

SolarAttic, Inc.

White Paper

**“The Minnesota Securities Division
& Its illegal rulemaking activities.”**

April 7, 1999

**Copyright 1999
All Rights Reserved**

Table of Contents

Synopsis	1-2
The Good Faith Argument	3
The Independent Disinterested Board of Directors Rule	4
Mr. Rivera’s Illegal Demand Using Rule 2875.3070	4
Minnesota Rule 2875.3070	5
SolarAttic’s Rule 2875.3070 Form of Notice	5
SolarAttic Meets Rule 2875.3070 Requirements.....	5
Analysis of Mr. Rivera’s Illegal Rulemaking	6-7
SolarAttic Stipulation.....	7
Threat To Public Investors Poor Argument	7
A Minnesota Wake-Up Call.....	7
Commerce Attorney—The Attorney General.....	8
Who Protects Small Business?.....	8
A Process That Protects Corruption in Minnesota Government.....	9-11
Commissioner’s Duty & Requirement To Publish All Rules	12
What Is A Rule?.....	12
Exclusions From § 14.02 Subd 4	12
Why Publish All Rules?.....	13
Who Is Responsible?.....	13
Relevant Case Law	14
Other Relevant Law	15-16
Other Unpromulgated Rules & The 1994-1995 Record.....	16
Is An Investigation Warranted?	17
Summary & Conclusion.....	17
 <u>Appendix</u>	
A	How To Contact Author
B	Larkin, Hoffman, Daly & Lindgren, Ltd. Report (April 22, 1996)
C	Communications Log (Supplied as a separate document.)

Synopsis

SolarAttic, Inc (a Minnesota Corporation) was founded as a Christian business named Pool Heat Company in January of 1984 for the purpose of developing a new alternative energy technology that uses hot attic air to heat swimming pools. The Company incorporated itself as Attic Technology, Inc in August 1986. In July 1993, the Company changed its name to SolarAttic, Inc. The Company has been in continuous full time business operations since June of 1985 developing its technology. After acquiring two U.S. Patents, SolarAttic attempted to go public in Minnesota with its stock during 1994. The offering turned out to be an expensive failure.

The principal reason for failure was the Minnesota Securities Division's imposition of illegal unpromulgated rules as "requirements." The Company was only able to get registered after a meeting with the Attorney General's staff and its examination of the unpromulgated rule that limited the company's offering to a 180-day period. This illegal requirement probably still exists today. At the request of an investor, the company's registration documents were examined in 1996 by the law firm of Larkin, Hoffman, Daly & Lindgren, Ltd. They confirmed the imposition of unpromulgated rules and quickly pointed out that there was little recourse against state employees who were acting in "good faith." See Appendix B Report dated April 22, 1996 attached hereto.

However, SolarAttic's DUE PROCESS rights were trampled on and this was pointed out in a petition to the Commissioner of Commerce James E. Ulland. There was nothing done about the illegal rulemaking activities in the Securities Division by the Commissioner. When this became evident, SolarAttic then petitioned both the Attorney General and the Governor. Thus, in 1995, Minnesota's government officials at the highest levels were made fully aware of the illegal rulemaking activities in the State's Securities Division. Still, to date, nothing has been done to stop these illegal activities. In 1994, it wasn't just SolarAttic's rights that were violated. In the process, 32 Minnesota private investors had their due process rights also violated. Plus, over 300 Minnesota investors were denied their rights to invest in SolarAttic's stock.

Fast forward to 1998 and we now find SolarAttic with four U.S. Patents and product in 31 states. The company, desiring to go public to raise expansion capital, again files an offering in

Minnesota. Once again, Minnesota's Securities Division chose to impose illegal rules on SolarAttic's offering. This illegal rulemaking activity denied SolarAttic its due process rights.

One particular demand would require that SolarAttic have an "independent disinterested board of directors." What small company, that has a board of directors, would want board members that are "disinterested" in its growth or future? SolarAttic has been left to assume that this is the proper definition of "disinterested" as the Securities Division in the State of Minnesota has repeatedly refused SolarAttic's request to define the meaning of their demand.

The demand constitutes an illegal requirement by the Securities Division and is clearly an "unpromulgated rule." It is a violation of Minnesota Laws & Rules. It is simply an agency policy forced upon SolarAttic as the Rule of Law by Mr. Robert Rivera. The very Minnesota agency responsible for overseeing and regulating securities are themselves engaged in routinely violating Minnesota law. Over a period of five years, SolarAttic has observed that the Securities Division has engaged in illegal rulemaking activities several times against the company. They have, without question, DENIED SolarAttic its DUE PROCESS RIGHTS. There is no question of the negative impact on SolarAttic's ability to expand its business and add jobs in Elk River.

By preventing small technology companies like SolarAttic from raising equity capital, the Minnesota Securities Division is contributing to the exodus of business. It is a major contributor to the state's "negative business climate." Equity capital is the lifeblood of small technology companies. The proper regulation of securities laws is what keeps technology companies growing. A technology company that has illegal demands imposed upon it by the state regulatory agency regulating its securities will have no choice but to relocate to a more business friendly state. A state with a Securities Division that will actually obey state laws and rules!

On March 10, 1999, the Securities Division issued a DENIAL ORDER. On April 7, 1999, SolarAttic requested an Administrative Court Hearing pursuant to Minn. Stat. § 80A.24.

The Good Faith Argument

In the 1996 review of SolarAttic's 1994-1995 offering attempt, it was clear that the Securities Division engaged in illegal rulemaking activity. This legal conclusion is shown in Appendix B and is summarized as follows:

“Any action for monetary damages against the state or any state agency is limited by the State Tort Act, as contained in Minn. Stat. § 3.736, unless the action is specifically authorized by statute. It does not appear that the actions taken by the Agency with respect to SolarAttic and its IPO fall outside the exclusions under Minn. Stat. § 3.736, Subd. 3; thus, the Agency appears to have no monetary liability to SolarAttic in this matter. SolarAttic does appear to have a valid argument that the Agency engaged in improper rulemaking, at least with respect to the imposition of the 180-day minimum period. However, its sole remedy appears to be in the form of injunctive and/or declaratory relief to the effect that the rule is invalid and may no longer be enforced against SolarAttic. Therefore, while SolarAttic may have a legitimate complaint, it appears that it is essentially left with a cause of action that would be quite expensive to pursue and has little, if any, monetary value.”

Larkin, Hoffman, Daly & Lindgren, Ltd.

The corruption in the Securities Division was fully documented in 1995. Minnesota Officials, at the highest levels of government, were then made aware of this illegal rulemaking activity. These officials included the Commissioner of Commerce Ulland, Attorney General Humphrey and Governor Carlson. Later, in 1996, an investor who had his attorney review our files verified this illegal rulemaking activity. For five years, Mr. Robert Rivera and others in the Minnesota Securities Division of the Department of Commerce have continued to deprive SolarAttic and other small companies of their DUE PROCESS rights.

SolarAttic now wonders why nothing has been done to stop this abuse. SolarAttic also wonders if, after 5 years, there still exists a valid “good faith” argument for this illegal activity by Commerce Department personnel.

The Independent Disinterested Board of Directors Rule

What exactly does it mean to have an “independent disinterested board of directors?” To SolarAttic the term seems like a corporate oxymoron. Does the Minnesota Securities Division have the right to impose such a board of directors on a Minnesota Corporation? In other words, does the Securities Division have the right to dictate the makeup of a Corporation’s Board of Directors? Can they decide who serves on the board? Isn’t this the right of stockholders to determine? How did Mr. Robert Rivera at the Minnesota Securities Division get into this area and exclusive domain of corporate stockholders?

The imposition of this illegal unpromulgated rule is the main reason SolarAttic did not get its 1998 Registration Statement approved in Minnesota. It simply could not comply with Mr. Rivera’s illegal demand. It would also violate the rights of the corporation’s stockholders.

Mr. Rivera’s Illegal Demand Using Rule 2875.3070

(An Illegal Rule Under Minn. Stat. § 14)

*Stop Order Exhibit A (June 16, 1998 Robert Rivera letter)
Page 1, Paragraph 3 reads as follows:*

“Representation of issuer’s compliance with Minn. Rule 2875.3070 (disclosure of management in transactions). In addition to the Minnesota Language the issuer will have to add language similar to the NASAA language on affiliated transactions. This language should show that all affiliated transactions will be ratified by a majority of independent disinterested board of directors.”

**SolarAttic doubts that any small corporation in
Minnesota could comply with such a demand!**

Minnesota Rule 2875.3070

2875.3070 INTEREST OF MANAGEMENT IN TRANSACTIONS.

Subpart 1. Disclosure. The prospectus or offering circular should describe briefly any material interest, direct or indirect, of any of the following persons in any material transactions during the last three years, or in any material proposed transactions, to which the registrant or any of its subsidiaries was, or is to be, a party: any affiliate of the registrant; any associate or affiliate of any of the foregoing persons.

Official instructions and other applicable interpretations or rules promulgated by the United States Securities and Exchange Commission will be deemed to apply to this part.

Subd. 2. Form of notice. For every transaction which would be required to be disclosed by Subpart 1, the prospectus or offering circular should include the following language, or substantially similar language acceptable to the commissioner:

The company's management believes that the terms of this transaction were (are) no less favorable to the company than would have been obtained from a nonaffiliated third party for similar (services) (equipment) (space) (or whatever descriptive term is appropriate).

If the inclusion of such language would be false or misleading, or tend to work a fraud upon the investor, complete disclosure of the transaction should be included in the prospectus or offering circular.

STAT AUTH: MS s 80A.11 subd 4; 80A.25

Current as of 05/12/97

SolarAttic's Rule 2875.3070 Form of Notice

“The Company's management believes that the terms of all affiliated or related transactions are no less favorable to the Company than would have been obtained from any non-affiliated or non-related third party for similar goods or services.” (*Located on Prospectus p64, last paragraph.*)

SolarAttic Meets Rule 2875.3070 Requirements

The language in SolarAttic's Prospectus clearly complies with Minnesota Rule 2875.3070 Subd 2 (Form of Notice). In addition, SolarAttic provided complete disclosure of the nature of all affiliated transactions. SolarAttic notes that the language in the last paragraph of this rule even “excludes” this form of notice if such notice would “tend to work a fraud upon the investor.”

Analysis of Mr. Rivera's Illegal Rulemaking

Several aspects of Mr. Rivera's demand are illegal under Minnesota Law. They constitute unpromulgated agency rules under Minn. Stat. § 14. Mr. Rivera's demand also lacks some common sense and is easily interpreted to have the following attributes or characteristics:

1. Minnesota Law is insufficient.
2. NASAA Language on affiliated transactions must be included.
3. A form of notice "is required."
4. Corporations in Minnesota must have an independent disinterested board of directors.

Minnesota's Securities Division does not have the authority to rule that Minnesota Law and Rules are insufficient. This is the responsibility of the State Legislature and its Lawmakers.

Minnesota's Securities Division does not have the authority to rule that NASAA language must be included. The law governing SCOR offerings at 80A.115 states those companies filing under this section must comply with NASAA Form 7 Instructions. SolarAttic fully complied with NASAA Form 7 instructions. There is nothing in 80A.115 or the Form 7 instructions that indicate NASAA language on affiliated transactions must be included or used in the Prospectus. SolarAttic notes the second paragraph in Subpart 1 of Minn. Rule 2875.3070 states that SEC instructions and interpretation or rules will be deemed to apply. We note that this paragraph states clearly "promulgated by the ... (SEC)" and does not provide excuse to impose NASAA criteria or language.

The fact that a "form of notice" was "**required**" by Mr. Rivera was a direct violation of Minnesota Rule 2875.3070 Subd 2 which provides for its "exclusion" when it would tend to work a fraud upon investors. In SolarAttic's case, Minnesota law was easy to comply with. However, NASAA language would tend to work a fraud upon investors.

This is what Mr. Rivera has demanded that SolarAttic place in its prospectus: "**All affiliated transactions will be ratified by a majority of independent disinterested board of directors.**"

Exactly what does this mean? To SolarAttic, it does seem like a corporate oxymoron.

Mr. Rivera's demand implies that he believes he has the authority to dictate the constitution of the board of directors of Minnesota Corporations. We find no such authority. When asked to supply a definition of this statement, the Securities Division either couldn't or wouldn't.

SolarAttic Stipulation

SolarAttic stipulates that it believes it was not treated any different than the Securities Division would have treated any other small company. We believe the Securities Division violates the rights of all small companies equally. We also note that our registration statement was approved by the states of New Jersey, Connecticut, Rhode Island and Iowa for sales to ANY INVESTOR. In addition, California approved our registration statement under its limited offering exemption.

Threat to Public Investors is a Poor Argument

To state SolarAttic's Offering was a threat to public investors is a poor argument. If it were, then the above five states would have to be declared unsound in their securities administrative practices! I prosecuted these registration statements for SolarAttic, Inc. I can tell you that every state did their due diligence and that SolarAttic made many changes to accommodate the respective securities examiners. We even went so far as modifying our Articles and By-Laws for the state of California. Our offering was not a threat to public investors and we endeavored to make any reasonable change that we could to accommodate state security examiners, including Minnesota's Mr. Robert Rivera.

A Minnesota Wake-Up Call

Public investors in five other states could invest in SolarAttic's Offering. Minnesota public investors couldn't! This should be a wake up call for the new Commissioner of Commerce, the new State Legislature and certainly the new Governor. The big question is why did this happen in Minnesota?

Commerce Attorney—The Attorney General

When SolarAttic sought help from the Attorney General’s Office in 1994, Mr. Michael Sindt, Assistant Attorney General quickly informed SolarAttic that the Attorney General’s Office is the attorney for the Commerce Department. In fact, they represent the Commerce Department and not the people or businesses in the State of Minnesota when it comes to a legal dispute. In a litigious society where the “big legal guns” overwhelm the common people, SolarAttic wants to know who in the Attorney General’s Office will protect the interests of the people and small business in the State of Minnesota against such Agency abuse. When SolarAttic petitioned Attorney General Hubert Humphrey in 1995 to investigate the corruption in the Securities Division, he informed us that the Commerce Department investigates itself. Besides, he said: “We are the attorneys for the Commerce Department.” Isn’t the Attorney General supposed to represent the citizens of the State of Minnesota?

Who Protects Small Business?

One question is apparent. Who in the Attorney General’s Office protects small business against corruption in Minnesota government? If the Attorney General doesn’t care, is it the Governor’s duty? When SolarAttic petitioned Governor Carlson in 1995 to institute an investigation, his staff informed us that, that in their opinion, “SolarAttic was treated no different than any other company that was registering its securities.” SolarAttic now wonders if that, itself, gives excuse for abuse in government and the right for government to violate its citizen’s DUE PROCESS rights. Does it? Or, does the Rule of Law still matter in Minnesota?

If a Minnesota corporation has to expend tens of thousands of dollars for audit, legal and other fees in order to comply with the securities laws in Minnesota, shouldn’t the government in Minnesota also be expected to obey Minnesota law?

A Process That Protects Corruption In Minnesota Government

The registration process actually protects corruption within the Minnesota Securities Division of the Department of Commerce. The process enables the Securities Division to implement policy routinely as rules of law with impunity. They get away with it for several distinct reasons.

Registering securities is a time-oriented process. Once approved, a company's registration statement is valid for a period of only twelve months. The Prospectus or Offering Circular is a snap shot in time and is designed to be current as of the date of effectiveness. Time progresses and the disclosure document gets stale. It then needs to be updated. Typically, a document dated over 18 months would be deemed to be too stale.

Audited financials are typically required to gain state approval. Often, these audits run from \$7,000 to \$18,000 to complete. If the document gets stale, it will cost another \$7,000 to \$18,000 to update the audit work.

On the legal side of things, it would not be unusual for a company to spend thousands of additional dollars. Then there are printing, postage and other costs such as marketing. Not to mention considerable state regulatory fees.

It can be observed that registering securities is always an expensive and time consuming affair representing a snap shot in time in which a corporation hopes to raise equity or other capital. Timeliness is very important to the small business given a short regulatory period of only 12 months in which to sell the company's stock.

Given this expensive process for registering securities, why not add one or more government bureaucrats with a "concern" about protecting public investors. Then add a little measure of uncertainty into their thinking about securities laws. That makes the situation very uncertain for a small corporation. But, it doesn't end there. Why not then also add an agency without any respect or regard for the rule of law. You get the picture. The situation then becomes intolerable for small corporations. This is what is happening in Minnesota and has been happening for a good number of years. Is it any wonder why a technology corporation would leave Minnesota?

This area of the law is also complex. Is this an easy read for you? It would be for highly trained legal people familiar with this area of law. On the other hand, one can only imagine the eyeballs of the casual reader as they gloss over trying to understand these issues.

This subject is not something that can be dealt with in the matter of a few minutes. In fact, it is an area of law that really scares a lot of people. There are all kinds of statutes with criminal consequences if you violate them. Securities laws should be taken seriously by everyone.

Issues of timeliness and the complexity of law give an abusive bureaucrat some distinct advantages. Simply put, he can threaten an issuer with stop orders, delay responding to their filings and impose all kinds of “unpromulgated rules” as actual Rules of Law. What happens then? And, who do you think will back him up when a legal conflict occurs? It’s the Attorney General and all of the resources at his disposal.

So, it is very easy for a bureaucrat to “scuttle” an issuer’s Registration Statement. Just be a little unreasonable, add some delaying tactics and then cap it off with some “unpromulgated rules.” Those alone chew up 5-7 months of the limited 12-month offering time frame. By the time an issuer litigates and “gets through” the Attorney General’s defenses --- say good bye to that registration and all of its expenses. You guessed right. The twelve months have expired.

With all of the considerable effort and expense that a small technology company would have to bear to make a public offering of its securities, you would expect the state’s regulatory agencies would provide assistance wherever they could. You would not expect those agencies to violate a citizen’s DUE PROCESS Rights. Nor would you expect them to hide behind “good-faith” laws.

Will the Attorney General’s Office be objective in any litigation? How can they? By nature, the Attorney General is the Commerce Department’s Attorney. What do good attorneys do well? They attempt to win for their client’s benefit. In a perfect world, we would all seek justice and righteousness and none of this would matter. However, in the legal battlegrounds of our courts, we often seek to win rather than to administer justice. The rights of common people many times simply get ignored. Who protects the rights of the citizens and small businesses in Minnesota?

It would have to be a private attorney suing the state that ultimately would seek to protect the DUE PROCESS RIGHTS of citizen's and small business. As can be seen in Appendix B, this is a money-losing proposition for a small company. A small business might be better off just packing up and relocating to a more business friendly state in such a situation. How about South Dakota? That is, unless these citizens were born and raised in Minnesota. Unless they have family, friends and all of their interests are in Minnesota. I've asked some respected Minnesota businessmen why they have stayed in Minnesota. The latter situation is always their answer.

As a lifelong resident of Minnesota, having been born and raised in Minneapolis, the CEO of SolarAttic has much higher expectations for government employees. I expect them to obey the Minnesota Administrative Procedure Act at Minn. Stat. § 14. I expect them to obey all the laws including the laws that regulate securities at Minn. Stat. § 80A and Minn. Rules at Chapter 2875. These are the laws they are charged with regulating. It is almost incomprehensible that they would violate the very laws and rules they are charged with regulating.

I also expect them to help small business NOT hurt small business. I certainly don't expect them to abuse the citizen's of the state by denying them their DUE PROCESS RIGHTS. It can be estimated conservatively that, in direct expenses, the Securities Division's illegal rulemaking activities have cost SolarAttic well over \$90,000. In terms of delaying the introduction of the company's new alternative energy technology and lost revenues, the costs are in the millions.

Thus, it can be easily observed that, for small business, registering securities is a time-consuming and very expensive affair. However, it only takes a few moments of a bureaucrat's time to scuttle the small company's rather expensive registration efforts. Is it any wonder why a small corporation would move out of Minnesota? This is especially true for a small technology corporation that relies upon equity investments through the sale of its securities for expansion and growth. The illegal rulemaking in the Securities Division is a nightmare that must end.

**This is a process that protects corruption
in Minnesota government.**

Commissioner's Duty & Requirement To Publish All Securities Rules

Securities Laws Chapter 80A

Minn. Stat. § 80A.25 Subd.4

All rules and forms of the commissioner shall be published

What Is A Rule?

Administrative Procedure Act Chapter 14

Minn. Stat. § 14.02 Subd. 4.

Rule. "Rule" means every agency statement of general applicability and future effect, including amendments, suspensions, and repeals of rules, adopted to implement or make specific the law enforced or administered by that agency or to govern its organization or procedure.

Exclusions From § 14.02 Subd. 4

Administrative Procedure Act Chapter 14

Minn. Stat. § 14.03 Subd. 3.

Rulemaking procedures. (a) The definition of a rule in section 14.02, subdivision 4, does not include: *(Specific exclusions are stated at this area of law.)*

SolarAttic notes that there is no exclusion within this section that exempts the Minnesota Department of Commerce Securities Division from complying with the Administrative Procedure Act and its rulemaking requirements.

Why Publish All Rules?

If there is one prevalent reason for publishing all the rules, it is to allow the citizens and businesses in the State of Minnesota to comply with them. It would make no sense to have rules that no one knew about. Would it? It would make even less sense to have rules that only government employees knew about! How could a small corporation's attorneys comply with state rules that no one knew about? Rules that were not published. Rules that existed only in an Agency's file cabinet or inner sanctum?

When SolarAttic filed its Registration Statement in 1994, it used a securities law firm and paid \$8,500 for their expertise in securities laws. Still, the company's offering was rejected because it did not comply with an unwritten 180-day rule. This was an unpublished rule enforced upon the company by Mr. Robert Rivera. If the attorney's who specialized in this area of the law are unaware of such laws, how can the citizens and businesses of the state become aware of them?

Who Is Responsible?

SolarAttic notes that the existing public securities examiner Mr. Robert Rivera and the existing Deputy Commissioner of Commerce Mr. Patrick Nelson were both on staff throughout the last six years as this illegal rulemaking went unchecked. These two individuals and possibly others inside the Securities Division and Commerce Department bear the full responsibility for the illegal rulemaking activities. Both of them were made fully aware of these illegal activities in 1994-1995. Both of them have signed off on the illegal rulemaking now imposed upon SolarAttic, Inc. The company wonders how such long-term employees of the Department of Commerce could come to the conclusion that they are exempt from the rulemaking provisions of Minn. Stat. § 14, the Administrative Procedure Act. And, especially the Securities Law at Minn. Stat. § 80A.25 Subd. 4. It states unequivocally that all "securities" rules SHALL be published! So, if the law states this as fact, does it mean these government employees have no respect for Minnesota law? How has this happened and what will it take to get them to obey the law?

Relevant Case Law

McKee V. Likins (Minn. 1977)
Minn., 261 N.W. 2d 566

“The legislative scheme in defining a “rule” for purposes of the Administrative Procedure Act was to include agency activities within the general definition of “rule” and then to exclude such specific activity as it deemed beneficial to the concerns of efficient government and public participation.” 261 N.W. 2d 567

Minn-Dakotas Retail Hardware Association V. State (Minn. 1979)
Minn., 279 N.W. 2d 360

All rules, whether or not they have the effect of law, are subject to the statutory rulemaking procedure.

Johnson Brothers Wholesale Liquor Company V. Novak (Minn. 1980)
Minn., 295 N.W. 2d 238

“Interpretive rules fall within statutory definition of “rule” [for purposes of compliance with Administrative Procedure Act’s rulemaking procedure.” 295 N.W. 2d 239

White Bear Lake Care Center, Inc. V. Minnesota, Etc. (Minn. 1982)
Minn., 319 N.W. 2d 7

“Administrative rules must be adopted in accordance with specific notice and comment procedures established by statute, and failure to comply with necessary procedures results in invalidity of the rule.”

With Minnesota Supreme Court rulings upholding the laws and dating back to 1977, SolarAttic wonders why the Securities Division still violates the law.

Other Relevant Law

Due Process Rights

SolarAttic had the right to expect that the law will be followed. This is guaranteed by the Minnesota Constitution in Article I, Bill Of Rights, Sec. 2 “Rights and Privileges.” SolarAttic’s due process rights as stated in Minn. Stat. § 80A were violated by the Securities Division. SolarAttic’s due process rights as stated in Minn. Stat. § 14 were violated by the Securities Division. SolarAttic’s due process rights as stated in Minn. Rules Chapter 2875 were violated by the Securities Division. The Securities Division also violated those rights of our stockholders.

Estoppel

SolarAttic relied upon the published law at Minn. Stat. § 14, Minn. Stat. § 80A and at Minn. Rules Chapter 2875 to its detriment. The Minnesota Department of Commerce Securities Division should be estopped from imposing different law in the form of unpublished rules. These illegal rules have and continue to cause great expense and harm to SolarAttic, Inc.

Minn. Stat. § 80A.17

“It is unlawful for ANY PERSON to make or cause to be made, in any document filed with the commissioner or in any proceeding under sections 80A.01 to 80a.31, other than a contested case hearing statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect or, in connection with such statement, to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.”

SolarAttic notes that it would be presumptuous to assume that the Securities Division would want SolarAttic to lie about a “independent disinterested board of directors.” However, if that is not the case, SolarAttic is left to conclude that the Securities Examiner is either incompetent or is trying to dictate the constitution of SolarAttic’s board. Either way, it amounts to usurping the rights of SolarAttic’s stockholders and working a fraud upon the company and its investors.

Minn. Stat. § 14.05 Subd. 4.

“Unless otherwise provided by law, an agency may grant a variance to a rule. Before an agency grants a variance, it shall adopt rules setting forth procedures and standards by which variances shall be granted and denied. An agency receiving a request for a variance shall set forth in writing its reasons for granting or denying the variance.”

SolarAttic notes that several waivers of the unpromulgated rules were requested. Virtually no reasons for denying our waiver requests were provided. Only the assertion that if we did not comply with the illegal rules that the offering would not be approved for sale in Minnesota.

Minn. Stat. § 14.14 Subd. 1.a.

“(a) Each agency shall maintain a list of all persons who have registered with the agency for the purpose of receiving notice of rule proceedings. The agency may inquire as to whether those persons on the list wish to maintain their names on it and may remove names for which there is a negative reply or no reply within 60 days. The agency shall, at least 30 days before the date set for the hearing, give notice of its intention to adopt rules by United States mail to all persons on its list, and by publication in the State Register.”

SolarAttic notes that its CEO, Edward G. Palmer, personally handed Shawn Hooper, Securities Director (on September 12, 1994) a written request to be placed on the agency’s mailing list for all notices pursuant to this statute. This was done at a meeting in which Mr. Hooper, Mr. Rivera, Mr. Palmer and a Mr. Fredell were in attendance in a securities division conference room. To date, Mr. Palmer has not received a single notice. However, Mr. Palmer notes that the Securities Division has since altered several rules and statutes. Why hasn’t Mr. Palmer received proper notice? This is yet one more way the Securities Division personnel have violated due process rights. Why? Does a list exist? Is it used to comply with this statute?

Minn. Stat. § 80A.12 Subd. 1

“A registration statement may be filed by the issuer...”

Other Unpromulgated Rules

SolarAttic makes note of the fact that there were several other unpromulgated rules and that the company pointed those out to the Securities Division in its written communications dated June 4, 1998. This letter is contained in Appendix C—“Communications Log” along with other letters. The substance of those other unpromulgated rules are similar in nature to the main issue presented herein. Simply put, there is no basis in law for a lot of the Securities rules forced upon SolarAttic. The company now wonders what illegal rules were also forced on other corporations.

The 1994-1995 Record

SolarAttic fully documented its first registration with Minnesota in which its due process rights were first violated. This document is in the form of a three-ring binder two inches thick. It is available only at SolarAttic’s headquarters. Contact the author for further information.

Is An Investigation Warranted?

Twice, SolarAttic has requested that the Commissioner of Commerce conduct an investigation of the Securities Division for its illegal rulemaking activities. Twice, nothing has been accomplished except perhaps a further cover-up and disguise of this illegal activity. Due to the complex nature of the Securities Laws, it is easy for a bureaucrat to “smoke” someone who will not take a personal interest in researching the law. These are not “fast” issues to resolve. They take a commitment of time. However, the law and rules are not that difficult to understand. Fortunately, it is mainly an investment of time that is required. The actual laws are rather straightforward, as are the rules.

Yes, a complete and thorough investigation is now warranted. Such an investigation should be taken out of the hands of existing staff at the Commerce Department and supervised by the new Commissioner Mr. David Jennings.

The investigation should involve legislative oversight committees that work with small business and the securities laws. SolarAttic offers itself as a case study having fully documented these abuses in Minnesota government on two separate occasions spanning five (5) years.

Summary & Conclusion

Registering securities is a complex and expensive process. A small corporation can expect to spend many thousands of dollars in its efforts to comply with Minnesota’s Securities Laws. However, the state employees responsible for regulating securities ignore these very same laws. In their place are substituted departmental “policy and concerns” in direct violation of Minnesota’s Administrative Procedure Act. Despite having informed the highest levels of Minnesota’s government about these illegal practices in 1995, they still persist. The limited offering time of 12 months and complexity of the law allows a bureaucrat to easily violate the due process rights of all small companies and their stockholders. It is time for a change. It is time the Securities Division personnel obeyed the laws they are charged with regulating. The personnel involved are long-standing state employees. What will it take to fix this injustice in Minnesota? What is the full extent of this illegal rulemaking activity on Minnesota commerce?

Appendix A

How To Contact Author

Edward G. Palmer, CEO

SolarAttic, Inc.
15548 95th Circle NE
Elk River, MN 55330
(612) 441-3440
(612) 441-7174 fax

ceo@solarattic.com
www.solarattic.com

Internet Chronicle

**This information is chronicled on the Internet
At <http://www.solarattic.com/mndpo.htm>**

Appendix B

Larkin, Hoffman, Daly & Lindgren, Ltd. Report

Dated April 22, 1996

Report Summary

Agency Engaged In Illegal Rulemaking

MEMORANDUM

LARKIN, HOFFMAN, DALY & LINDGREN, LTD.

Attorneys at Law
1500 Norwest Financial Center
7900 Xerxes Avenue South
Bloomington, Minnesota 55431
Telephone: (612) 833-3800
FAX: (612) 896-3333

TO: James R. Cargill II
FROM: James P. Quinn, Esq.
DATE: April 22, 1996
RE: SolarAttic, Inc.

We have reviewed the "legal brief" prepared by SolarAttic, Inc. ("SolarAttic") concerning SolarAttic's complaints against the Minnesota Department of Commerce (the "Agency") as to how the Agency handled SolarAttic's recent initial public offering ("IPO"). SolarAttic's position, as stated in the twelve page memorandum entitled "SolarAttic's IPO Perspective," is essentially as follows:

- The Agency imposed several unreasonable requirements on SolarAttic during the IPO process. For example, the Agency imposed a 180 day period during which the IPO, as a "best efforts offering" would have to raise a certain minimum amount. The Agency also told SolarAttic that "no stickered prospectuses were allowed in Minnesota" (meaning errors would have to be corrected in a reprinted document, rather than placing a sticker over the misprint or error, as commonly allowed by the Securities and Exchange Commission ("SEC")).
- These requirements imposed by the Agency, while labeled by the Agency as mere "guidelines" and "policies," are in fact "rules" as defined in the Minnesota Administrative Procedures Act, Minnesota Statutes, Chapter 14 (the "APA").
- As "rules" under the APA, the requirements imposed by the Agency are invalid and inapplicable to SolarAttic's IPO, because the rules were not properly adopted under the APA.
- The application of the invalid rules caused SolarAttic and its investors financial damage in the form of a depreciated stock price and delays in starting and completing the IPO process.

Based on the documentation provided by SolarAttic and the relevant statutes and case law, we believe that the chance of successfully bringing an action for damages against the Agency in this matter is very low. First, the state, including its agencies, has relatively broad statutory immunity under the State Tort Act contained in Minnesota Statutes, Section 3.736. Second, even if the Agency is not protected by the State Tort Act, SolarAttic would still have to prove that the

requirements imposed on it were in fact rules not properly adopted under the APA, and there are good arguments that can be made both for and against this position. Finally, even if SolarAttic prevails on the issues of immunity and the invalidity of the rules, SolarAttic still has the significant task of proving that not only did the Agency's actions damage SolarAttic, but also that the damages are not merely speculative.

The following is a more detailed discussion of each of these issues.

I. Sovereign Immunity and Minnesota Statute, Section 3.736.

Pursuant to the State Tort Act, the State of Minnesota, including its departments, boards, agencies, and commissions, is immune from tort liability in most cases. This is not first apparent from the stated "general rule" under the act, which provides as follows:

The state will pay compensation for injury to or loss of property or personal injury or death caused by an act or omission of an employee of the state while acting within the scope of office or employment . . . under circumstances where the state, if a private person, would be liable to the claimant"

Minn. Stat. § 3.736, subd. 1. However, the act also specifically provides that many actions will not give rise to liability for tort damages, with the net result being general immunity for the state and its employees. For example, the state and its employees are not liable for "a loss caused by an act or omission of a state employee exercising due care in the execution of a valid or invalid statute or rule; [or] a loss caused by the performance or failure to perform a discretionary duty, whether or not the discretion is abused." Minn. Stat. § 3.736, subd. 3(a) and (b). Moreover, even in cases where the state is found to have tort liability, liability is limited to \$200,000 per claimant and \$600,000 for any number of claims arising out of a single occurrence. Minn. Stat. § 3.736, subd. 4.

No matter how "picayunish, dogmatic and bureaucratic in nature" the Agency and its employees were, as stated in SolarAttic's IPO Prospective memorandum, their actions most likely do not fall outside the exemptions under Minn. Stat. § 3.736, subd. 3, particularly since the stated exclusions contemplate even abuse of discretion and the execution of an invalid statute or rule. Therefore, even if requirements imposed on SolarAttic by the Agency are in fact invalid rules, as claimed by SolarAttic, the Agency most likely has no responsibility to pay monetary damages for its actions.

II. Alleged Violation of the APA

SolarAttic claims that the "180 day" requirement and the "no stickered prospectus" requirement are rules adopted in violation of the procedural requirements of the APA. A rule is defined as "every agency statement of general applicability and future effect, including amendments, suspensions, and repeals of rules, adopted to implement or make specific the law enforced or administered by that agency or to govern its organization or procedure," but the definition specifically excludes rules concerning only the internal management of the agency that do not

directly affect the rights of or procedures available to the public. Minn. Stat. § 14.02, subd. 4 and § 14.03, subd. 3. The "180 day" requirement to reach the minimum amount on "best efforts offerings" arguably is a rule of general applicability in future effect, particularly since the Agency stated that the requirement "is the policy of this department."

However, as the Agency pointed out in the Atlas Engineering Company case included in SolarAttic's legal brief, if the Agency is merely interpreting a rule or statute within its plain meaning, or has a long-standing interpretation of an ambiguous rule, the Agency will be deemed to be interpreting the rule rather than adopting a new rule through its interpretation. See White Bear Lake Care Center v. Minnesota Dep't of Public Welfare, 319 N.W.2d 7 (Minn. 1982); George A. Beck, et al, Minnesota Procedure § 16.5.2 at 311 (1987).

In the Atlas Engineering case, the agency formally issued an order denying the issuer's registration based on several deficiencies. The issuer complained that the reason for the denial was the agency's application of a 120 day maximum offering period, which the issuer contended was actually an invalid rule under the APA, when the issuer was requesting a three year period. Minn. Stat. § 80A.13, subd. 1(b)(6) (1980) provided that the commissioner may issue an order denying a registration if "the terms of the securities are unfair and inequitable." The deputy commissioner testified that the 120 day maximum had "been the consistent administrative standard used to interpret and implement the statutory provision." The agency also offered evidence showing how the issuer's proposed three-year offering period was unfair and inequitable to investors. Therefore, the hearing examiner concluded that the agency's rejection of the three year offering period did not "constitute the invalid application of an illegal rule."

It is debatable whether Atlas Engineering clearly supports the imposition of the 180 day requirement, as suggested to SolarAttic by the Agency. The hearing examiner seemed to be careful to avoid the issuer's argument that the 120 day maximum requirement was a rule and only held that the issuer's proposed three year period was "unfair and inequitable." The hearing examiner did, however, appear to give at least some weight to the Agency's 120 day "administrative standard" as a means of applying relatively ambiguous statutory language. The point is that while SolarAttic may have a good argument that the Agency's "requirements" are in fact "rules" under the APA, there is also support for the Agency's position.

III. Available Remedies

If the Agency engaged in illegal rulemaking, it appears that SolarAttic's only remedy is injunctive or declaratory relief, and not monetary recovery. If a rule is not properly adopted or otherwise invalid, the rule will be withdrawn or declared invalid, thus resulting in a reversal of an agency decision. See Minn. Stat. §§ 14.18, 14.44, and 14.45; see also Minnesota Administrative Procedure § 16.5.4 at 316 (a finding of illegal rulemaking may result in no judicial deference being given to the policy and in a reversal of the agency decision). However, apparently because of the statutory immunity granted to the state and its agencies, there appears to be no case involving a successful claim for damages against a state agency for enforcing an invalid rule. See Minn. Stat. § 3.736, subd. 3(a) (a state and its employees are not liable for a loss caused by

an act or omission of the state employee exercising due care in the execution of a valid or invalid statute or rule).

III. Damages -- Causation and Amount

Even if SolarAttic can overcome the statutory immunity issue and demonstrate that the Agency engaged in illegal rulemaking, SolarAttic would still have to demonstrate how it was damaged by the Agency's actions. From SolarAttic's own documentation, it appears that the basis for damages rests primarily on a delayed IPO and an underpriced stock value. However, the IPO was ultimately approved only one to two months after SolarAttic's target date of August 1994 (to coincide with the Minnesota State Fair). Moreover, even if the Agency had allowed registration by coordination pursuant to Minn. Stat. § 80A.10 (and the Agency typically will request that the issuer waive coordinated registration or issue a stop order if it is informed that the SEC will likely grant effectiveness of a registration before the Agency is satisfied that all requirements have been met -- see Exhibit 10 in SolarAttic's "legal brief"), the state registration would still have not become effective until after the fair because the SEC did not declare effectiveness until September 7, 1994.

IV. Conclusion

Any action for monetary damages against the state or any state agency is limited by the State Tort Act, as contained in Minn. Stat. § 3.736, unless the action is specifically authorized by statute. It does not appear that the actions taken by the Agency with respect to Solar Attic and its IPO fall outside the exclusions under Minn. Stat. § 3.736, subd. 3; thus, the Agency appears to have no monetary liability to SolarAttic in this matter. SolarAttic does appear to have a valid argument that the Agency engaged in improper rulemaking, at least with respect to the imposition of the 180 day minimum period. However, its sole remedy appears to be in the form of injunctive and/or declaratory relief to the effect that the rule is invalid and may no longer be enforced against SolarAttic. Therefore, while SolarAttic may have a legitimate complaint, it appears that it is essentially left with a cause of action that would be quite expensive to pursue and has little, if any, monetary value.

0203191.01



Appendix C

Communications Log

This appendix is supplied as a separate document. The information contained in this appendix is also available on the Internet at the following address (<http://www.solarattic.com/mndpo.htm>).