DRAFT ATTORNEY GENERAL PROPOSED LEGISLATION
TO END AUTOMATIC TEMPORARY RATE HIKES BY UTILITIES

Section 1. Minnesota Statutes 2008, section 216B.16, subdivision 3, is amended to read:

Subd. 3. **Interim rate.** (a) Notwithstanding any order of suspension of a proposed increase in rates, the commission ~~shall~~ may order an interim rate schedule into effect not later than 60 days after the initial filing date. ~~The commission shall order the interim rate schedule ex parte without a public hearing.~~ An interim rate schedule may only be authorized upon a finding that an immediate and compelling necessity exists for an interim rate increase. Notwithstanding the provisions of sections 216.25, 216B.27, and 216B.52, no interim rate schedule ordered by the commission pursuant to this subdivision shall be subject to an application for a rehearing or an appeal to a court until the commission has rendered its final determination.

(b) ~~Unless the commission finds that exigent circumstances exist, the interim rate schedule shall be calculated using the proposed test year cost of capital, rate base, and expenses, except that it shall~~ If the commission finds that interim rate relief is necessary, the commission may authorize an interim rate schedule under which the utility's revenues will be increased by an amount deemed necessary to prevent injury to the public or utility, not exceeding the amount requested by the utility. Any authorized interim rate schedule may include:

(1) a rate of return on common equity for the utility ~~equal to~~ no more than that authorized by the commission in the utility's most recent rate proceeding;

(2) rate base or expense items the same in nature and kind as those allowed by a currently effective order of the commission in the utility's most recent rate proceeding; and

(3) no change in the existing rate design.

In the case of a utility which has not been subject to a prior commission determination, the commission shall base ~~the~~ any interim rate schedule on its most recent determination concerning a similar utility.

(c) If, at the time of its final determination, the commission finds that ~~the~~ any authorized interim rates are in excess of the rates in the final determination, the commission shall order the utility to refund the excess amount collected under the interim rate schedule, including interest on it which shall be at the rate of interest determined by the commission. The utility shall commence distribution of the refund to its customers within 120 days of the final order, not subject to rehearing or appeal. If, at the time of its final determination, the commission finds that the interim rates are less than the rates in the final determination, the commission shall prescribe a method by which the utility will recover the difference in revenues between the date of the final determination and the date the new rate schedules are put into effect. In addition, when an extension is granted for settlement discussions under subdivision 1a, the commission shall allow the utility to also recover the difference in revenues for a length of time equal to the length of the extension.

(d) If the public utility fails to make refunds within the period of time prescribed by the commission, the commission shall sue therefor and may recover on behalf of all persons entitled to a refund. In addition to the amount of the refund and interest due, the commission shall be entitled to recover reasonable attorney's fees, court costs and estimated cost of administering the distribution of the refund to persons entitled to it. No suit under this subdivision shall be maintained unless instituted within two years after the end of the period of time prescribed by the commission for repayment of refunds.

(e) The commission shall not order an interim rate schedule in a general rate case

into effect as provided by this subdivision until at least four months after it has made a final determination concerning any previously filed change of the rate schedule or the change has otherwise become effective under subdivision 2, unless:

(1) the commission finds that a four-month delay would unreasonably burden the utility, its customers, or its shareholders and that an earlier imposition of interim rates is therefore necessary; or

(2) the utility files a second general rate case at least 12 months after it has filed a previous general rate case for which the commission has extended the suspension period under subdivision 2.