Cont'd
MOTION PENDING

did not think the matter would be taken up during the pending legislative session later in June. Bach feels there should be some meaningful way to look at the whole area of regulations.

Monroe asked if complaints were voiced at the hearing held in January at the Des Moines Area Community College and Bach advised complaints had been voiced in the areas discussed today.

Mr. Osborn commented that they had worked on the rules for 2½ years and he expressed an interest in having heard the complaints previously, but no one had come forth against anything except anaerobic lagoons.

Knowles indicated they were told at the meeting in January that it would impossible to put these rules into effect prior to January 1980.

Schroeder called for short form voting on his motion. Motion carried with quorum of four members being present. Doderer out of the room.

Schroeder requested DEQ to prepare an impact statement as a courtesy to the committee.

ENVIRONMENTAL QUALITY[400]
Continuing education, operators of water treatment, contested cases, 21.1, 21.2(4), 21.2(5), 21.6(3)"c", 21.6(3)"d", 21.9(1), 21.10(6)—21.10(11), 21.13, 55.1(1), 55.1(3), 55.1(3)"b", 55.2(6), 55.8(1), 55.8(4). 5/31/78

Bach noted they have requirements in their current rules as to who is eligible for continuing education. He noted there are some things missing from the requirements which will need to be added, General discussion of requirements. Bach will write a summary of these rules for Schroeder.
Doderer returned.

NATURAL RESOURCES COUNCIL

Doyle out of room.
Merwin Dougal, Chairman, Iowa Natural Resources Council appeared to discuss the following:

NATURAL RESOURCES COUNCIL[580]
Definitions, channel changes, 2.1(28)—2.1(35), 5.1(1)"b", 5.2, 5.15(4), 5.16, 5.29—5.32 5/31/78
Permits to divert, store or withdraw water, 2.1(36), 3.3(1), 3.4, 3.5, 3.8 5/31/78

Also present from the Natural Resources Council were: Louis Gieseke, Water Commission, James Wiegand, Deputy Water Commissioner, Mike Smith, Deputy Water Commissioner, Attorney, Gus Kerndt, Attorney, Water Resources Planner,

NATURAL RESOURCES COUNCIL Cont'd

Allan Reinig, Water Resources Engineer and Vickie Sanders, Information Specialist. Mr. Dougal indicated that Mr. James Webb, Director, apologized for not being able to be present.

Dougal advised that the Resources Council had worked for two years to revise and update the rules of procedure for flood plain management and the water rights law. Over the last two years, the drought has intensified the efforts and hearings were held all over the state. Dougal commented that the framers of the water rights law were very concerned that withdrawal of water would not dry up streams and the rights of owners both up and down stream would be protected, along with the fish and wildlife. The council feels that some exemptions could deprive of the protected low flow provisions in the law itself.

Reinig presented the following proposed change in channel change rules:

ITEM 1: Subrule 5.16(8) is amended to read as follows:

5.16(8) landowner notification. The applicant(s) shall submit the names, addresses and location of the immediate upstream, downstream and adjacent landowner(s) and occupant(s). In addition, the applicant(s) shall submit the names and addresses of other landowners and occupants that the Council, after reviewing the plans for the proposed channel change, believes will have a substantial interest in the channel change or will be substantially affected by the channel change.

NOTE: June 6, 1978 the Council approved the above amendment to the landowner notification section of the new rules and regulations pertaining to channel changes.

Vice Chairman Monroe suggested the Natural Resources Council file the proposed rule change, without notice, on July 1, under the provisions of S.F. 244, wherein the Committee can put a termination date on it if they don't like the rule. Royce agreed this was a viable suggestion.

Schroeder questioned 5.1(1)"b" dealing with channel changes dealing with rural area floodway and wondered if a lot of work was being added. Dougal suggested 5.2(9) paragraph 2 addresses Schroeder's concerns. Reinig commented they will have administrative procedure

NATURAL RESOURCES COUNCIL Cont'd

that will expedite these channel change requests. Schroeder suggested having a rule with respect to channel stablization to protect bridges. He was informed that the Council already has such a rule.

2.1(36)

Dougal discussed the water withdrawal rules and advised the Resources Council has hearings across the state to revise the rules. Professor William Heintz, University of Iowa, reviewed the water law after 10 years and the professor made the statement that the test of the water law would come during a drought period. Dougal stated the Council feels the water rights law did get the state through the drought period. He commented that the rules being presented now should strengthen the water rights law to take care of stress situations.

Dougal discussed regulation of water flows and advised that the Council does not regulate water flow on the border streams, so that water is shared with other states. The interior streams are short of water to meet a lot of the consumptive withdrawals.

A specific exemption for the power companies is being presented before the Committee, but Dougal noted that if wholesale exemptions are given, there would be no protected low flow.

Schroeder out of the room. Doyle returned

Mr. John Cortesio, representing Iowa Power and Light, introduced the following persons from the company: Carl B. Feilmann, Ed L. Birdsall, David J. W. Proctor, Lynn K. Vorbrich.

Mr. Cortesio reviewed the following letter from Ed L. Birdsall, Vice President, Iowa Power and Light Company:

Iowa Administrative Rules
Review Committee
Room 318 - Statehouse
Des Moines, Iowa 50319

RE: New Rules 580-3.4 and 580-3.5 and Subrule 2.1(36) of the Iowa Natural Resources Council, adopted May 2, 1978

Dear Committee Members:

The purpose of this letter is to express Iowa Power and Light Company's grave and urgent concern about the new rules 580-3.4 and 580-3.5 and subrule 2.1(36) of the Iowa Natural Resources Council, which were adopted May 2, 1978. Application of these rules as adopted will have the practical effect of terminating operation of Iowa Power's Des Moines Power Station and a calamitous impact on the reliability and cost of electric service to Iowa Power's customers.

NATURAL RESOURCES COUNCIL Cont'd

Iowa Power believes that these rules are unreasonable, arbitrary, capricious, and otherwise beyond the authority delegated to the Iowa Natural Resources Council, thus warranting the Iowa Administrative Rules Review Committee's objection pursuant to Section 17A.4(4)(a), Code of Iowa, 1977. It may be helpful briefly to describe the factual setting relative to Des Moines Power Station prior to analyzing the impact of these rules thereon.

I. BACKGROUND RELATIVE TO DES MOINES POWER STATION.

The Des Moines Power Station is a coal-burning multi-generator facility located along the Des Moines River. The plant has been operating since 1925, and 100 persons are currently employed there. Generating Units 1, 2, and 3 located at the Des Moines Power Station are now retired but the plant's Generating Units 4, 5, 6, and 7 are still used and useful in the service of Iowa Power.

At the present time, the Des Moines Power Station is classified as a somewhat older, less-efficient station as compared with new, more fuel-efficient generation. Units 4 and 5 are relied upon primarily for "peaking" service during the hotter periods of late summer and during mid-winter to meet the extremely heavy demands for power which our customers impose during those time periods. Generating Units 6 and 7 are presently considered intermediate units but are in operation substantially all of the time.

Des Moines Power Station also continues to serve as a fully-integrated part of Iowa Power's total system by providing service when other units are undergoing repair or routine maintenance. Continuous availability of the station to serve the needs of central Iowa and the Des Moines metropolitan area is required, as available transmission line capacity from generating plants owned by Iowa Power or other companies cannot reliably carry in all the power requirements of the area during heavy load conditions, and the station is needed at all times for reliability and stability of supply to the Des Moines area.

During the period from 1950 through 1963, cooling towers were added for Units 5, 6, and 7 at Des Moines Power Station. There are fifteen identifiable cooling cells there, of which nine were built in 1950 and six (which are larger ones) were built in 1963. Characteristically, these cooling towers have been used since the time of their installation when the flow of the Des Moines River is low. In such circumstances use of the cooling towers is necessary to keep these units operating. The water drawn into the cooling towers breaks through slats located in the towers and is met by air from fans also located there. This produces cool water but at the same time results in some evaporation of water. Additional water must be withdrawn from the water source to replace the water lost to evaporation, and this replacement water (commonly referred to as "makeup water") is the "consumptive use" which Iowa Power makes of water withdrawn by Des Moines Power Station within the meaning of the rules in question.

In recent years the use of the cooling towers has become more frequent in order to serve an environmental objective within the regulatory ambit of the Iowa Department of Environmental Quality: Prevention of thermal pollution which may result from discharging warm water into the Des Moines River at Des Moines Power Station.

In 1976, the Department of Environmental Quality (DEQ) issued a citation to Iowa Power based upon the discharge of water into the river at temperatures in excess of those permitted under the standards adopted by DEQ. As a proposed solution for this problem, Iowa Power has submitted a plan to DEQ under which it proposes to install a closed-cycle system into its cooling tower operations, thus eliminating in its entirety the discharge into the river of warm water from Units 5, 6, and 7. Unit 4 will make use of "straight-through" cooling exclusively but will be operated only a limited number of hours annually. A series of shallow wells will be constructed at Des Moines Power Station which will provide the source of clean makeup water for the new closed-cycle cooling system. The plan envisions continual operation of these cooling towers and regular withdrawal of water from the wells for makeup water. This plan has been accepted by DEQ.

NATURAL RESOURCES COUNCIL Cont'd

The conversion of Units 5, 6, and 7 to a closed-cycle system, the construction of the wells and an accompanying chemical treatment system, a proposed ash pond enlargement and treatment system for ash pond overflow (to reduce alkaline levels of water draining from the ash pond into the river), and elimination of miscellaneous drainage at the facility will cost Iowa Power approximately $3,000,000 under contracts on which bids have been received and which are presently awaiting award and execution.

Since 1958, withdrawal of water from the Des Moines River at Des Moines Power Station has been made pursuant to ten-year permits granted by the Natural Resources Council. An application is now pending before the Natural Resources Council to replace the permits which expire this year. Iowa Power's intended use of river water includes 37,000 gallons per minute for "straight-through" cooling of Unit 4 when it is in operation and 3,045 gallons per minute (6.8 cubic feet per second) for makeup water for the cooling towers. Until completion of construction of the wells and the closed-cycle cooling system, the makeup water will be taken directly from the river but thereafter will be taken from the wells. The water to be withdrawn from the river and the wells to be used as makeup water for Units 5, 6, and 7 will be a "consumptive use" as defined in the new rules of the Iowa Natural Resources Council. The "straight-through" cooling use does not constitute a consumptive use within the meaning of the new rules.

II. THE NEW RULES.

The newly adopted rules, effective July 5, 1978, will impose drastic restrictions on Iowa Power's ability to withdraw water for cooling purposes at the Des Moines Power Station from the Des Moines River or the nearby wells which Iowa Power has planned as an integral part of its proposed solution of the problem with DEQ.

The first sentence of subrule 3.4(2) provides that, "[w]ithdrawals of water for consumptive uses from any stream which has a drainage area of fifty (50) or more square miles shall not be permitted to reduce the flow of said stream below the protected flow provided herein." This provision thus has the effect of flatly prohibiting the withdrawal of any water by a nonmunicipally owned electric generating plant (including generating units existing at the time the rules were adopted) for consumptive use from any stream which has a drainage area of 50 or more square miles whenever such withdrawal would reduce the flow of such stream below the protected minimum flow provided in the rule. The particular "protected flow" which would apply to Iowa Power's existing Des Moines Power Station under the rule would be that of 300 cubic feet per second ("cfs") along the Des Moines River at the U.S. Geological Survey stream gaging location at Des Moines (14th Street). See new subrule 3.4(2)(a).

Subrule 3.4(2)(c) places an even more severe limit on withdrawals for consumptive uses by establishing a "cutoff flow" -- a flow which may far exceed the amount of the "protected flow". Subrule 3.4(2)(c) provides that "cutoff flow" is "the sum of the permitted withdrawals for all consumptive uses from that stream or designated portion thereof added to the protected flow for that stream or portion thereof as established by the Iowa Natural Resources Council." Subrule 3.4(2)(c) then provides that whenever the flow of a stream or a portion thereof designated by the Water Commissioner (measured at the applicable stream gaging station) falls below the cutoff flow for that stream or portion thereof, "all consumptive withdrawals of water . . . from that stream or portion thereof shall cease until the Water Commissioner determines the flow has returned to a level above the cutoff flow and authorizes resumption of withdrawals." Thus, Iowa Power's ability to withdraw water from the Des Moines River for use in its Des Moines Power Station may under this rule be curtailed when the flow far exceeds the level of the "protected flow".

Subrule 3.4(2)(d) then provides that the Council may authorize withdrawals which would reduce the flow of the stream or portion thereof to a level below the cutoff flow but above the protected

NATURAL RESOURCES COUNCIL Cont'd

flow after approval of "a written sharing and/or rotation plan submitted by all persons engaged in permitted consumptive withdrawals from that stream or designated portion thereof." It is small and inadequate consolation to an electric utility and its customers that its ability to obtain needed cooling water at a power station is at the whim of all persons engaged in permitted consumptive withdrawals and their collective willingness to agree upon a "sharing and/or rotation plan".

The new rules have an adverse impact not only upon Iowa Power's ability to make withdrawals of water directly from the Des Moines River but also upon its ability to make withdrawals of water from the planned wells, which will draw water from unconsolidated aquifers. Subrule 3.5(2)(a) provides that withdrawals for consumptive uses from unconsolidated aquifers at any point within 1/8 mile of a stream having a drainage area of 50 or more square miles (such as the Des Moines River) "shall be considered withdrawals from the stream itself and shall be subject to the protected flow regulation in 3.4(2)." It appears that Iowa Power's planned wells would result in withdrawals from unconsolidated aquifers at points located within 1/8 mile of the river and thus would be governed by 3.5(2)(a). This subrule imposes a serious restriction if it even incorporates no more than the "protected flow" limitations contained in subrule 3.4(2)(a). But its ambiguity leaves open the possibility that the more limiting provisions on "cutoff flow", contained in subrule 3.4(2)(c), are applicable to withdrawals from unconsolidated aquifers at any point within 1/8 mile of the stream.

Even if Iowa Power, by means of its planned wells, were fortunate enough to be able to withdraw water from unconsolidated aquifers at a point more than 1/8 mile (but less than 1/4 mile) from the Des Moines River, Iowa Power, under subrule 3.5(2)(b), would have to cease withdrawals from these aquifers when the flow of the stream is at or below the "7-day 1-in-10 year low flow (7Q10)." A "7-day 1-in-10 year low flow" occurred just last year.

Subrules 3.5(2)(a) and 3.5(2)(b), limiting withdrawals from unconsolidated aquifers, are subject to possible waiver under subrule 3.5(2)(d) if an applicant "conclusively demonstrates, by conducting appropriate tests, that such withdrawals will not reduce the flow of the adjacent stream." It will be difficult and most likely impossible ever to make such a conclusive demonstration and the utility would have to make a sizable investment in acquiring any required land, constructing test wells, and conducting geological surveys before ever really being able to attempt such a demonstration.

The new rules not only have the practical, and indefensible, effect of regulating out of existence an operating electric generating plant but also unjustifiably discriminate between an electric generating plant which is investor-owned or cooperative-owned on the one hand and municipally-owned electric generating plants on the other.

New subrule 2.1(36) defines "consumptive use" as follows:

> "[A]ny use of water, except for a municipal use or municipal-type use, which involves substantial evaporation, transportation, or incorporation of water into a product or removal of water from a watercourse without prompt return thereto. Consumptive uses include, but are not limited to, irrigation, evaporative cooling, and flooding of wildlife areas by withdrawals or diversions from watercourses."

The "municipal use" or "municipal-type use" language has the effect of providing an exception for municipally-owned or municipal utility-owned electric generating plants from all of the new rules restricting consumptive use withdrawals, even though the public service they render is patently indistinguishable from that furnished by investor-owned electric utilities (such as Iowa Power) and by electric cooperatives. This discrimination, when its impact is considered in the context of the severe restrictions imposed upon nonmunicipal power plants by the Council's new rules 580-3.4 and 580-3.5, is clearly unreasonable, arbitrary, capricious, and otherwise beyond the authority delegated to the Iowa Natural Resources Council. The void of logic in this discrimination is demonstrated if one tries to visualize how the rules would

NATURAL RESOURCES COUNCIL
Cont'd

be applied in a situation (much more likely to occur in this age of increasing joint ownership of electric generating facilities) where a municipality owns a portion of a jointly-owned generating plant and the output therefrom. The legislature saw fit to specifically accommodate such joint ownership by enacting Chapter 390, Code of Iowa, 1977.

As previously stated, rule 3.4 establishes a protected flow level for the Des Moines River of 300 cfs at the Des Moines Power Station. Based upon an examination of the flow history of the Des Moines River, there is a strong possibility that the river will fall below this protected flow level (and therefore obviously below the cutoff flow level as well) during the late summer and through the winter as it did during 1976 and 1977. This is coincident with the time that the Des Moines Power Station is required to be operating due to the heaviest summer demand and heaviest winter demand on Iowa Power's system. When cooling water is unavailable, the Des Moines Power Station -- as any other coal-burning power station -- must cease operations.

In the light of rules 3.4 and 3.5, we have examined the quarterly monitoring reports which we submitted to the Iowa Department of Environmental Quality between October 1, 1975, and March 31, 1978. These reports date back to the inception of our reporting and cover a period of 30 months. During that 30-month period, based on a 300 cfs protected flow for the Des Moines River at the 14th Street gaging station (and leaving totally aside subrule 3.4(2)(c)'s imposition of a "cutoff flow", which occurs at an even higher cfs level), Des Moines Power Station would have been unavailable for a total of 262 days (29% of the time period examined).

Review of our records shows that river flow at 14th Street gaging station was below the 300 cfs "protected flow" level on 135 (or 37%) of the days during calendar year 1977, and Des Moines Power Station was used on all of those 135 days and, on those days, provided 20.8% of Iowa Power's generation. The flow was below the 300 cfs "protected flow" level on 68 (or 73.9%) of the days during the three-month period of June through August, 1977, and Des Moines Power Station was used on all of those 68 days and, on those days, provided 20.6% of Iowa Power's generation.

III. PROJECTED EFFECTS OF THE NEW RULES.

If demand on Iowa Power's system and low river flows follow their normal patterns, we are satisfied that rules 3.4 and 3.5 would have the practical effect of causing an emergency generation capacity shortage in Iowa Power's service area and would precipitate the premature retirement of our existing Des Moines Power Station, which currently provides approximately 277 megawatts, or 22%, of Iowa Power's total generation capacity. The results of such a drastic occurrence could very well include the effective loss of Iowa Power's investment in that facility. This loss of investment, if measured by the gross value of the plant as of December 31, 1977, as reported to the Iowa Department of Revenue, would be approximately $49,300,000, but would be significantly in excess of that figure if current replacement costs were used.

The most likely short-term consequence of such a premature retirement of Des Moines Power Station would be emergency efforts to replace the lost capacity with another generation source at enormous expense (assuming Iowa Power is in fact able effectively to obtain regulatory approval and acquire such capacity and the associated transmission requirements within the practical time constraints), with the institution during heavy demand periods of a program of mandatory alternating shutoffs ("rolling blackouts") to the extent such efforts are not successful. Iowa Power's ability to acquire such additional capacity and the associated transmission line capacity between the central Iowa area and the plant where the capacity is available within the time frame in question is very improbable, and the costs would be staggering even if such generation and transmission capacity could be made available or constructed.

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The rules in question, and the demise of Des Moines Power Station which they would produce, are not consonant with our national energy policy, which is to protect and preserve existing electric generating plants to the fullest extent possible. If faced with the loss of the generation capacity of the Des Moines Power Station, Iowa Power, in order to make up the lost capacity and minimize the impact of the generation capacity shortage, would have the choice of building a new power plant, attempting to purchase generating capacity in the power plants of other utilities, or attempting to buy bulk power from other power suppliers.

We do not regard replacement of an entire generating plant with 277 megawatts capacity or construction of off-stream reservoirs as an option available, at any price, for at least two years. Rather, we would have to make a commitment to a replacement construction program for a lengthy period of time, a year at the minimum in the case of purchases of bulk power, and substantially longer in the case of building a new generating facility or buying an interest in an existing facility (if any such interest is available) and in accomplishing necessary transmission line building. Under the adopted rules, it simply would not be economically justifiable to keep Des Moines Power Station running under the severe restrictions on use which only permit operation when the plant is least needed.

The cost of replacement of the capacity of the Des Moines Power Station would be enormous. The unfortunate costs associated with replacing the lost capacity would be borne directly by the electric customers of Iowa Power. It obviously would be a distinct benefit to our customers to be able to retain Des Moines Power Station as an intermediate to peak load generating facility because of the facility's relatively low fixed cost.

If Des Moines Power Station were to be replaced by a coal-fired base-load facility, the replacement cost (with no allowance for inflation) would be approximately $800 per kilowatt, or a total capital expenditure of $221,000,000, and eight to ten years of lead time would be required before the plant could be licensed, completed, and placed in service.

If Des Moines Power Station were to be totally replaced with a combustion-turbine peaking facility, based upon a current construction cost of $180 per kilowatt, replacement of the station would result in a total capital expenditure of $50,000,000. Such a replacement with oil-fired combustion turbine generators would take a minimum of two to three years to accomplish and would also result in increases in fuel costs of approximately $75,000 per day of operation. Moreover, the substitution of oil-fired generation for coal-fired generation would run afoul of our national energy policy.

If the lost capacity were to be replaced by a purchase of capacity from another utility (assuming the availability of same and the construction of sufficient transmission capacity to carry the power to central Iowa), this would result in an annual cost to Iowa Power in the range of $6,500,000 to $11,000,000, depending on the type of capacity available and based on current prices. If Iowa Power were to pursue the alternative of purchasing bulk power, there would be no assurance that bulk power to satisfy its needs would be available at any price, or that existing transmission facilities could transfer the power into central Iowa.

We cannot emphasize enough the extreme disruption that would be thrown into the operation of our utility system if Des Moines Power Station cannot operate. We try to forecast our needs years in advance because it takes many years of lead time to build new generating units and associated facilities, including transmission lines and reservoirs. We have a system with a capacity of about 1,200 megawatts which with small purchases was sufficient to enable us to meet our 1977 peak of 1,063 megawatts and to provide necessary reserves. Our membership in the Mid-Continent Area Power Pool (MAPP) helps us meet our reserve requirements for emergencies and planned outages but it does not provide access to any additional capacity to supply normal system loads. Providing for our own system load is part of our responsibility as an electric utility and our plans for meeting that responsibility rely upon the use of Des Moines

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Power Station for the foreseeable future. If the rules go into effect on July 5, 1978 and on that day the temperature is high and the river is low, Iowa Power and its electric customers are going to have a terrible problem. We will only be able to prevent somebody's lights from going out by paying extremely high prices for replacement power if any is available.

It should also be remembered that the Des Moines Power Station has been a large consumer of Iowa coal. We had expected to burn over 250,000 tons of Iowa coal in 1978, or approximately 1/3 of Iowa's annual coal production. If water withdrawals for consumptive uses are restricted in the manner proposed under these rules, the Des Moines Power Station's use of Iowa coal would be drastically curtailed or terminated.

We submit that the adopted rules have a blatantly confiscatory effect, deprive Iowa Power of property (including the Des Moines Power Station and water rights) without due process of law, result in a taking of Iowa Power's property for public use without just compensation, and are unreasonable and arbitrary as well in the impact they impose upon electric customers of Iowa Power and Light Company. The objectionable character of the rules is intensified by their rank and invidious discrimination against electric utilities which are not municipalities or municipal utilities, and against the customers of such electric utilities. These rules will have the effect of regulating out of existence a low fixed-cost, reliable, used and useful power plant which has served Iowa Power customers for many years. Such regulation may not be justified by the suggestion, which the Iowa Natural Resources Council has posed to Iowa Power, that it construct a reservoir in the vicinity of its Des Moines Power Station. The acquisition of the land necessary to build a reservoir and its construction would take a considerable period of time and the expenditure of significant sums of money, and the construction and operation of such a reservoir would also require numerous licensing approvals which would place this contingency plan at the discretion of a variety of regulatory agencies.

IV. AREAS OF OBJECTION AND REASONS.

We submit that new subrule 2.1(36) should receive the Committee's objection to the extent it creates an exception from the definition of "consumptive use" which has the effect of exempting municipally-owned electric generating plants without also exempting nonmunicipally owned electric generating plants from the concept of "consumptive use". Both furnish the same vital service to the public. We submit that at the very least, subrule 2.1(36) warrants the Committee's objection to the extent that it has the effect of excepting municipally-owned generating plants from the concept of "consumptive use" without furnishing a similar exception to nonmunicipally owned electric generating units in existence and operation on the date the new rules take effect.

We submit that new rules 3.4 and 3.5 should be objected to by the Committee to the extent:

(1) That they impose flat prohibitions on withdrawals of water for consumptive uses upon the occurrence of certain flow levels without notice and hearing and without consideration of the individual needs of particular permittees or the impacts which such particular uses or the denial thereof will have;

(2) That they apply to nonmunicipally owned electric generating plants while not applying to municipally-owned electric generating plants;

(3) That they apply to nonmunicipally owned electric generating units in existence and operation at the present time while not applying to municipally-owned electric generating plants;

(4) That subrules 3.4(2) and 3.5(2) impose restrictions on withdrawals of water for "consumptive uses" (as defined in subrule 2.1(36)) without an exception reasonably accommodating electric generating units in existence and operation at the present time;

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(5) That subrules 3.4(2) and 3.5(2) impose restrictions on withdrawals of water for "consumptive uses" (as defined in subrule 2.1(36)) without an exception reasonably accommodating electric generating units in existence and operation at the present time belonging to nonmunicipal electric utilities who have been making similar uses on the same property since prior to the effective date of Chapter 455A, Code of Iowa, 1977;

(6) That they reserve no discretion or right on the part of the Water Commissioner or the Council to allow withdrawals of water for consumptive use, which would otherwise be prohibited by such rules, for electric generating plants in limited amounts and for intermittent periods upon a finding that the existing or alternative consumptive water use sources of such a plant are insufficient to maintain safe and reliable operation of the plant and that allowing withdrawal or additional withdrawal of water for consumptive uses is necessary to protect the public health, safety, or welfare; and

(7) That they reserve no discretion or right on the part of the Water Commissioner or the Council to allow withdrawals of water for consumptive uses, which would otherwise be prohibited by such rules, for a consumptive user who holds a proper permit in an emergency situation upon a finding that withdrawal for a particular consumptive use is necessary to protect the public health, safety, or welfare.

Iowa Power respectfully submits that the Committee should find that the new rules are unreasonable, arbitrary, and capricious in the above-described respects in that, among other things, they discriminate against nonmunicipally owned electric generating plants without a rational basis for distinguishing them from municipally-owned electric generating plants; have a confiscatory effect upon nonmunicipal electric utilities who withdraw the water for use for generating units presently in existence and operation; have a confiscatory effect upon nonmunicipal electric utilities who withdraw the water for use for generating units presently in existence and operation and who have been making similar uses on the same property since prior to the effective date of Chapter 455A, Code of Iowa, 1977; are so drastic that they unreasonably alter expectations normally flowing from the property interests of the nonmunicipal electric utilities described above in this paragraph; deprive such nonmunicipal electric utilities of their property without due process of law; result in a state taking of property of such nonmunicipal electric utilities without just compensation; are destructive of vested rights of such nonmunicipal electric utilities; will have an unreasonable and arbitrary adverse effect on such nonmunicipal electric utilities and upon the customers of such utilities; present an unreasonably dangerous threat to the health, safety, and welfare of electric customers of such nonmunicipal electric utilities; impose, by standard of general and unyielding application, restrictions on withdrawals of water for all "consumptive uses" even though under given circumstances such restrictions may defeat rather than preserve the overall balance of public health, safety, and welfare; and pre-empt the discretion of the Water Commissioner and the Council to allow withdrawals of water for consumptive use in the face of compelling need, public emergency, or other drastic consequence, or in circumstances where the public health, safety, and welfare considerations dictating such use may be more compelling than any then-existing, actual reasons for prohibiting such withdrawals.

Iowa Power further respectfully submits that the Committee should find that the new rules are otherwise beyond the authority delegated to the Council in the above-described respects in that, among other things, the Council does not have the power or authority under Chapter 455A, Code of Iowa, 1977, to adopt rules which may flatly prohibit all withdrawals of water for consumptive uses without regard to the individual need or purpose for the withdrawal or the impacts of the particular use or denial thereof; the rules violate the provisions of Section 455A.28 of the Code as to the irrevocability of permits, which contemplate notice to a permittee and hearing, and certain other conditions and limitations, as prerequisites to modification, cancellation, or suspension of operations under a permit; such rules would implement Chapter 455A of the Code in such a manner

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as to impair the vested rights of Iowa Power and Light Company and other persons in contravention of the specific provisions of Section 455A.21 of the Code; Chapter 455A does not empower the Council to distinguish between nonexempt municipal utilities and nonmunicipal electric utilities which use water for similar purposes and toward similar ends in imposing restrictions on withdrawals of water for use in electric generating plants; such rules place it beyond the ability of the Council to permit or promote wise use of water resources of the state, or their beneficial use to the fullest extent of which they are capable, as contemplated by Section 455A.2 of the Code and therefore contravene that section and Section 455A.3, which makes it the duty of the Council to promote the policies set forth in Chapter 455A; and such rules prevent the actual exercise of conservation of water with the view to the reasonable and beneficial use thereof in the interest of the people and the taking of such measures as shall effectuate full utilization of the water resources of the state, both of which are contemplated by Section 455A.2 of the Code, in contravention of that section and Section 455A.3.

V. POSSIBLE ALTERNATIVES.

All of the following alternatives to the new rules as adopted are suggested on the assumption that the Council has the statutory power (which we do not concede that it has) to adopt rules that may have the effect of creating flat prohibitions on withdrawals of water for consumptive uses without notice and a hearing wherein the Council would consider the individual needs of the user and the probable impacts under individual circumstances. Although as indicated in Part IV of this letter we seriously doubt that the Council has such power, we offer these alternatives, on the purely hypothetical assumption such power exists, because such alternatives are likely to remove the aggrievement which Iowa Power and its customers would suffer from implementation of the rules.

Considerations of fundamental fairness would dictate that the same exception from the definition of "consumptive use" of water accorded by subrule 2.1(30) to "municipal" and "municipal-type" uses be extended as well to uses for cooling purposes in electric generating plants (or at least in electric generating units in existence and operation on the effective date of the rules).

The result achieved by the adopted rules creates an invidious and inflexible prohibition on the consumptive use of water which reserves no discretion in the Water Commissioner or the Council to allow such use, even in the face of compelling need, public emergency, or other drastic consequence. If the blanket exception from the definition of "consumptive use" urged by Iowa Power is not established, then at the very least basic considerations of fairness would demand a modification to the rules to allow withdrawals for consumptive use by electric generating plants in a situation similar to that of the Des Moines Power Station at times when withdrawals for consumptive use would otherwise be prohibited under the rules, while at the same time giving authority to the Water Commissioner to curtail or terminate such electric generating plant withdrawals if a contrary compelling public need arises. Such a provision could state as follows:

> "Withdrawals of water for consumptive uses by electric generating units in operation on or before July 5, 1978 from streams draining fifty (50) or more square miles as set forth in 3.4(2), and from unconsolidated aquifers adjacent to streams draining fifty (50) or more square miles as provided in 3.5(2), shall not be subject to the restrictions imposed by 3.4(2) or 3.5(2) upon withdrawals of water for consumptive uses, provided that the Water Commissioner may restrict or curtail such withdrawals at such times as compelling and immediate considerations of public health, safety, or welfare demand such restriction or curtailment."

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There may well be instances where legitimate emergency conditions will commend withdrawal of water by permittees, in the overall best interests of public health, safety, and welfare, even though the flow may have fallen below the minimum flow level at which withdrawals for consumptive use are permitted under the rules. Since the rules as adopted allow no latitude on the part of the Water Commissioner or the Natural Resources Council to grant an exception in any such instance, those officials can be required to abide by the Council's own rules even though those rules impair or defeat the public good in the given emergency situation. The rules are in need of a "safety valve" provision of such a nature to insure that, under the exigencies of an unusual situation, the rules serve to protect rather than defeat the public interest.

VI. CONCLUSION.

In view of the considerations set forth in this letter, we respectfully urge the Committee to object to the newly adopted rules 580-3.4 and 580-3.5 and subrule 2.1(36) as unreasonable, arbitrary, capricious, and otherwise beyond the authority delegated to the Council, in the respects and for the reasons set forth in Part IV of this letter.

Iowa Power and Light Company wishes to thank the Committee for affording it this opportunity to comment on these proposed rules of the Iowa Natural Resources Council.

RE: New Rules 580-3.4 and 580-3.5 and Subrule 2.1(36) of the Iowa Natural Resources Council, adopted May 2, 1978

Dear Committee Members:

By way of supplement to my letter on behalf of Iowa Power and Light Company to the Iowa Administrative Rules Review Committee dated June 5, 1978, concerning the above rules, I wish to make the following clarifying changes in that letter:

> Substitute the following for the words "Chapter 455A, Code of Iowa, 1977" both in numbered item (5) on page 11 and in the twelfth line on page 12:
>
> "Iowa's water rights law, Chapter 229, Acts of the 57th General Assembly, 1957 (i.e., prior to May 16, 1957)"

Your attention to the serious concern which Iowa Power and Light Company has expressed regarding the above rules will be appreciated.

Following is the Natural Resources Council's response to the Iowa Power and Light Company letter:

Dear Committee Members:

The purpose of this letter is to address the issues raised by Mr. Ed L. Birdsall, Vice President, Iowa Power and Light Company (Iowa Power), in his June 5, 1978, letter (hereinafter: Iowa Power letter) to the Administrative Rules Review Committee. This letter does not constitute a response to the "Request for Statement" submitted on May 31, 1978, to the Iowa Natural Resources Council (Council) by Iowa Power pursuant to the provisions of Section 17A.4(1)(b) of the Code. A response to Iowa Power's "Request for a Statement" is in preparation.

I. PROJECTED EFFECTS OF THE NEW RULES ON OPERATION OF THE DES MOINES POWER STATION.

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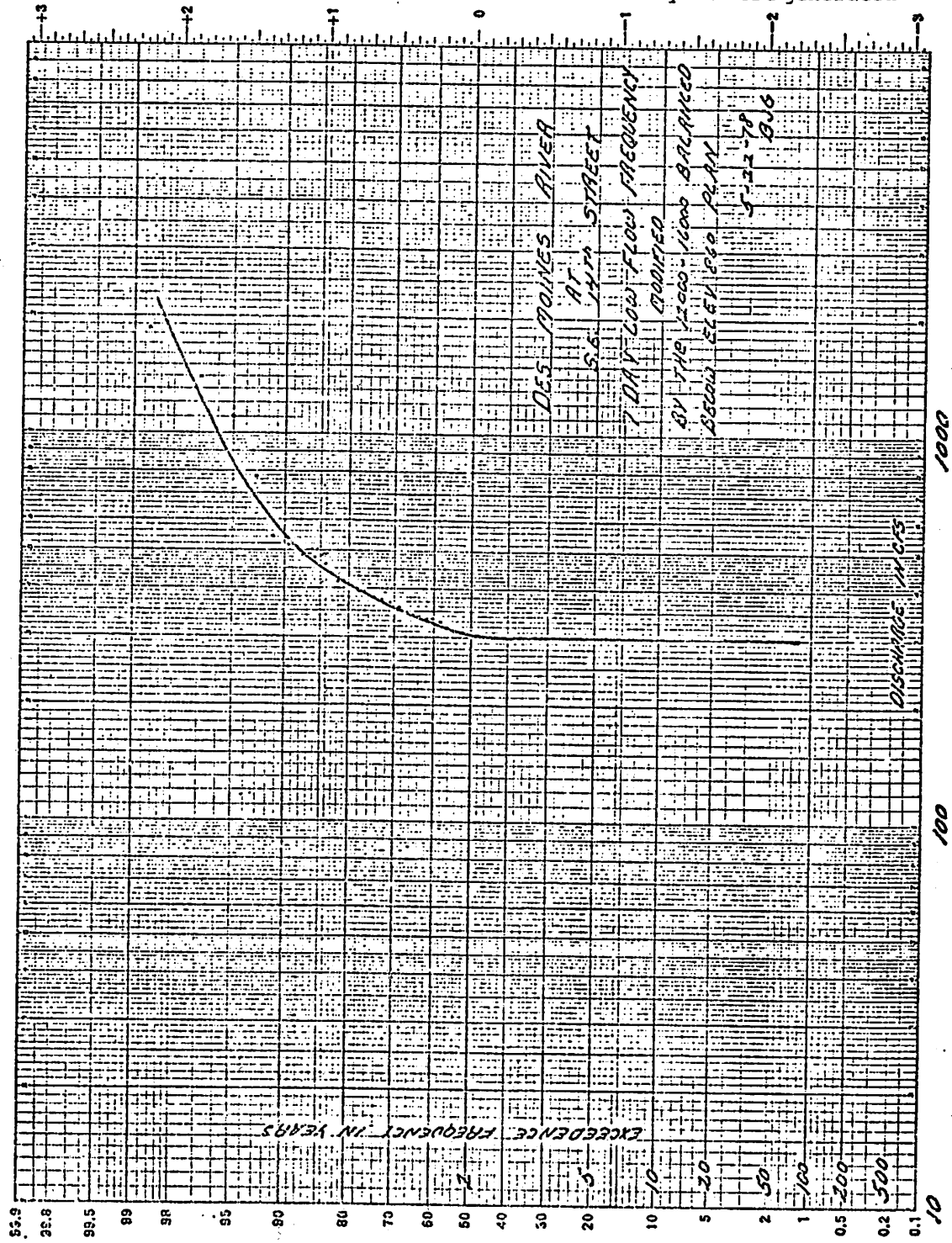
On pages 6-8 of the Iowa Power letter, it is contended that rules 3.4 and 3.5, which set a protected flow of 300 cubic feet per second (cfs) in the Des Moines River at the 14th Street gage, will have the effect of shutting down the Des Moines Power Station in late summer and in winter months at times when power demand is at its peak. To support its contention, Iowa Power cited flow data for the period October 1, 1975, to March 31, 1978. The flow data cited by Iowa Power were based upon conditions of natural streamflow during a severe drought and during the initial filling of the Saylorville Reservoir. These data have little, if any, relevance to future low-flow conditions at the 14th Street gage since the streamflow at this gage is now regulated by operation of the reservoir.

The attached graph, prepared by the Rock Island District of the U.S. Army Corps of Engineers, depicts the frequency of exceedence for low-flows of seven-days duration in the Des Moines River at the 14th Street gage as regulated by operation of the Saylorville Reservoirs. The data used in this statistical analysis were generated



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by computer simulation of the operation of Saylorville Reservoir for fifty-four years of streamflow records (water years 1922 through 1975, inclusive). This graph indicates that, though the lowest average flow for a period of seven consecutive days may reach 300 cfs as frequently as once in two years, the seven-day duration low-flow should not be less than 300 cfs for droughts with a frequency as extreme as once in nearly 100 years.

The Iowa Power letter also ignores the effect of the discharge of treated effluent from the Des Moines waste water treatment plant to the Des Moines River downstream of the 14th Street gage and upstream of the Des Moines Power Station. The flow of the Des Moines River at the Des Moines Power Station will be about 60 cfs higher than at the 14th Street gage because of this effluent discharge. This further reduces the likelihood of interruption of the operation of the Des Moines Power Station.

In short, the Corps of Engineers has projected that the controlled release of water from Saylorville Lake will assure a flow of 300 cfs in the Des Moines River at the 14th Street gage except during disastrous droughts, and the flow at the Des Moines Power Station withdrawal point will be further augmented by effluent discharge by the City of Des Moines. On May 2, 1978, when the Council adopted the challenged rules, Iowa Power representatives were advised that a variance allowing continued operation of the Des Moines Power Station during a period of low streamflow could be provided in the most appropriate manner pursuant to the governor's power to suspend agency rules after proclaiming a drought disaster emergency. Given the Corps of Engineers' projected frequency with which the Des Moines River flow is expected to fall below 300 cfs at the 14th Street gage, the augmentation of the flow downstream from the gage resulting from effluent discharge, and the emergency powers available to the Governor, it does not appear that the challenged rules will force shutdown of the Des Moines Power Station at any time.

II. RESPONSE TO THE REASONS FOR SPECIFIC OBJECTIONS REQUESTED BY IOWA POWER.

Pages 10 to 13 of the Iowa Power letter list specific objections the utility has to the water withdrawal rules. These Iowa Power objections relate to the following two general aspects of the water withdrawal rules: (A) the provisions of subrule 2.1(36) that exempt "municipal and municipal-type" water use from the definition of consumptive use; and (B) the provisions of rules 3.4 and 3.5 that prohibit water withdrawals from streams and adjacent unconsolidated aquifers when streamflows fall below minimum protected flows. The Council staff's response to these two aspects of the rules follow.

A. Response to Objections Concerning the Exemption of "Municipal" and "Municipal-type" uses from the Council's Definition of "Consumptive Use."

Iowa Power in its letter to the Committee has alleged that the "consumptive use" definition promulgated by the Council in subrule 2.1(36) discriminates against non-municipally owned power generating facilities by excluding municipal power companies from the consumptive use category.

While the Council has not by rule adopted definitions of "municipal" and "municipal-type" use, these two terms are employed to describe uses of water associated with a centralized water withdrawal and distribution system supplying water primarily for ordinary domestic purposes (including livestock watering). "Municipal-type", as distinguished from "municipal", properly applies to the centralized distribution system of an unincorporated village, subdivision, mobile home park, etc.

Accordingly, the only power-generating facilities whose water use can properly be included within the scope of municipal or municipal-type permits are power generating facilities which obtain their water from a municipal or municipal-type water system. All power-generating facilities having their own water supply systems are properly classified as industrial users whether or not they are municipally owned. For example, the City of Waverly presently withdraws water pursuant to two permits granted by the

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Council. Iowa Water Permit #1938-R1 authorizes withdrawals of water from wells for industrial purposes (supplying cooling water to the municipal electric generating plant). Iowa Water Permit #2222-R1 authorizes withdrawals from wells for municipal purposes (supplying water through Waverly's municipal water distribution system to homes and businesses).

The Council's rationale for excluding "municipal" and "municipal-type" uses from the category of consumptive use as defined in subrule 2.1(36) is two-fold. First, municipal and municipal-type permittees supply water primarily to households which, if they had individual wells, would be classified by Section 455A.1 of the Code as non-regulated uses. It is the Council's position that Chapter 455A mandates that permittees supplying water for ordinary domestic and livestock use be accorded priority over industrial and irrigation users in situations where demand exceeds water availability. Second, most municipal permittees which withdraw water from rivers or from alluvial groundwater sources adjacent to rivers return comparable volumes of treated waste water to the same rivers. Generally, water sales to industrial customers for consumptive uses account for a small part of the total water use by municipal water systems.

B. Response to the Iowa Power Objections to the Rules Concerning Establishment and Implementation of Protected Flows.

Four types of objections have been raised by Iowa Power to the protected flow rules. These are as follows:

1. The protected flow rules are unreasonable because they prohibit water withdrawal without prior notice and hearing (see Iowa Power letter, page 11, paragraph 1 and page 12, paragraph 2);

2. The protected flow rules are unreasonable because they lack a variance clause that would allow suspension of the protected flow restrictions on utilities in times of water shortage (see Iowa Power letter, page 11, paragraphs 6 and 7);

3. The protected flow rules are beyond the scope of the Council's authority provided in Chapter 455A (see Iowa Power letter, page 1, paragraph 2); and

4. The protected flow rules are a taking of property without compensation because they do not reasonably accomodate the vested rights of Iowa Power (see Iowa Power letter, page 11, paragraphs 4 and 5).

The Council believes that these rules are not unreasonable, do not involve a taking of property rights, and are not beyond the scope of its authority as alleged by Iowa Power. The bases for the Council's beliefs are discussed below.

1. Notice and Hearing Objection.

Iowa Power claims that an objection is warranted because the protected flow rules "impose flat prohibitions on withdrawals of water for consumptive uses upon the occurrence of certain flow levels without notice and hearing and without consideration of the individual needs of particular permittees or the impacts which such particular uses or the denial thereof will have." (See Iowa Power letter, page 11, paragraph 1.)

This objection is an apparent confusion of the notice and hearing requirements imposed by both Chapter 455A and the contested case provisions of the IAPA when the Council considers a water permit application with the notice and hearing requirements imposed by the IAPA rulemaking provisions. The former notice and hearing requirements are triggered before a water permit can be granted, modified, or renewed by the Council. There are different notice and hearing requirements imposed by the IAPA on rulemaking proceedings which have been complied with in promulgating the water withdrawal rules. A hearing was held on the water withdrawal rules on May 1 at which utility companies, including Iowa Power,

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made presentations and, in response to which, the Council modified its rules.

Iowa Power presently has an application pending before the Council on which a determination has not yet been made. Iowa Power has applied for modification of its Iowa Water Permit #117-R1 which presently authorizes withdrawals of water for operation of the Des Moines Power Station. Notice of public hearing of this contested case proceeding has been scheduled for publication on June 9 and 16. The public hearing will be held on June 28. Iowa Power has been provided notice of the hearing and will have ample opportunity to show its particular needs.

2. Lack of Variance Objection.

On page 11, paragraphs 6 and 7 of the Iowa Power letter, an objection is requested because a variance provision is not provided for in the rules. At the May 1 hearing on these rules utility representatives made a similar request for a variance provision. The Council responded to that request by letting the minutes of the meeting show that protected flow restrictions on withdrawals would be suspended pursuant to a drought disaster emergency proclamation by the Governor.

A drought disaster emergency proclamation was issued by the Governor last summer. As a result of that proclamation, Iowa Power was not ordered to stop pumping from the Des Moines River even though the flow levels were below the protected flow. Thus, the Council's approach has precedent. It also strikes a balance between water needs for generation of electricity and water needs for downstream withdrawals (e.g. public water supplies and non-regulated riparian users) and for in-stream uses including fish and wildlife, waste load assimilation, and recreation and aesthetics.

At the May 1 hearing, the utility representatives expressed the opinion that a variance granted pursuant to a disaster proclamation was inadequate. They reasoned that a variance granted under a governor's emergency proclamation without explicit rules authorizing a variance would leave the utilities and Council susceptible to attack by third parties because the variance would be contrary to the Council's new rules. This argument, however, ignores the fact that Section 29C.6(6) of the Code (1977) authorizes the governor to suspend agency rules after he or she proclaims a disaster emergency.

3. Beyond the Scope of Authority Objection.

Iowa Power, on page 12 of its letter to the Committee, has alleged that the Council acted beyond the scope of its statutory authority by adopting protected-flow restrictions which "may flatly prohibit all withdrawals of water for consumptive uses without regard to the individual need or purpose for the withdrawal or impacts of the particular use or denial thereof." The Council denies Iowa Power's allegation and responds that Chapter 455A of the Code directs the Council to establish "average minimum flows" and to condition withdrawals for consumptive uses on the preservation of said flows.

Section 455A.18 provides in pertinent part that upon each application for a permit to withdraw water:

> the council shall cause to be made an investigation of the effect of such use upon the natural flow of such watercourse [and] the effect of any such use upon the owners of any land which might be affected by such use...

Morover, Section 455A.22 provides as follows:

> The water commissioner and the council shall have the authority to issue a permit for beneficial use of water in a watercourse provided the established average minimum flow is preserved. (Emphasis added)

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The "average minimum flow" which Section 455A.22 directs the Council to preserve is further identified in Section 455A.1 (unnumbered paragraph 18) which authorizes the Council "to determine and establish the average minimum flow for a given watercourse at a given point thereon." The protected flows identified in new rule 3.4 are in fact the "average minimum flows" which have been determined and established by the Council.

4. No Reasonable Accomodation of Vested Rights Objection.

On page 11, paragraphs 4 and 5 of the Iowa Power letter, objections are requested because the protected flow restrictions on water withdrawals are made applicable to use of water by electrical generating units "in existence and operation at the present time" and "in existence and operation at the present time belonging to nonmunicipal electrical utilities who have been making similar use on the same property since prior to the effective date of Chapter 455A of the Code 1977" without an exception reasonably accomodating these water uses.

Iowa Power is in essence claiming a "vested right" to use as much water as it needs from the Des Moines River for its existing generating facilities free from the protected flow restrictions required by Section 455A.22. It is Iowa Power's position that imposition of the rules will result in a taking of property without compensation in violation of constitutional provisions.

The Council does not believe that Iowa Power has any such vested right that exempts its existing water uses from the provisions of 455A.22. In addition, the Council believes that a "reasonable accomodation" of Iowa Power's existing water uses is the appropriate subject of the pending contested case proceedings whereby Iowa Power will be granted a water permit for these existing uses under such terms and conditions that the Council feels are equitable in light of all the circumstances, including the needs of other water users on the Des Moines River.

The Council position that Iowa Power's existing water uses are not vested rights is based on its understanding of the common law of water rights and its relationship to Chapter 455A's scheme for regulating water. Under the common law,

> every riparian owner has a right to use the water in the stream as it passes along, and an equal right with those above and below him [or her] to the natural flow of the water in its accustomed channel, without unreasonable detention, or substantial diminution, either in quality or quantity, and none of such owners have the right to use the water to the prejudice of the others, unless such a right has been acquired by license, grant, or prescription.
> Willis vs. City of Perry, 92 Iowa 302 (1894)

This is commonly referred to as the "reasonable use" rule.

When water supplies were inadequate to meet all needs, the common law provided a crude allocation rule based on type of use. If the use was labeled "natural", then all the water in a stream could be used even though it precluded water use by other proprietors. Id. The use of water for natural purposes that involved no waste was per se reasonable. However, only two uses were labeled natural--uses for household purposes and for watering an ordinary number of livestock. Id. at 303.

All water uses not classified as natural were classified as "artificial". These included municipal, industrial, and irrigation uses. Id. at 302, 304. (Under the common law, Iowa Power's use would be classified as artificial.) Water use rights for artificial purposes were subordinate to the water use rights for natural uses. Id. 303. As between two artificial uses, each user had a reasonable use right that was

> determined in view of the size and capacity of the stream, the wants of all other proprietors, the fall of the water, the character of the soil, the number of

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> proprietors to be supplied, and all other circumstances. In no case, however, is reasonable use to be determined in view of the necessities or business of any one proprietor, but the rights of each in the stream for artificial uses are to be determined in view of all of the circumstances as affecting all of the proprietors. Id. at 304.

There was great uncertainty associated with water use rights under this common law reasonable use test.

In 1957, a comprehensive water permit system was enacted. It replaces the common law water rights system for many water users, including Iowa Power at its Des Moines Station. The water permit system, however, does not regulate uses of water for ordinary household and livestock needs, which under the common law were classified as natural uses and enjoyed a priority over all other water uses. This priority was codified in Section 455A.21 of the Code.

Section 455A.21 also prohibits impairment of the "vested rights" of any person. These vested rights, however, are not defined. Because of Chapter 455A's deference to natural uses recognized under the common law and because of the highly uncertain nature of the reasonable use rights afforded to artificial uses under the common law, the Council takes the position that the only vested rights in water use are those associated with the nonregulated natural uses for household and livestock watering.

Substitution of the "beneficial use" and protected flow criteria provided in Chapter 455A for the common law reasonable use test is not so drastic a shift of water allocation rules as to infringe on the reasonable expectations that users of water for artificial purposes had under the common law prior to enactment of 455A. The water rights provisions of 455A are intended to provide an equitable mechanism for allocation of water. Arguably, water users for artificial purposes are better off under an agency-administered permit system than they would be under the common law because an agency, unlike a court, can more readily obtain jurisdiction over all interdependent water users and has a staff with expertise in hydrologic matters and with the capability of developing and implementing comprehensive solutions to regional water problems. In the long run, water rights are more certain under a permit system than under the common law, and the Iowa Power claim that water uses in existence at the time of enactment of 455A are infringed upon is without merit.

Besides asserting a vested right claim, the Iowa Power letter at page 11, paragraphs 4 and 5 also asserts that the protected flow restrictions will not "reasonably accomodate" existing utility water uses unless an exception is provided. This is a premature statement on Iowa Power's behalf. Whether or not the rules provide for a reasonble accomodation of Iowa Power's existing water uses can only be determined after the pending Iowa Power water permit is processed. Rules are promulgated to cover situations of "general applicability" (see section 17A.2(7)) and factors unique to the Iowa Power case will be given due consideration prior to making a determination on its water permit request. Only after such a determination is made can Iowa Power adequately assess whether the Council has provided a "reasonable accomodation" for its existing uses in implementing the protected flow concept. If Iowa Power at that time feels there has been a taking without compensation, then its remedy is a petition for judicial review under Section 17A.19 of the Code on the grounds that the rules as applied infringe on its constitutional rights. Iowa Power's attack of the protected flow rules on their face ignores the fact that the Council is required by Section 455A.22 to implement the concept of protected flow.

III. CONCLUSION

The particular protected flow addressed in Iowa Power's letter is 300 cubic feet per second (cfs) in the Des Moines River at the U.S. Geological Survey gaging station at 14th Street in Des Moines, Iowa. This numerical value is identical to the low-flow augmentation release which the U.S. Army Corps of Engineers will provide

NATURAL RESOURCES COUNCIL Cont'd

from Saylorville Reservoir. The low-flow augmentation releases from Saylorville Reservoir were established with the joint concurrence of the State of Iowa and the federal government.

The promise upon which a protected flow concept is based is that consumptive water users bear the responsibility of either restricting their consumption or developing alternative supplemental water sources to meet their needs during periods of low streamflow. Such a user or group of users should recognize that minimum flows for downstream nonregulated and regulated uses and for in-stream uses must be preserved from artificial depletion. Development of a supplemental water source or acquisition of the right to the use of an existing supplemental water source is the most logical alternative for consumptive users to pursue and one that is given only cursory attention by Iowa Power on page 10 of its letter to the committee.

In conclusion, for the reasons presented in this letter, the rules presently before the Committee are within the authority delegated to the Council and are not unreasonable, arbitrary, or capricious.

General discussion of the water levels of the Des Moines River and the impact on the cities of Des Moines and Ottumwa. The discussion centered around the filling of Saylorville Lake and whether or not this contributed to the low levels on the Des Moines in the past two years. The Committee was informed that Saylorville was filled starting in the fall of 1976.

Schroeder returned.

Kenneth Brown commented that the major reason for building the dam at Lake Red Rock was to cut down the river flow, thus avoiding flooding on the Des Moines River and also, to avoid flooding on the whole Mississippi River system. He noted that both Saylorville and Red Rock Dams serve to avoid flooding. He would like to see the word "reasonable" inserted in the rule and noted that the whole state of Iowa could be faced with blackouts such as the eastern United States has experienced if the rule is enforced.

RECESS

The Committee recessed until 4:50 p.m.

Senator Kelly excused.

The meeting reconvened and Maurice Van Nostrand, Commerce Commissioner, stated they would like other agencies to be aware of the intolerable restrictions being placed on the construction of new power plants. The Commerce Commission would like the rule shelved permanently. He noted that the Commission is making

NATURAL RESOURCES COUNCIL Cont'd

decisions now for eight years hence and he suggested that the implementation of the rule which is proposed would deny the power company the right to serve its customers. In response to a question by Monroe, Van Nostrand advised that the minutes of the Commerce Commission reflect a discussion upon the matter but they do not show a vote. General discussion of the impact, if any, should the rule be delayed. Further discussion of the impact of the rule and Representative Schroeder commented he could not see the advantage in the Council using the figures for the last two years when Iowa was in a drought situation and he considered this arbitrary.

Dougal commented that the Council is aware of the problems being faced and the need for more water storage and more availability. He reminded that the Saylorville Lake will be an available water source in times of low flow on the Des Moines River.

MOTION TO DELAY

Schroeder made the following motion:

Suspend four rules, 2.1(36), 3.4, 3.5 and 3.8 of the Natural Resources Council for seventy days beyond their effective date of July 5, 1978.

VOTING

Short form voting used and the motion carried with 4 aye votes. Kelly absent.

REVENUE

J. Elliott Hibbs, Deputy Commissioner and Carl Castelda, Sales and Use Tax Division, appeared to discuss the follwing:

REVENUE[730] F

Sales and use tax, 11.2, 11.6, 11.10"b", 12.3, 12.6, 12.11, 14.3, 15.1, 15.3(5), 15.13, 15.14, 16.4, 16.7, 16.47(3), 16.47(4), 17.9(2), 17.11, 17.14, 17.15, 18.7(3),18.7(4), 18.8, 18.10(2), 18.11, 18.32—18.35, 19.1(9), 19.3(3), 19.4, 20.1, 26.2(6), 26.7, 26.18, 26.55, 32.1, 34.1	5/17/78
Corporation income tax, 52.4(1)	5/18/78
Franchise tax, Chs 57—60	5/18/78

REVENUE[730] N

Organization, 6.1(2), 6.1(3), 11.1, 12.1, 17.1(14)"c", 20.10, 30.4, 46.3(3)"c", 47.2(1)"a", Ch 63, item 4, also page 2, 91.2, filed emergency	5/17/78

Hibbs noted that rules were adopted and two rules were removed at the request of the Rules Review Committee; one, concerning the sale of businesses and the other, pertaining to electricity used in grain drying. Castelda stated that some of the amendments to the rules were as a result of a public hearing, one specifically requested by the Iowa Taxpayers Association.

Royce's memo pertaining to the sales and use tax was discussed and Royce commented that the rules could be phrased so that people could better understand them.

REVENUE Cont'd

Hibbs responded that the terms are those used in the Code and trying to define the terms could create more problems.

MOTION TO OBJECT

Representative Doyle moved the following objection:

The Committee objects to proposed rule 26.2(6),exempting from sales tax services purchased for resale, on the grounds that it is unreasonable and beyond the authority of the department. Examples b and c modify the subrule by providing that used-car dealers,who sub-contract repair work to third parties, must pay sales tax on the service charge. The rationale for these examples is expressed in b : "[The car dealer]cannot purchase the repair service for resale since he or she is the owner of the automobile and therefore, the consumer of the repair service."

Section 422.42(3), The Code, defines a retail sale as a "sale to a consumer or to any other person for any purpose, other than for processing or for resale of tangible personal property or taxible services...". This section clearly exempts from sales tax services which are intended for resale. The imposition of sales tax upon subcontracted repair service performed upon vehicles held for resale is contrary to the provisions of the Code.

The statement by the department that the dealer is the consumer because he/she is the owner of the vehicle is unreasonable. Webster's New World Dictionary, 2nd ed., defines 'consumer' as: "...a person who buys goods or services for his own needs and not for resale or to use in the production of other goods for resale.". The car dealer is in neither of these catagories, the vehicles are not held for the dealers personal enjoyment and any repair on these vehicles is to render them fit for sale and could not be construed as being used in the production of a product;. The department may not adopt a strained or unusual definition of the word 'consumer' unless such a definition comes from a statute, section 4.1(2), The Code.

Al Kahl, Iowa Automobile Dealers Association, spoke in objection to item 34 pertaining to resale of tangible personal property. Their feeling is that it is not consistent with Iowa law. Small dealers would be faced with excessive hardships. An item that is used to repair an auto for resale should not be taxed in their opinion.

Hibbs replied that it has been the Revenue Department's position in the past that a purchase of service for resale is not possible if the service is not resold--only tangible personal property can be sold, not the service. The department feels there are two separate transactions. The rule assists the public in distinguishing the two. Hibbs urged the Committee not to object to the rule. Discussion of the meaning of the word "consumer".

VOTING

Short form voting used and the motion was adopted with 4 aye votes.

Hibbs advised there were no changes in 52.4(1) and chapters 57-60.

REVENUE Cont'd

Hibbs advised they did not feel public participation necessary since the rules on organization describe the structure of the department and notify the public of the changes made in the department in the last few months.

In response to a question by Doyle, Hibbs advised that the department has very specific confidentiality provisions.

CRIME COMMISSION

CRIME COMMISSION[300] F no rep
Rules, meetings, public information, 1.3, 2.2(2), 3.3 — 5/17/78

Doyle requested Royce to obtain information relative to the makeup of the Task Force on Juvenile Justice, i.e., number of persons on the Task Force, their political affiliation, etc.

TRANSPORTATION

TRANSPORTATION[820] No rep
Safety rules, rescind [07,E] Ch 5, see also filed emergency — 5/31/78

TRANSPORTATION[820] F no rep
Motor vehicle dealers, [07,D] 10.1(4), 10.4(2), 10.4(3) — 5/31/78
Vehicle registration, [07,D] 11.33(1)—11.33(3) — 5/31/78

Monroe expressed an interest in knowing why Transportation rescinded all of the safety rules and Royce replied the rules were placed in another division. Monroe requested the staff to check where the rules were placed.

In checking, Barry and Royce informed the Committee the rules were in 07F, 4.9, and the Transportation Dept. has adopted federal regulations. Royce advised this was because of duplication.

HISTORICAL
NURSING BOARD
PLANNING AND
PROGRAMMING

The following rules were acceptable to the Committee as published:

HISTORICAL DEPARTMENT[490] F
Preservation districts, 12.3(1)"b", "c", 12.3(2)"b"(4), 12.3(4)"a", 12.4(1)—12.4(9) — 5/31/78

NURSING BOARD[590] F
Registered nurse, license reinstatement, 3.3(3)"c" — 5/17/78
Practical nurse, license reinstatement, 4.3(3)"c" — 5/17/78

PLANNING AND PROGRAMMING[630]
Emergency energy assistance program, 17.1, 17.2(2)"b", "c", 17.2(3), filed emergency — 5/31/78

SOCIAL SERVICES
Resumed
MOTION

Doderer moved the following motion:

The Committee objects to paragraph 130.3(1)b, establishing eligibility to receive benefits on a gross income basis, on the grounds it is unreasonable. The Committee notes that the use of gross income as a determinent would not allow an applicant to deduct necessary business expenses from income. As an example, under the rule an impoverished tenant farmer could not deduct from income the cost of renting land, buying seed or purchasing implements. The committee notes that under paragraph 130.3(3)i capital gains are specifically allowed as a deduction from gross income, and believes it unreasonable to allow such a rare deduction, which is generally of benefit to the well-to-do, while not allowing as a deduction the more common business expense.

The Committee also objects to the income levels established in paragraph 130.3(1)b, on the grounds that it is arbitrary. The paragraph establishes different income eligibility levels for different services; and the Committee feels that it is arbitrary to establish 'degrees of neediness'.This objection may be cured by returning to the current paragraph which contains a single income eligibility schedule.

Short form voting requested and the motion carried.

Monroe suggested the Committee authorize Doyle to speak for the Committee to remind the Legislative Council that they will be in charge of the Code Editor's office effective July 1, 1978. [Contingent upon the Governor's approval of S.F. 244]

On motion by Doderer, the Committee adjourned at 5:46 p.m. Next regular meeting to be held Tuesday, July 11, 1978.

Respectfully submitted,

Phyllis Barry

(Mrs.) Phyllis Barry, Secretary
Assistance of Vivian L. Haag

APPROVED:

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CHAIRMAN

DATE_____