

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1482**

Builders Association of the Twin Cities,
d/b/a Housing First Minnesota,
Petitioner,

vs.

Board of Electricity,
Respondent,

Department of Labor and Industry,
Respondent.

**Filed July 19, 2021
Rule declared valid
Gaïtas, Judge**

Minnesota Board of Electricity
File No. 82-9001-36673

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Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Gaïtas,
Judge.

SYLLABUS

A deficiency in an agency's statement of need and reasonableness (SONAR) may
invalidate an agency rule, but only if the deficiency prejudiced the rulemaking process.
Prejudice occurs if a SONAR does not adequately preview the agency's intentions,

evidence, and rationale so as to afford interested parties the opportunity to meaningfully participate in the rulemaking process. When a SONAR provides sufficient information for interested parties to meaningfully participate in the rulemaking process, there is no resulting prejudice.

OPINION

GAÏTAS, Judge

In this pre-enforcement declaratory-judgment action under Minnesota Statutes section 14.44 (2020), petitioner Builders Association of the Twin Cities d/b/a Housing First Minnesota (Housing First) challenges the Minnesota Board of Electricity's adoption of the 2020 Minnesota Electrical Code, Minnesota Rule 1315.0200 (Supp. 2020). Housing First asks us to invalidate the code because the board's rulemaking processes violated statutory and due-process requirements.

We conclude that the board complied with its statutory and constitutional obligations and that Housing First, which meaningfully participated in the rulemaking process, was not prejudiced by alleged deficiencies in the board's SONAR. Thus, the rule adopting the 2020 Minnesota Electrical Code is declared valid.

FACTS

The 12-member Minnesota Board of Electricity is an administrative arm of the Minnesota Department of Labor and Industry (DOLI). *See generally* Minn. Stat. §§ 175.001, 326B.32 (2020). Its membership includes one DOLI representative, eight electrical professionals, two power-limited technicians, and one member of the public. Minn. Stat. § 326B.32, subd. 1(a). Among other duties, the board is required by statute to

adopt “the most current edition of the National Electrical Code and any amendments thereto,”¹ which then serves as the Minnesota Electrical Code. *Id.*, subd. 2(a)(3). In performing this function, the board follows rulemaking procedures under the Minnesota Administrative Procedure Act (MAPA). Minn. Stat. §§ 14.001-14.69 (2020). Although the board may modify the NEC by adopting amendments during the rulemaking process, two-thirds of board members must first agree on any proposed amendment. Minn. Stat. § 326B.32, subds. 2(a)(3), 6(b). If a proposed amendment receives the requisite board votes, it must be included in the subsequent rulemaking proceedings. *Id.*, subd. 6(b).

In January 2019, the board voted to initiate the rulemaking process for the 2020 Minnesota Electrical Code, rule 1315.0200. Several months later, the board published a notice in the state register for public comment. No comments were submitted. The board then appointed a subcommittee to review changes in the 2020 NEC. After reviewing 53 changes that the 2020 NEC made to the 2017 edition,² *see* Minn. R. 1315.0200 (2017), the

¹ The National Electrical Code (NEC) is a uniform code developed by the National Fire Protection Association and approved by the American National Standards Institute. The NEC—which is updated every three years after opportunity for public input, review, and comment—prescribes regulations for “[a]ll new electrical wiring, apparatus, and equipment for electric light, heat, power, technology circuits and systems, and alarm and communication systems.” Minn. R. 1315.0200; *see* Minn. Stat. § 326B.35 (2020).

² According to the information in the record, many changes in the 2020 NEC are updated standards affecting residential buildings, including “ground-fault circuit-interrupter” protection for construction personnel, basements (e.g., electric ranges and electric dryers), and outdoor circuits (e.g., air-conditioning equipment); “arc-fault circuit-interrupter” protection for dwelling units and replacement receptacles; installation of receptacle outlets in kitchen islands, peninsular countertops and work surfaces; surge protection devices; installation of “emergency disconnects” on dwelling exteriors (for first responder emergency access); outlet boxes for ceiling-suspended fans; and receptacle limitations in bathrooms.

subcommittee recommended that the board adopt the 2020 NEC, without amendment, as the 2020 Minnesota Electrical Code. The board unanimously voted in favor of the recommendation.

In March 2020, the board published a SONAR, a draft of the proposed rule (the entire 2020 NEC), and a dual notice to interested parties, as required by MAPA. *See* Minn. Stat. §§ 14.131, .22, subd. 2, .23. The SONAR outlined five notable changes in the 2020 NEC that related to dwellings, and it pointed out the associated increased costs of the changes, among other considerations. Many interested parties responded to the SONAR by providing written comments.

Among the commenters was Housing First, a nonprofit organization consisting of construction-industry professionals. Housing First submitted nine proposed amendments to the 2020 NEC and requested an opportunity to be heard during a public hearing held before an administrative law judge (ALJ). Almost all of the other comments filed by interested parties expressed support for adopting the 2020 NEC as written.

An ALJ held a public hearing on August 19, 2020, with about 100 attendees. The board gave a general presentation in support of adopting the 2020 NEC as written and responded directly to the nine proposed amendments offered by Housing First. Following the board's presentation, the ALJ welcomed participation from the attendees and gave each willing participant an opportunity to testify.

Four participants testified on behalf of Housing First, objecting to the board's rulemaking process and highlighting provisions of concern in the 2020 NEC. They claimed the rulemaking process was "flawed," "rushed," "outcome predetermined," a "rubber

stamping” of the NEC,” “arbitrary and capricious,” and less rigorous than the processes followed by other boards, such as the Minnesota Plumbing Board. Housing First members criticized the board’s SONAR as a “thinly veiled attempt to comply with the statutory requirements to achieve its foregone conclusion.” And they challenged the board’s analysis of anticipated costs to small businesses and municipalities during the first year of the rule’s enforcement. *See* Minn. Stat. § 14.127. They warned that, without amendments, the 2020 NEC would impose unnecessary, costly regulations on builders and homeowners, which would primarily benefit product manufacturers and service providers.

The ALJ also heard from commenters who supported the board’s proposal to adopt the 2020 NEC without amendments. These commenters included members of fire-safety, engineering, manufacturing, and electrical organizations.

After the hearing, all interested parties had an opportunity to submit additional written comments. Housing First and some of the other participating organizations supplemented the testimony with two rounds of additional written comments. The board also issued detailed memoranda responding to Housing First’s procedural objections and substantive complaints regarding the 2020 NEC.

After the record closed, the ALJ issued a 46-page report that found the board’s rulemaking had “complied with procedural and notice requirements, was thorough and well-reasoned, and was not arbitrary or capricious.” The ALJ ultimately approved the board’s decision to adopt the 2020 NEC without amendments as the Minnesota Electrical Code.

Housing First now asks this court to declare the rule adopting the 2020 Minnesota Electrical Code invalid in a pre-enforcement declaratory-judgment action brought under Minnesota Statutes section 14.44.

ISSUES

I. Did the Minnesota Board of Electricity’s SONAR and analysis of first-year costs to small businesses and municipalities violate MAPA and thereby invalidate the 2020 Minnesota Electrical Code?

II. Did the Minnesota Board of Electricity’s rulemaking process for the 2020 Minnesota Electrical Code violate substantive due-process guarantees?

ANALYSIS

A section 14.44 pre-enforcement declaratory-judgment action may be brought to challenge the rulemaking process and the validity of a rule before the rule is enforced. *Save Mille Lacs Sportsfishing, Inc. v. Minn. Dep’t of Nat. Res.*, 859 N.W.2d 845, 849 (Minn. App. 2015). In such an action, we have original jurisdiction to declare an agency rule invalid if the petitioning party establishes that: (1) the rule violates the constitution, (2) the rule exceeds the agency’s statutory authority, or (3) the agency failed to comply with MAPA rulemaking procedures. *See* Minn. Stat. §§ 14.44-.45; *Coal. of Greater Minn. Cities v. Minn. Pollution Control Agency*, 765 N.W.2d 159, 164 (Minn. App. 2009), *review denied* (Minn. Aug. 11, 2009); *see also* *Minn. Voters All. v. State*, 955 N.W.2d 638, 641 (Minn. App. 2021) (explaining this court’s review is restricted to these three bases for invalidation). The party challenging an agency’s decision bears the burden of showing that

the agency violated MAPA. *In re Review of 2005 Annual Automatic Adjustment of Charges*, 768 N.W.2d 112, 118 (Minn. 2009).

Housing First challenges the board’s rulemaking process on two grounds. First, it argues that the board failed to comply with MAPA procedures. And second, it contends that the rulemaking process was unconstitutional, violating “substantive due process.” We address both arguments in turn.

I. The board’s rulemaking process complied with MAPA requirements.

An agency rule is “every agency statement of general applicability and future effect . . . adopted to implement or make specific the law enforced or administered by that agency.” Minn. Stat. § 14.02, subd. 4. In making agency rules, agencies, including state boards, must comply with the specific procedures set forth in MAPA. Minn. Stat. §§ 14.02, subd. 2, .05, subd. 1; *see also Minn. Env’tl. Sci. & Econ. Review Bd. v. Minn. Pollution Control Agency*, 870 N.W.2d 97, 101 (Minn. App. 2015) (“Agency rulemaking is strictly controlled by statute and the statutory procedures must be followed in order to create a valid rule.”). All agency rules that are validly adopted in compliance with MAPA procedures “have the force and effect of law.” Minn. Stat. § 14.38. But an agency’s failure to follow statutory rulemaking procedures may invalidate a rule. *Id.*; *see White Bear Lake Care Ctr., Inc. v. Minn. Dep’t of Pub. Welfare*, 319 N.W.2d 7, 8-9 (Minn. 1982).

Housing First raises two specific challenges to the board’s compliance with MAPA requirements, arguing first, that the board’s SONAR was defective because it lacks sufficient explanation, *see* Minn. Stat. § 14.131, and second, that the board failed to supply a sufficient analysis of the costs of the 2020 NEC, *see* Minn. Stat. § 14.127, subd. 1.

A. The SONAR is not prejudicially defective.

Before any public hearing on a proposed rule, an agency must prepare a SONAR. Minn. Stat. § 14.131. A SONAR must “summarize the evidence and argument” advanced by the agency through “sufficiently specific” information “so that interested persons will be able to fully prepare any testimony or evidence in favor of or in opposition to the proposed rules.” Minn. R. 1400.2070, subp. 1 (2019). MAPA specifically identifies the information that an agency must address in its SONAR. To the extent that the agency can ascertain through reasonable effort, a SONAR must include:

(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;

(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule;

(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals;

(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals;

(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference; and

(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

Minn. Stat. § 14.131. “A general description of the statute being implemented or restating the proposed rule is not sufficient.” Minn. R. 1400.2070, subp. 1.

Housing First contends that the SONAR failed to satisfactorily address the statutory considerations. Additionally, Housing First seems to argue that the SONAR did not provide adequate notice of the information ultimately presented during the public hearing, impacting its members’ ability to prepare.

We first consider Housing First’s claims regarding specific deficiencies in the board’s SONAR. The SONAR clearly addresses all eight statutory considerations. But Housing First maintains that the board failed to provide sufficient information for consideration (1) and considerations (3) through (6).

Consideration (1) requires the agency to provide “a description of the classes of persons who probably will be affected by the proposed rule,” including those who will bear compliance costs and those who will benefit from the rule. Minn. Stat. § 14.131(1). The board’s SONAR identified building owners, equipment suppliers, contractors, and code-enforcement authorities. Housing First claims that, because the board failed to distinguish between those who will bear the costs of complying with the 2020 NEC and those who will benefit, the SONAR is deficient. The board argues, and we agree, that Housing First’s argument fails because section 14.131(1)—which identifies the SONAR requirements—imposes no such obligation. Moreover, we agree with the ALJ’s determination that the

board’s analysis of this factor “was reasonable and served to provide notice to potentially affected persons.”

SONAR considerations (3) and (4) require the agency to evaluate “less costly” alternatives “for achieving the purpose of the proposed rule.” Minn. Stat. § 14.131(3)-(4). The purpose of the board’s proposed rule was to update the Minnesota Electrical Code in accordance with the statutory mandate provided by section 326B.32, subdivision 2(a)(3), which requires the board to adopt the most current edition of the NEC. Thus, SONAR considerations (3) and (4) required the board to determine whether there were less costly methods of achieving that particular purpose—adopting the most current edition of the NEC.

The SONAR states that the board determined “there are no less costly or intrusive methods for achieving the purpose of the proposed rule” because the NEC is the prevailing model electrical code and its incorporation by reference would be the most cost-effective method “for adopting a national model code.” Additionally, the SONAR emphasizes the board’s statutory mandate to adopt the “most current edition” of the NEC and “any amendments thereto.”

Housing First argues that SONAR considerations (3) and (4) also required the board to discuss potential cost-effective amendments to the 2020 NEC in the SONAR. Housing First acknowledges the board’s statutory mandate. But it points out that the board also has statutory authority to adopt amendments. Housing First claims that the statute therefore obligated the board to consider both the 2020 NEC and hypothetical amendments to the

code. *See* Minn. Stat. § 326B.32, subd. 6(b). In turn, Housing First contends, the board was also required to address hypothetical amendments to the 2020 NEC in the SONAR.

However, the board’s discretionary authority to adopt amendments does not create an affirmative obligation for the board to also consider hypothetical amendments. Indeed, the board’s authority to propose amendments is limited by statute; before any amendment can be included in a rule making proceeding, two-thirds of the board must approve it. *See id.* We therefore reject Housing First’s assertion that the SONAR was defective because it failed to address hypothetical amendments to the 2020 NEC. The SONAR adequately addressed considerations (3) and (4), explaining why there were no less costly methods for achieving the purpose of the rule.

Notably, after the board issued the SONAR, it did consider specific amendments to the 2020 NEC that Housing First proposed in response to the SONAR. In written comments submitted before and after the public hearing, Housing First challenged nine new requirements in the 2020 NEC as unnecessary and costly, and recommended alternatives to the new regulations. The board responded to each of Housing First’s proposals during the hearing and in post-hearing comments, clarifying how the challenged regulations in the 2020 NEC furthered the objectives of safety and uniformity. Additionally, the board addressed Housing First’s concerns about the increased costs of the challenged regulations, explaining how any potential cost increase was both nominal and justified by improved safety. Thus, contrary to Housing First’s claim that the board “conducted no analysis to determine if there were less costly methods,” the board

considered each of the alternative regulations proposed by Housing First during the rulemaking process.

For SONAR consideration (5), an agency must address “the probable costs of complying with the proposed rule.” Minn. Stat. § 14.131(5). The board addressed the probable costs associated with the 2020 NEC, noting that anticipated cost increases would not be significant. According to the SONAR, five changes to the 2020 NEC could result in increased costs of \$600 or less per building project—a figure derived from a report prepared by Home Innovation Research Labs for the National Association of Home Builders.³ But the SONAR notes that many variables in each building project ultimately will affect the costs of compliance.

Housing First argues that the board’s analysis lacked necessary detail because, for instance, it failed to highlight certain changes in the 2020 NEC that will apply to every construction project. And because the board supplemented the SONAR with additional evidence regarding costs during the public hearing, Housing First suggests the board introduced new information after the record had closed.

Again, we are unpersuaded. Given that the board is statutorily required to adopt an entire electrical code, and that each project involves multiple variables, the cost analysis proposed by Housing First—a project-by-project comparison of costs under the 2017 and the 2020 codes—would be a monumental task.⁴ We agree with the ALJ that the board was

³ The board supplied a website link to the report within a footnote in the SONAR.

⁴ Both during the rulemaking proceedings and in the briefing to this court, the parties have relied on our unpublished decision *Water in Motion, Inc. v. Minn. Dept. of Labor & Indus.*,

not required to perform this type of analysis in the SONAR, which is intended to be a summary of the evidence and rationale in support of a proposed rule. *See* Minn. R. 1400.2070, subp. 1. The ALJ concluded, and we agree, that the board’s cost analysis for consideration (5) was sufficient. The board consulted a research report on costs, highlighted five noteworthy changes to the NEC, and predicted that costs of compliance would generally not exceed \$600 in additional costs per project.

Housing First correctly notes that the board presented evidence during the public hearing that was not explicitly outlined in the SONAR. But this was not improper. Again, the SONAR need only summarize the evidence and rationale in support of a proposed rule. Minn. R. 1400.2070, subp. 1. During the subsequent public hearing, the agency must provide “an affirmative presentation of facts establishing the need for and reasonableness of the proposed rule.” Minn. Stat. § 14.14, subd. 2. Thus, the public hearing is the agency’s opportunity to expound upon the information in the SONAR, as occurred here. *Cf. In re Hibbing Taconite Co.*, 431 N.W.2d 885, 894-95 (Minn. App. 1988) (“The purpose of the hearing is to ensure that the agency does not deprive the public of fair notice of the agency’s intentions.” (quotation omitted)).

No. A16-0335, 2016 WL 7041978, at *8 (Minn. App. Dec. 5, 2016). There, we recognized the plumbing board’s difficulty in quantifying the costs of adopting an entire model plumbing code for purposes of preparing a SONAR and the section 14.127 analysis. *See id.* We observed that, because we could “envision endless permutations in cost comparison, depending on the particular work that a particular business or homeowner desires on a particular property,” we were not persuaded that the plumbing board “was required to undertake such a complex and hypothetical analysis.” *Id.* As an unpublished decision, *Water in Motion* has no precedential value. *See Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993). But we have the same concerns here about this type of cost analysis.

Lastly, Housing First challenges the adequacy of the board's information relating to consideration (6). This consideration requires the agency to examine "the probable costs or consequences of not adopting the proposed rule." Minn. Stat. § 14.131(6). The board's SONAR explains that failing to adopt the 2020 NEC would mean that the latest methods and technologies would not be used in this state's electrical industry, which could potentially impact licensing reciprocity with other states. The board also emphasized its statutory mandate to adopt the latest edition of the NEC. Housing First again maintains this was deficient because (1) the board "failed to explain why no amendments were necessary," (2) the board did not present statistics, and (3) the rationale provided "has nothing whatsoever to do with the legislature's stated purpose for the State Building Code."

Housing First's arguments are unpersuasive. As we have explained, the board has authority to vote on and include amendments in rulemaking proceedings—but the board is not obligated to do so. *See* Minn. Stat. § 326B.32, subd. 2(a)(3). The board could have better supported its position that failing to adopt the 2020 NEC would cause Minnesota to fall behind in terms of electrical methodology and technology standards. The board could have provided examples of the 2020 NEC's updated methods and technology, for instance. But, although conclusory, the board's underlying premise was reasonable and largely based on its expertise. "Agencies must at times 'make judgments and draw conclusions from suspected, but not completely substantiated, relationships between facts, from trends among facts, from theoretical projections from imperfect data, from probative preliminary data not yet certifiable as fact, and the like.'" *Minn. Env'tl. Sci. & Econ. Review Bd.*, 870 N.W.2d at 102 (quoting *Manufactured Hous. Inst. v. Pettersen*, 347 N.W.2d 238, 244

(Minn. 1984)). Given its demonstrated knowledge of the NEC, we are satisfied by the board's rationale that the 2020 NEC will improve electrical standards. The paramount purpose of the Minnesota electrical and building codes is to "establish reasonable safeguards for health, safety, welfare, comfort, and security of the residents of this state and provide for the use of modern methods, devices, materials, and techniques which will in part tend to lower construction costs." Minn. Stat. § 326B.101 (2020); *see also* Minn. Stat. § 326B.35. The board's rationale fits neatly within this greater purpose.

Although the board's SONAR could have included more detail, it adequately addresses each of the considerations set forth by section 14.131. We therefore reject Housing First's argument that the SONAR failed to satisfactorily address the statutory considerations.

Housing First also argues that even if the SONAR is technically valid on its face, it did not provide sufficient notice of the information that would be presented at the public hearing. According to Housing First, the board failed to include "any information" in the SONAR that was later presented during the public hearing. Housing First contends that it was "prejudiced by the empty and non-compliant SONAR" because its representatives appeared at the public hearing with "no knowledge of the impact the proposed rule might have."

A mere allegation of prejudice is not sufficient to invalidate a rule. Instead, a party must show that a deficiency in a SONAR caused actual prejudice. *See Minn. League of Credit Unions v. Minn. Dep't of Commerce*, 486 N.W.2d 399, 405-06 (Minn. 1992). In *Minn. League of Credit Unions*, the supreme court determined that a SONAR was

inadequate because it contained ambiguous information. *Id.* But the court concluded that the deficiency did not invalidate the resulting rule because the petitioner was not surprised by the agency’s presentation at the public hearing and did not request a recess to prepare a response. *Id.*

The essence of the SONAR requirement is to provide fair notice so that interested parties can meaningfully participate in the rulemaking process. As noted, a SONAR must contain sufficient information to enable parties “to fully prepare any testimony or evidence in favor of or in opposition to the proposed rules.” Minn. R. 1400.2070, subp. 1. But a SONAR need only “*summarize* the evidence and argument that the agency is relying on” for the proposed rule. Minn. R. 1400.2070, subp. 1 (emphasis added). The public hearing is the subsequent forum for the agency to make an “affirmative presentation” establishing that the rule is necessary and reasonable. Minn. R. 1400.2220, subp. 3. Thus, a deficient SONAR only causes prejudice when it does not adequately preview the agency’s intentions, evidence, and rationale so as to afford parties the opportunity to meaningfully participate in the rulemaking process. *See* Minn. Stat. § 14.131; Minn. R. 1400.2070. When a SONAR provides sufficient information for interested parties to meaningfully participate in the rulemaking process, there is no prejudice.

Here, the record confirms that Housing First meaningfully participated in the rulemaking process. Housing First fully responded to the board’s proposal to adopt the 2020 NEC without modification—before, during, and after the public hearing. We therefore conclude that Housing First has not shown that alleged deficiencies in the board’s SONAR were prejudicial.

First, based on the SONAR, Housing First requested a public hearing and submitted prehearing comments. The prehearing comments included Housing First's nine detailed proposals to amend specific provisions of the 2020 NEC.

Second, at the public hearing, Housing First's objections to the 2020 NEC were addressed extensively. Housing First members testified, providing their views of the 2020 NEC and articulating concerns about the board's rulemaking process. The board responded to each of Housing First's proposed amendments. Housing First's legal counsel testified that the board's presentation was "extremely enlightening," with "ample information . . . as to the cost analysis," but complained that much of that information was not included in the SONAR. However, administrative rules clearly state that a SONAR need not include rebuttal to public comments. Minn. R. 1400.2070, subp. 1.

Third, Housing First had an opportunity to request a recess in order to prepare responses to any new information revealed during the public hearing. *See* Minn. R. 1400.2210, subp. 3. Housing First did not exercise that option.

Finally, Housing First submitted posthearing comments, which were consistent with its prehearing comments and the testimony of its members at the public hearing. Housing First's posthearing comments did not raise any new concerns in response to information provided during the public hearing. And Housing First made no claim that its members were ill-prepared for the hearing due to the allegedly inadequate SONAR. After the first round of posthearing comments, the board issued detailed responses. Then, Housing First participated in a second round of posthearing comments, to which the board again responded.

Given this record, we are satisfied that Housing First was able to meaningfully participate in the rulemaking process and therefore was not prejudiced by any alleged deficiency in the SONAR. We will not invalidate the board's adoption of Minn. R. 1315.0200 (Supp. 2020) based on the contents of the SONAR.

B. The board provided a sufficient analysis of first-year costs to small businesses and municipalities.

Housing First also challenges the board's compliance with another MAPA provision—section 14.127, subdivision 1—which requires an agency to determine the impact of a rule on small businesses and municipalities. Under this section, the agency must determine, before the record closes, whether small businesses (less than 50 full-time employees) or municipalities (less than 10 full-time employees) will pay more than \$25,000 to comply with the proposed rule in the first year it takes effect. Minn. Stat. § 14.127, subs. 1, 2. Then, the ALJ “must review and approve or disapprove the agency determination.” *Id.*, subd. 2. If the costs will exceed \$25,000, affected small businesses and municipalities may claim a temporary exemption from the rule. *Id.*, subd. 3. An agency deviates from rulemaking procedures when it fails to perform the analysis required by section 14.127. *See Builders Ass’n of Twin Cities v. Minn. Dept. of Labor & Indus.*, 872 N.W.2d 263, 274 (Minn. App. 2015), *review denied* (Minn. Dec. 29, 2015).

Here, the board provided the required cost analysis in the SONAR and in its posthearing submissions. Based on the board's analysis, small businesses and municipalities would not incur costs over \$25,000 during the first year following adoption of the new code. The board determined that cost increases in the 2020 NEC would be

largely offset by new cost reductions. Moreover, according to the board, even if all of the potential new costs applied to an affected project, the total increase per project would be approximately \$450 to \$600, which would result in increased costs under \$25,000 per year for a small business.

During the rulemaking process, Housing First challenged the board's cost analysis. Housing First claimed that the board showed "very little analysis" in addressing section 14.127, "much of which was misguided." Moreover, Housing First asserted to the ALJ that the board's conclusion "that Minn. Stat. § 14.127 [was] not . . . violated without showing its work represents the board's will, not its judgment."

The ALJ approved the board's compliance-cost analysis. According to the ALJ, the board's conclusion was "reasoned and well-supported." The ALJ dismissed Housing First's calculations as speculative.⁵

Now, before this court, Housing First again contends that the board's analysis of the costs associated with the 2020 NEC was inaccurate. It maintains that some of its own members are small business owners who believe they will face over \$25,000 in new costs during the first year after the adoption of the 2020 NEC. Additionally, by Housing First's own calculations, first-year compliance costs will very likely exceed \$25,000. Housing

⁵ The ALJ disagreed with some of the board's comments regarding costs made at the public hearing. At the hearing, the board advised that costs "will be passed down to and borne by the homeowner and not absorbed by the home builder or electrical contractor." The ALJ rejected the board's "analysis of pass-through costs," observing that this reasoning would render section 14.127 meaningless.

First asks us to invalidate the board's adoption of the 2020 NEC based on the allegedly erroneous cost analysis.

But the board conducted the analysis required by section 14.127. Moreover, the ALJ reviewed the board's analysis, agreed that the costs determination was reasonable and supported by the record, and approved it. Both the board and the ALJ followed their statutory obligations. *Cf. Builders Ass'n of Twin Cities*, 872 N.W.2d at 274 (determining that rulemaking process was violated where agency did not conduct analysis required under section 14.127, even though ALJ found statutory requirement satisfied nonetheless). And as the reviewing court, we will not substitute our judgment for the board's informed analysis.

In sum, we conclude that the board did not violate MAPA procedures in adopting the 2020 NEC as the 2020 Minnesota Electrical Code. Because the board's SONAR satisfied statutory requirements and afforded Housing First the opportunity to meaningfully participate in the rulemaking process, it was not prejudicially defective. And, both the board and the ALJ complied with section 14.127. We therefore reject Housing First's request to invalidate the rule based on the alleged MAPA violations.

II. Housing First fails to allege a cognizable due-process claim.

Housing First also contends that the board violated "substantive due process" by "rubber stamp[ing]" the 2020 NEC without amendments. Because Housing First provides little analysis or authority in support of its due-process claim, we question whether the argument has been adequately briefed. *See State Dep't of Labor & Indus. v. Wintz Parcel*

Drivers, Inc., 558 N.W.2d 480, 480 (Minn. 1997) (declining to consider inadequately briefed argument). We nonetheless elect to briefly address the issue.

“In attacking a statute or regulation on due process grounds, one bears a heavy burden; the statute or rule need only bear some rational relation to the accomplishment of a legitimate public purpose to be sustainable.” *Manufactured. Hous. Inst.*, 347 N.W.2d at 243. A rule that bears no rational connection to the agency’s target objective is invalid. *Builders Ass’n of Twin Cities*, 872 N.W.2d at 268. But agency rulemaking enjoys a “presumption of correctness,” and reviewing courts generally refuse to second guess an agency’s technical determinations, affording deference instead. *Minn. Env’tl. Sci. & Econ. Review Bd.*, 870 N.W.2d at 102 (quotation omitted). “We apply the arbitrary-and-capricious test when considering whether an administrative rule violates substantive due process.” *Builders Ass’n of Twin Cities*, 872 N.W.2d at 268. This demands “a searching and careful inquiry of the record to ensure that the agency action has a rational basis.” *Id.* (quotation omitted).

As one ground for its due-process claim, Housing First essentially reiterates its challenges to the SONAR, claiming that the board’s failure to consider “alternatives” to the 2020 NEC was “arbitrary and capricious.” Housing First also claims that “[t]he 2020 NEC is invalid because it bears no rational relationship to the accomplishment of a legitimate public purpose.”

Neither of these claims establishes a constitutional violation. Housing First’s argument that the board should have considered alternatives to the 2020 NEC ignores the board’s statutory obligation to adopt the latest version of the NEC and to consider

amendments in its discretion. *See* Minn. Stat. § 326B.32, subds. 2(a)(3), 6(b).⁶ As noted, the board’s discretionary authority to consider and implement amendments does not require the board to manufacture hypothetical amendments for inclusion in its SONAR. Likewise, we reject Housing First’s argument that the board’s adoption of the 2020 NEC had no legitimate public purpose. The board’s stated purpose in adopting the 2020 NEC was “to reduce the loss of life and property across the entire spectrum of all the buildings in which we live, work, and play.” This is consistent with the legislature’s purpose for the electrical and building codes. *See* Minn. Stat. § 326B.101, .35.

After reviewing the record here, we are convinced that the board’s rulemaking process complied with MAPA requirements, provided sufficient notice to allow interested parties to meaningfully participate, and was thorough. Housing First has not demonstrated a basis for us to invalidate the 2020 Minnesota Electrical Code. To the contrary, the record establishes that the board’s adoption of the rule was reasonable and procedurally compliant.

DECISION

The Board of Electricity complied with MAPA in adopting the 2020 Minnesota Electrical Code, codified as Minn. R. 1315.0200, and Housing First was afforded an opportunity to meaningfully participate in the rulemaking process. Additionally, Housing

⁶ We note that Housing First also seems to suggest in its brief that the board exceeded its statutory authority, which is another basis for invalidation of an agency rule. *See* Minn. Stat. § 14.45. However, the only issues analyzed by Housing First involve the two matters of statutory compliance already discussed and the substantive due process claim. Because inadequately briefed issues are not properly before an appellate court, we need not address this as a separate argument. *Wintz Parcel Drivers, Inc.*, 558 N.W.2d at 480.

First fails to articulate a cognizable constitutional claim. We accordingly declare Minn. R. 1315.0200 valid.

Rule declared valid.