

## DECISION

### BEFORE THE COMMISSIONER OF THE MINNESOTA DEPARTMENT OF COMMERCE

**GRACE ARNOLD, COMMISSIONER**

In the Matter of Update to CIP Policy Guidance  
for Low-Income Programming in  
Multifamily Buildings with 5+ Units

**Issue Date:** March 15, 2022  
**Docket No.** E,G999/CIP-22-41

#### I. PROCEDURAL HISTORY

On July 29, 2021, the Minnesota Department of Commerce, Division of Energy Resources (Department) convened a virtual stakeholder meeting to discuss changes to guidelines for determining the eligibility of multifamily buildings to participate in low-income CIP programs (Multifamily Guidance Document) as required in the Minnesota Energy Conservation and Optimization Act of 2021 (ECO Act).<sup>1</sup> The Department held two subsequent meetings on August 31, 2021 and January 20, 2022 for the purpose of getting informal feedback on development of the updated Multifamily Guidance Document.

On February 18, 2022, Staff of the Minnesota Department of Commerce, Division of Energy Resources (Staff) filed their Proposed Decision (Proposal). The Proposed Decision contained Staff's recommended updated Multifamily Guidance Document.

On March 4, 2022, the Department received comments on Staff's Proposal from Xcel Energy, Minnesota Power, and CenterPoint Energy. The Department received comments filed jointly, from Fresh Energy, Natural Resources Defense Council (NRDC), Minnesota Housing Partnership (MHP), and Community Stabilization Project (CSP) on March 7, 2022.

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<sup>1</sup> Minn. Stat. 216B.2403 subd. 5(e).

## II. BACKGROUND

The ECO Act was signed into law by Governor Tim Walz on May 25, 2021 and was enacted the next day.<sup>2</sup> The ECO Act primarily serves to modernize Minnesota's Conservation Improvement Program (CIP) to provide a more holistic approach to energy efficiency programming. The ECO Act was the result of multiple years of stakeholder discussion and development. Notable highlights of the ECO Act include: providing participating electric and natural gas utilities the opportunity to optimize energy use and delivery through the inclusion of load management<sup>3</sup> and efficient fuel switching programs<sup>4</sup>; raising the energy savings goals for the state's electric investor owned utilities (IOUs);<sup>5</sup> more than doubling the low-income spending requirement for all IOUs;<sup>6</sup> providing greater planning flexibility for participating municipal and cooperative utilities (COUs);<sup>7</sup> and including activities to improve energy efficiency for public schools.<sup>8</sup>

Given the significance and complexity of some of the changes brought about by the ECO Act, the legislation instructs the Department to work with stakeholders to develop guidance in several areas. This Decision concerns guidelines for utilities to use to determine the eligibility of multifamily buildings to participate in CIP low-income programs.

## III. COMMENTS BY INTERESTED PARTIES

By the end of the comment period on March 4, 2022, the Department received comments on Staff's Proposal from Xcel Energy, Minnesota Power, and CenterPoint Energy. The Department received comments filed jointly, from Fresh Energy, Natural Resources Defense Council (NRDC), Minnesota Housing Partnership (MHP), and Community Stabilization Project (CSP) on March 7, 2022.

The Commissioner thanks those organizations who participated in the virtual stakeholder meetings and those that submitted written comments.

### *XCEL ENERGY*

Xcel Energy expressed support for Staff's Proposed Decision. Xcel Energy also expressed enthusiasm for the inclusion of geographical proxy methods as an additional eligibility method.

### *MINNESOTA POWER*

Minnesota Power expressed support for Staff's Proposed Decision. Minnesota Power also expressed enthusiasm for the inclusion of additional eligibility methods.

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<sup>2</sup> [Minnesota Energy Conservation and Optimization Act of 2021](#)

<sup>3</sup> See Minn. Stat. § 216B.241, subd. 13.

<sup>4</sup> See Minn. Stat. § 216B.2403, subd. 8.

<sup>5</sup> Minn. Stat. § 216B.241, subd. 1c(b).

<sup>6</sup> Minn. Stat. § 216B.241, subd. 7(a).

<sup>7</sup> Minn. Stat. § 216B.2403, subd. 3.

<sup>8</sup> See Minn. Stat. §§ 216B.2403, subd 3(j) and 216B.241, subd. 2(i).

### **Eligibility for properties under construction**

CenterPoint Energy pointed out that the guidance does not differentiate between existing multifamily projects, and new construction multifamily projects (i.e. properties that are not already occupied). In Staff's Proposed Decision, the explanation of the scope of the guidance (described in the section titled "Low-income Occupancy Threshold of 66 Percent of Units in a Building") only describes buildings that are already occupied:

For CIP low-income spending, buildings with five or more units must have at least 66 percent of the units occupied by low-income households.<sup>9</sup>

However, utilities offer CIP Programs, such as CenterPoint Energy's Energy Design Assistance ("EDA") program, which work with new construction properties for both market rate projects and a low-income spending participation. As the guidance is currently worded, utilities cannot use the definition of occupancy or occupied to qualify a property that is under construction. CenterPoint Energy further explains that for such cases, utilities have collected documentation to provide evidence that the property will be occupied in the future by low-income occupants. CenterPoint Energy asks the Department to provide inclusive CIP low-income spending guidance for multifamily properties or asks for a section to be added which provides specific CIP low-income spending multifamily qualification guidance for new construction programs.

### **Geographical proxy method**

CenterPoint Energy also pointed out that in the Geographical Proxy method section, Staff's Proposed Decision contains the following statement:

The approach has the potential to be highly beneficial to utilities because it would not require utilities to locate any documentation about individual buildings.<sup>10</sup>

CenterPoint Energy requests that the Department add "income" after the word "any" in the above sentence. Utilities are not required to locate any income documentation about individuals in the buildings, but they must have accurate documentation about the building.

### **Commissioner's Determinations**

The Commissioner agrees with both of CenterPoint Energy's comments and appreciates that the Company has pointed these out. The final version of the Multifamily Guidance Document addresses these items. The Commissioner further notes that the Multifamily Guidance Document requires utilities to consult with Staff when using the geographical proxy method. The consultation process will allow for additional details to be identified and clarified so that future versions of the Multifamily Guidance Document can be improved.

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<sup>9</sup> January 31, 2022 Proposed Decision in this Docket, page 4 of attachment.

<sup>10</sup> January 31, 2022 Proposed Decision in this Docket, page 10 of attachment.

*JOINT FILERS: FRESH ENERGY, NATURAL RESOURCES DEFENSE COUNCIL (NRDC), MINNESOTA HOUSING PARTNERSHIP (MHP), AND COMMUNITY STABILIZATION PROJECT (CSP)*

The Joint Filers expressed general support of Staff's Proposed Decision. They also expressed that they were satisfied with the stakeholder input process and felt that the structure and pace of meetings supported an equitable process for participation.

**Adopt a mechanism to ensure long-term affordability and stabilize rent costs**

The Joint Filers state that often energy efficiency improvements to a building increase the market value of the building, which in turn may incentivize a building owner or manager to increase rents to reflect the market value. The Joint Filers expressed that it is important to consider strategies to prevent unintended increased housing cost burdens to renters, particularly those in under-resourced communities, and for whom the low-income CIP program is meant to serve. The Joint Filers suggest that the Department adopt a mechanism to ensure long-term affordability and stabilize rent costs for renters in buildings that receive energy efficiency upgrades and improvements through low-income CIP spending or other financial mechanisms (e.g. a low-income CIP financial incentive). One mechanism may be requiring the property owner provide the Department a written letter of commitment that they will keep rents stable for a minimum of two years.

**Commissioner's Determinations**

The Commissioner shares the concerns of the Joint Filers but believes that the risk of increased rents or displacement is mitigated because the guidance leverages other well established affordability programs. All the methods that make use of affordable housing subsidies require a long-term commitment to affordability and the Weatherization Assistance Program contains a provision for making agreements with property owners. The only methods that do not include such mechanisms are the Tenant-based Section 8: Housing Choice Vouchers (HCV) and the Geographical Proxy methods. The proposed Multifamily Guidance Document requires utilities to consult with the Department if they plan to use those methods in order to allow the Department to track how often these methods are used, where they are used, and whether there are risks of negative consequences. At this time, the Commissioner believes that the proposed Multifamily Guidance Document balances the parties desire to avoid administrative burdens and explore additional methods. The Commissioner expects that the Joint Filers' concerns and suggestion will be included in discussions around subsequent revisions to the Multifamily Guidance Document. Placing a requirement on all low-income programs and investments that might be included in a future low-income financial mechanism is out of the scope of this docket.

**Identify the number and demographics of those that continue to be underserved**

The Joint Filers stated that qualifications based solely on income do not capture all those who need assistance. They explain that it is important to also identify the number and demographics of participants that are served by income-qualified programs, along with the number and demographics of those that continue to be underserved.

**Commissioner's Determinations**

The Commissioner acknowledges this nuance and this short-coming of means tested approaches. The CIP low-income programs are a single component in Minnesota's energy efficiency and anti-poverty efforts, and they are designed to work alongside the WAP and Low-Income Home Energy Assistance Program (LIHEAP), which also serve very low-income customers. The Department has also approved low-income CIP programs designed to reach customers with incomes higher than the WAP and LIHEAP thresholds but still reasonably considered low (at 300% of the federal poverty rate). The Commissioner is confident that all the interested parties in this process will consider the full range of low-income customers as they continue their work.

### **Require that a portion of programs be reserved for very low-income properties**

The Joint Filers recommend that the Department explore requiring a portion of the program be targeted to and/or reserved for a subset of very low-income properties. They state that there needs to be a better understanding of where low-income CIP program dollars are currently going, an assessment of the gaps, and then a plan to target programs to serve the buildings and residents most in need within under-resourced communities (e.g., 50% AMI, the most-energy burdened areas, etc.). They state that they are happy to provide examples of similar programs and engage in further discussions on this topic.

### **Commissioner's Determinations**

One of the purposes of the Multifamily Guidance Document is to remove administrative burdens by not requiring utilities to handle financial information and by allowing multiple eligibility methods. Requiring utilities to work with property owners to determine the income range of occupants or the proportion of units funded by different housing subsidies would run counter to the purpose of the Multifamily Guidance Document. While the Commissioner shares the general concerns of the Joint Filers and welcomes hearing the Joint Filers suggestions, the Commissioner believes that the suggested action is outside of the scope of this docket.

### **Reporting Data**

The Joint Filers request "data transparency and reporting for this program with information disaggregated by race and income, as well as detailing households, units and number of properties served, and eligibility category information".

### **Commissioner's Determinations**

Decisions about specific CIP programs are stated in filings associated with those programs. This docket is concerned with guidance that can be applied in any program when multifamily properties are concerned. In the recent Decision regarding modification to low-income programs, the Commissioner made the following determination about reporting requirements:

The Commissioner finds that more discussion is needed later this year to determine the type and granularity of data that would be both useful and reasonable to obtain from the utilities and to outline a process to efficiently collect such data. Therefore, during second quarter of 2022, the Commissioner directs Staff to work with Fresh Energy, the utilities, and other stakeholders to map out the CIP 2024- 2026 financial incentive process, including what data would be most helpful to inform the consideration of a low-income shared-savings mechanism.<sup>11</sup>

While the language above mentions the financial incentive process, the Joint Filers can be confident that they will be invited to participate in future conversations about data reporting for low-income programs, including what data are feasible and meaningful.

### **Eligibility threshold of at least 66% of units being income-qualified**

The Joint Filers request that the Department consider whether the low-income eligibility threshold of at least 66% of units being income-qualified is an appropriate threshold. They suggest that other terms, such as "the majority," or "51% of the units," may be more appropriate to allow for greater participation in low-income CIP programs.

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<sup>11</sup> January 31, 2022 Decisions in Dockets 20-473, 20-475, and 20-479. Vary similar language is also included in the January 31, 2022 Decisions in Docket 20-478.

### **Commissioner's Determinations**

The Commissioner supports Staff's Proposal as it is currently stated. Requiring a threshold of 66% mirrors the approach of WAP which the Department considers a well-established, rigorous program. The Commissioner is open to considering this topic when future revisions to the Multifamily Guidance Document are made.

#### **IV. DECISION**

The Commissioner supports Staff's analysis and appreciates their efforts in drafting therecommended guidance concerning eligibility of multifamily properties in low-income CIP programs. The Commissioner also acknowledges and appreciates the efforts of stakeholders in participating in the working group and developing detailed and thoughtful written comments in response to Staff's Proposal. The Commissioner also appreciates that the Joint Filers were satisfied with the stakeholder input process and felt that the structure and pace of meetings supported an equitable process for participation.

The Commissioner approves the following Multifamily Guidance Document that incorporates changes addressing CenterPoint Energy's comments. The Multifamily Guidance Document is shown here with redlining to indicate these changes. A clean version will be posted on the Department webpage for reference.

*BY ORDER OF THE COMMISSIONER*



Grace Arnold, Commissioner  
Minnesota Department of Commerce

**CIP Policy Guidelines:  
Low-Income Programming in Multifamily Buildings with 5+ Units  
March 15, 2022**

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## OVERVIEW

Minnesota Statutes set minimum spending requirements on low-income programs for all utilities that are required to deliver Conservation Improvement Program (CIP) programs. The minimum spending requirements are summarized as follows:

### Low-Income Spending Program Requirements (% of most recent 3-year average gross operating revenue from residential customers in MN)

	IOUs		COUs	
	Electric	Gas	Electric	Gas
Beginning 2022	0.4%	1.0%	0.2%	0.2%
Beginning 2024	0.6%	1.0%	0.2%	0.2%
Citation	MN Stats § 216B.241 subd. 7		MN Stats § 216B.2403 subd. 5	

Minnesota Statutes § 216B.2402 subdivision 19 defines a “multifamily building” as “a residential building containing five or more dwelling units.” Section 216B.2403, subdivision 5(e) requires that the Commissioner of the Department of Commerce develop and establish guidelines for determining the eligibility of multifamily buildings to participate in energy conservation programs provided to low-income households. Section 216B.2403 subdivision 5(e) also provides that “[n]otwithstanding the definition of low-income household in section 216B.2402, a . . . utility or association may apply the most recent guidelines published by the department for purposes of determining the eligibility of multifamily buildings to participate in low-income programs.” Meaning, the eligibility guidelines for multifamily buildings can differ from the definition of low-income household in section 216B.2402.

Section 216B.2403, subdivision 5(e) also requires that the commissioner convene a stakeholder group to review and update these guidelines by August 1, 2021, and at least once every five years thereafter. The stakeholder group must include but is not limited to representatives of public utilities; municipal electric or gas utilities; electric cooperative associations; multifamily housing owners and developers; and low-income advocates.

The Department of Commerce (Department) convened a stakeholder meeting on July 29, 2021 and held two subsequent meetings on August 31, 2021 and January 20, 2022 for the purpose of getting informal feedback on updates to the previous version of this guidance document published on August 3, 2012. Notice of the initial stakeholder meeting was delivered to all of the Department’s CIP utility contacts and to subscribers to the Department’s CIP electronic newsletter. Invitations to the subsequent two meetings went to those that attended the first meeting and individuals that contacted the Department independently requesting to receive notice of subsequent meetings. The Department published a formal proposed guidance document on its public docket system on <date TBD> and received comments through <date TBD>. As of <date TBD>, this document is the current guidance document. The Department will convene a stakeholder group to update this guidance document by August 1, 2026, notwithstanding subsequent legislation or actions that supersede the requirement to do so in § 216B.2403, subdivision 5(e).



## BACKGROUND

### *ADMINISTRATIVE EFFICIENCY AND SHARED BENEFITS*

The purpose of this guidance is to support the administrative efficiency of utility CIP programs. This guidance describes several methods that utilities and CIP program administrators can use to verify that a reasonable threshold of units in a building is occupied by low-income households without the need to handle tenant personal and financial information. A multifamily building that is considered low-income according to any of the eligible methods, may be considered low-income within the context of a utility's CIP portfolio and associated CIP energy savings, spending, and participation achievements.

MN Statutes § 216B.2402 subdivisions 16 and 17 express an intent for low-income customers and low-income renter households to share in the benefits of energy efficiency measures. Low-income programs are defined as “energy conservation improvement and efficient fuel-switching programs that directly serve the needs of low-income households, including low-income renters.”<sup>12</sup> In the multifamily market sector, substantial energy efficiency investments, by their nature, need to involve the property owner(s) and/or manager(s). In many cases energy efficiency measures require that these parties coordinate access to buildings and individual units, authorize work on whole-building mechanical systems, and contribute to the cost of measures. Therefore, many multifamily CIP programs are directed at this audience and offer rebates to the property owner. To ensure that low-income households will share in the benefits of these investments, the methods outlined in the guidance document leverage existing affordable housing or other income eligible programs that by their nature include a commitment on the part of the property owner to long-term affordability of a property. Even if the specific households that are occupying the property at the time that the energy efficiency measures are installed do not enjoy the full lifetime of the measures, future low-income households will. Also, for this reason, utilities and property owners may require that energy efficiency investments and improvements made through CIP programs stay with the building regardless of resident turnover. It is also often the case that building occupants may not pay the utility bill associated with the energy efficiency measures that are installed. While building occupants may not experience direct utility bill savings, they will benefit from the improved comfort and durability that often accompany energy efficiency measures. Therefore, the Department believes that a property owner's commitment to long-term affordability of a property demonstrates an intention to share the benefits of energy efficiency investments with building residents.

### *LOW-INCOME OCCUPANCY THRESHOLD OF 66 PERCENT OF UNITS IN A BUILDING*

While there are several definitions of multifamily depending on the context, this guidance applies to multifamily properties that contain five or more housing units.<sup>13</sup> This guidance is based on demonstrating that a threshold of units in a single building is occupied by low-income households. For CIP low-income spending, buildings with five or more units must have at least 66 percent of the units occupied by low-income households. [For buildings still under construction, 66 percent of units must be intended for occupancy by low-income households.](#) If a building meets this threshold of occupancy by low-income households, 100 percent of the building can be considered low-income within the context of a utility's CIP portfolio and within a utility's associated CIP energy savings, spending, and participation achievements.

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<sup>12</sup> Minnesota Statutes § 216B.2402 subd. 17

<sup>13</sup> Utilities may have more specific program eligibility requirements. For example, some utilities may require that multifamily buildings have a common corridor in order to target a program to a specific type of building (e.g., apartment style buildings versus townhomes).

## *INCOME LIMITS*

Income eligibility within this guidance can differ from the definition of low-income household in MN Statutes § 216B.2402 (i.e. 60 percent of state median income). There are several standards for establishing income eligibility that are used by different programs. This guidance does not choose one definition or create a new definition of low-income. Many income eligibility guidelines are based on state median income (SMI), area median income (AMI), and federal poverty guidelines, and are adjusted for family size so that larger families have higher income limits. The Department accepts the following commonly used income eligibility guidelines used by the United States Department of Housing and Urban Development (HUD) as reasonable:

- low-income family: incomes do not exceed 80 percent of AMI
- very low-income family: incomes do not exceed 50 percent of AMI
- extremely low-income family: income does not exceed the higher of federal poverty guidelines as determined by the Department of Health and Human Services or 30 percent of AMI

The Department also finds these additional income eligibility guidelines reasonable:

- 60 percent of SMI used for Energy Assistance Program (EAP) eligibility
- 200 percent of federal poverty guidelines used for WAP eligibility
- 300 percent of federal poverty guidelines, which utilities have used for program eligibility in a few cases

If utilities find cases of income guidelines not listed above or based on a different methodology, they should communicate with the Department to identify potential additions and to improve future versions of this guidance.

## *BUILDINGS VERSUS PROPERTIES*

One of the goals of CIP is to achieve energy savings through actions that have direct, measurable energy savings. For practical purposes, utilities will need to be able to track energy savings to a specific utility meter or account. However, in affordable housing regulation, housing “properties” or “projects” may consist of multiple adjacent or scattered buildings<sup>14</sup>. Utilities will need to be aware of this factor when determining program eligibility to ensure that 66 percent of a building is occupied by low-income households. As utilities and CIP program administrators encounter nuances related to meter arrangements and properties consisting of multiple buildings, they are advised to work with the Department to determine what portion of CIP activities can reasonably be considered low-income and to improve future versions of this guidance.

## *COST-EFFECTIVENESS AND PROGRAM ELIGIBILITY*

Utilities have a responsibility to use CIP funds cost-effectively, to meet all CIP statutory obligations, and to offer a broad enough portfolio of CIP programs so that all customer classes have access to CIP programming. This guidance is not intended to imply that a property owner is automatically entitled to CIP funding if low-income households occupy 66 percent of the units in their property. Utilities may set reasonable program eligibility

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<sup>14</sup> For the purpose of this guidance, the word building is used for readability. Building generally means a single structure. However, there are situations where multiple structures share the same heating, ventilation and air conditioning (HVAC) system; where a single HVAC system serves only a portion of a structure; or where a single HVAC system serves multiple structures. Utilities and CIP program administrators are familiar with appropriate methodologies for designing and documenting energy savings at sites with a variety of metering arrangements. Utilities and CIP program administrators can also work with the Department when questions regarding such methodologies arise. It is not within the scope of this guidance document to define different metering/building arrangements. The intent of the guidance is to communicate that utilities and CIP administrators need to adequately document the proportion of low-income occupants within a defined area for which energy consumption and savings can be calculated by generally accepted engineering methodologies.

guidelines to balance all the priorities listed above. The Department is committed to working with utilities and CIP program administrators toward achieving these goals.

## **ELIGIBLE METHODS**

Utilities may work with property owners and the Department to use one or a combination of the following conditions to demonstrate that low-income households occupy at least 66 percent of units within a building to qualify the entire building as low-income within CIP programs.

### *WEATHERIZATION ASSISTANCE PROGRAM (WAP) DOCUMENTATION*

Guidance: The Weatherization Assistance Program (WAP) has a rigorous process for determining WAP eligibility. For multifamily properties with 5+ units to qualify for building-wide weatherization assistance, WAP requires that a minimum of 66 percent of the residents in the building meet DOE's income requirements of no more than 200 percent of federal poverty guidelines.

Documentation: Utilities may retain a copy of the WAP eligibility confirmation for the property to demonstrate that the building qualifies for low-income spending.<sup>15</sup> The confirmation should not be older than 2 years.

### *LOW INCOME RENTAL CLASSIFICATION (LIRC)*

Guidance: MN Statutes § 273.128 provides that qualifying low income rental properties are eligible for a class rate reduction in property taxes. Property owners apply to the Minnesota Housing for Low Income Rental Classification (LIRC)<sup>16</sup> and MN Housing provides certification of qualified properties to local assessors. MN Housing compiles a LIRC Assessor Report annually of all properties that have LIRC status.<sup>17</sup> The LIRC Assessor Report indicates the portion of low-income units in a property.

Documentation: Utilities may retain a copy of the LIRC Assessor Report with the listed property to demonstrate that the building qualifies for low-income spending.

Some properties listed on the LIRC Assessor Report are composed of multiple buildings. CIP program administrators will need to work with property owners and the Department in such cases to determine methods for documenting the threshold of low-income households in an individual building.

### *USE RESTRICTION DECLARATION*

Guidance: Some affordable housing programs require, as a condition of receiving funding, that the property owner sign a declaration stating that a portion of the units will be rented to tenants that meet income eligibility guidelines. These income eligibility guidelines may be one or a mix of different amounts. Common income eligibility guidelines are based on the state median income (SMI), the area median income (AMI), and the federal poverty rate. This method is likely to be a good option for properties that are still under construction or

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<sup>15</sup> If utilities encounter a case where a property had recently received WAP services, and therefore met the eligibility requirements, but does not have a multifamily weatherization income determination letter, they should contact Department CIP staff.

<sup>16</sup><https://www.mnhousing.gov/wcs/Satellite?cid=1364120490987&pagename=External%2FPage%2FEXTStandardLayout>

<sup>17</sup> Some municipalities have local initiatives for rental properties that include a commitment to affordability and result in these buildings being included on the LIRC Assessor Report. When utilities encounter properties participating in these programs, they should use the LIRC list to document low-income eligibility. Some example programs are City of Minneapolis' 4d Affordable Housing Incentive Program and City of Saint Paul's 4d Affordable Housing Incentive Program: <https://www2.minneapolismn.gov/government/programs-initiatives/housing-development-assistance/rental-property/4d/>, <https://www.stpaul.gov/housing/housing-trust-fund/4d-affordable-housing-incentive-program>.

are not yet occupied. This method is also likely a good option for affordable buildings that do not pay property taxes and thus are not included on the LIRC Assessor Report.

Documentation: Utilities may use copies of a use restriction declaration that lists the income restrictions on a property to demonstrate that a building qualifies for low-income spending. The documentation needs to show the income limits, the number of income-limited units, and the total number of units in the building to demonstrate that at least 66 percent of units are income-limited. If the declaration does not show the total number of units, then the utility needs to collect an additional document (e.g. construction plans, building permit, rental license) that describes the number of units in the building.

There are many documents that might fulfill this eligibility method. A non-exhaustive list of documents generated by Minnesota Housing and other affordable housing financiers include:

- BOND Regulatory Agreement
- CDBG Declaration
- HOME Declaration
- HTC Declaration of Land Use Restrictive Covenant (LURA)<sup>18</sup>
- Livable Communities Grants Affordability Agreement
- Regulatory Agreement on a Mortgage
- Rent and Income declaration
- Repayment Agreement on a Mortgage
- Rural Development – Restrictive Use Covenant
- TIF Declaration
- Greater Minnesota Housing Fund’s NOAH Impact Fund<sup>19</sup>

#### *PUBLIC HOUSING AND PUBLICLY OWNED PROPERTIES*

Guidance: Public housing, affordable housing owned by a government agency, generally does not pay property tax and therefore these properties are not included on the LIRC list. HUD administers federal aid to local housing agencies (HAs) that manage the housing for low-income residents at rents they can afford. Utilities are encouraged to locate the HAs<sup>20</sup> in their service territories.<sup>21</sup> HousingLink’s Streams<sup>22</sup> resource is a searchable database of publicly-funded rental housing in Minnesota.

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<sup>18</sup> A sample Declaration of Land Use restrictive Covenant for Low-Income Housing Tax Credits for 2021 is available from MN Housing at: [https://www.mnhousing.gov/sites/Satellite?blobcol=urldata&blobheadername1=Content-Type&blobheadername2=Content-Disposition&blobheadername3=MDT-Type&blobheadervalue1=application%2Frtf&blobheadervalue2=attachment%3B+filename%3DMHFA\\_246952.rtf&blobheadervalue3=abinary%3B+charset%3DUTF-8&blobkey=id&blobtable=MungoBlobs&blobwhere=1533152628732&ssbinary=true](https://www.mnhousing.gov/sites/Satellite?blobcol=urldata&blobheadername1=Content-Type&blobheadername2=Content-Disposition&blobheadername3=MDT-Type&blobheadervalue1=application%2Frtf&blobheadervalue2=attachment%3B+filename%3DMHFA_246952.rtf&blobheadervalue3=abinary%3B+charset%3DUTF-8&blobkey=id&blobtable=MungoBlobs&blobwhere=1533152628732&ssbinary=true).

<sup>19</sup> <https://noahimpactfund.com/>

<sup>20</sup> Public housing authority (PHA), Housing and Redevelopment authority (HRA), Economic Development Agency (EDA), and Community Development Agency (CDA) are all terms for government agencies granted the responsibility to develop property in their jurisdiction, a portion of which typically includes housing. All three terms may commonly be referred to collectively as PHAs or just housing authorities (HAs).

<sup>21</sup> The U.S. Department of Housing and Urban Development provides a resource to find local PHAs: [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/pha/contacts](https://www.hud.gov/program_offices/public_indian_housing/pha/contacts)

<sup>22</sup> <https://housinglink.org/Streams/>

Documentation: Utilities should work with HAs and the Department to identify appropriate documents to demonstrate that 66 percent of a building is occupied by low-income households. An example of a document that a HA may be able to provide as documentation is a HUD Declaration of Trust<sup>23</sup>.

#### *PROJECT-BASED SECTION 8: HOUSING ASSISTANCE PAYMENT (HAP)*

Guidance: Project-based Section 8 housing is a form of subsidized housing in buildings owned by private property owners where the subsidy stays with the building. The property owner(s) enters into a Housing Assistance Payment (HAP) contract with HUD. The contract requires that a property owner(s) provide affordable housing to low-income families for a certain period of time. Most tenants in this program are charged rent equal to 30% of their household adjusted gross income and the contract provides a subsidy to cover the difference between HUD-approved rents (contract rent) and the amount the tenant is required to pay each month.

Documentation: Utilities may use copies of a project-based HAP contract<sup>24</sup> to demonstrate that a building qualifies for low-income spending. The HAP contract should state the number of affordable units and total number of units in the building.

#### *TENANT-BASED SECTION 8: HOUSING CHOICE VOUCHERS*

Guidance: Tenant-based Section 8 housing is a government-funded program that helps low-income households pay the rent for private, market-rate rental units. Tenants receive a voucher from a local HA which the tenant can bring to a landlord that accepts housing choice vouchers. Tenants generally pay rent equal to 30% to 40% of their household adjusted gross income. The HA pays the remainder of the rent directly to the property owner. HUD provides funds to allow the HAs to administer this program and to make the rental payments on behalf of the tenant. There is a tenant-based HAP contract<sup>25</sup> between the property owner and the HA for each tenant using a housing choice voucher. A tenant-based HAP contract contains personal information about the tenant and therefore should not be used as documentation.

Because a housing choice voucher stays with the tenant and not with the building, tenants may relocate and their unit may subsequently be rented to a new tenant with a housing choice voucher, or it may be rented at market rate to a tenant without a housing choice voucher. A property owner may also choose to stop accepting housing choice vouchers. Therefore, the proportion of units with subsidized rent in a building can change and there is not a long-term commitment of affordability tied to the building. However, Department Staff think it is reasonable to assume that properties with a high proportion of tenant-based HAP contracts will maintain those levels over time. The Department is interested in understanding this approach better but feels that it is important to monitor how often and where it is used.

Documentation: Utilities can ask the property owner and the HA to provide a letter attesting to the total number of units in the building with tenant-based HAP contracts at the time of the property owner's participation in the CIP program. Utilities also need to document the total number of units in the building. Utilities must communicate with Department Staff before using this method of documentation.

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<sup>23</sup> A sample of HUD Forms 52190 is available at <https://www.hud.gov/sites/dfiles/OCHCO/documents/52190.docx>.

<sup>24</sup> Samples of HUD Forms 52522A and 52522B are available at: [https://www.hud.gov/sites/documents/52522A\\_B.PDF](https://www.hud.gov/sites/documents/52522A_B.PDF). Additional HUD forms are available here: [https://www.hud.gov/program\\_offices/administration/hudclips/forms](https://www.hud.gov/program_offices/administration/hudclips/forms).

<sup>25</sup> A sample of HUD Forms 52641 is available at <https://www.hud.gov/sites/dfiles/OCHCO/documents/52641.pdf>.

## MEDICAL WAIVER PROGRAMS

Guidance: The Minnesota Department of Human Services administers a variety of programs that provide housing options for Medicaid-eligible people. Medicaid home and community-based service (HCBS) waivers afford states the flexibility to develop and implement creative alternatives to placing Medicaid-eligible people in hospitals, nursing facilities or Intermediate Care Facilities for Persons with Developmental Disabilities (ICFs/DD).<sup>26</sup> These multifamily housing properties often provide medical and supportive services and are operated by nonprofit organizations.

Documentation: Utilities should work with the property owners and the Department to identify appropriate documents to demonstrate that 66 percent of a building is occupied by low-income households.

## GEOGRAPHICAL PROXY METHODS

Guidance: This method uses Census Tract data as a foundation to identify areas with a high rate of low-income households. Identified Census Tracts may then be expanded or restricted based on additional analysis to target specific populations, such as households with a higher percentage of poverty or renters, and to avoid non-target areas, such as areas with a high concentration of student housing and areas of gentrification. At the time of distributing this guidance document, the Department has approved the use of geographic proxy methods for a few individual utility programs. The approach has the potential to be highly beneficial to utilities because it would not require utilities to locate any **income** documentation about individual buildings. This is a new approach and the Department is interested in understanding it better but feels that more information is needed to provide guidance on a methodology that can be used consistently across utilities, that will be appropriate in both urban and rural areas of the state, and that will not erroneously target student housing and/or promote displacement in gentrifying areas. The Department is also concerned that this method does not require property owners to make a long term commitment to affordability or ensure that residents share in the benefits of energy efficiency investments.

Documentation: The Department is confident in the methodology used by Minneapolis to develop the Green Zones<sup>27</sup> and by the Metropolitan Council to identify ACP50 areas<sup>28</sup>. Utilities should work with the Department on a case by case basis regarding using these or additional geographic methods. This will help the Department learn more about this topic, track the concerns listed above, and prepare for future guidance document updates. A non-exhaustive list of additional potential resources includes:

- Social Vulnerability Index<sup>29</sup>
- Census tracts like Opportunity Zones<sup>30</sup>
- Qualified Census Tracts<sup>31</sup>

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<sup>26</sup> <https://mn.gov/dhs/people-we-serve/people-with-disabilities/services/home-community/programs-and-services/hcbs-waivers.jsp>

<sup>27</sup> <https://www2.minneapolismn.gov/government/departments/coordinator/sustainability/policies/green-zones-initiative/>

<sup>28</sup> ACP50 areas are defined as areas of concentrated poverty where 50% or more of the residents are people of color and at least 40% of the residents are at or below 185% of the federal poverty threshold.

<sup>29</sup> <https://www.atsdr.cdc.gov/placeandhealth/svi/index.html>

<sup>30</sup> <https://mn.gov/deed/business/financing-business/tax-credits/opp-zones/census-opp-zone-tracts.jsp>

<sup>31</sup> [https://www.huduser.gov/portal/sadda/sadda\\_qct.html](https://www.huduser.gov/portal/sadda/sadda_qct.html)

## **NON-ELIGIBLE METHODS**

### *RENT ROLLS*

Guidance: The Department investigated this method and appreciates that it would have minimal administrative burden for property owners. However, the Department determined that the available documentation for rent rolls would not be able to leverage an existing rigorous system and could be easily fabricated. The Department is also concerned that this method does not require property owners to make a long term commitment to affordability or ensure that residents share in the benefits of energy efficiency investments. Therefore, this option is not included as an allowable method in this version of this guidance. This matter can be revisited in the future if energy and affordable housing policy stakeholders find that there is significant untapped potential for delivering energy efficiency due to not including it in this guidance.

/ar

**CERTIFICATE OF SERVICE**

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce  
Decision**

**Docket No. E, G999/CIP-22-41**

**Dated this 15<sup>th</sup> day of March 2022**

**/s/Sharon Ferguson**



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Dave	Reinke	dreinke@dakotaelectric.com	Dakota Electric Association	4300 220th St W Farmington, MN 55024-9583	Electronic Service	No	SPL_SL_CIP SPECIAL SERVICE LIST
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	No	SPL_SL_CIP SPECIAL SERVICE LIST
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