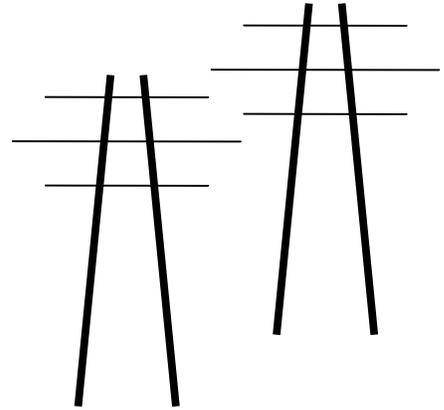


# Legalelectric, Inc.

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March 8, 2011

Chief Judge Raymond R. Krause  
Office of Administrative Hearings  
P.O. Box 64620  
St. Paul, MN 55164-0620

RE: Petition for Rulemaking based on 2010 PPSA Annual Hearing Comments  
Minn. R. Chapter 1400 and 1405.

Dear Chief Judge Krause:

Enclosed for filing please find **Petition for Rulemaking, Minn. R. Chapter 1400 and 1405**. Petition for Rulemaking regarding the Public Utilities Commission rules will be sent separately to the PUC.

I am making this Petition as an individual, and not in the course of representation of any specific party, although for the last 15 years I have been representing local governments, activist groups and individuals in utility regulatory and Power Plant Siting Act dockets, ranging from nuclear waste, transmission, coal gasification, wind, and natural gas, and have gleaned these comments from that extensive experience.

For most of that 15 years, I've been participating in the Annual Power Plant Siting Act hearing. The hearing record should be available on eDockets by this time. To avoid reinventing the wheel, I am incorporating by reference and requesting notice of prior Annual Power Plant Siting Act records. As anyone who has testified at the PPSA hearing before would know, the same issues are raised year after year after year after year after year, and the problems continue. Legislative changes have been made to suit utility desires that exacerbate these problems. Parties raising issues are often regarded as "impediments" and the public interest has been mowed down as so much Right of Way vegetation. It is my hope that the **Petition for Rulemaking** can bring some of these issues into focus.

If you have any questions or require anything further, please let me know.

Very truly yours,

Carol A. Overland  
Attorney at Law

**AMENDED PETITION FOR RULEMAKING  
TO THE  
OFFICE OF ADMINISTRATIVE HEARINGS**

Power Plant Siting Act Annual Hearing  
OAH Docket No. OAH Docket 8-2500-21746-2  
PUC Docket No.10-222

**Name of Petitioner:** Carol A. Overland

**Group Represented or Title:** Petition made as an individual

**Address:** Legalectric, P.O. Box 176, Red Wing, MN 55066

I request that the Office of Administrative Hearings amend Minnesota Rules, parts:

Minn. R. Chapter 1400.7100 & 7400;

Minn. R. Chapter 1405.0600, .0800,.0900, .1400, .1500, .1600, .1800;

The need or reasons for the rulemaking are detailed in these paragraphs based on my testimony at the 2010 Annual Power Plant Siting Act hearing, OAH rule relevant comments outlined below in track changes, with some specific rationale for proposals set out separately with that proposal.

**RATIONALE FOR SPECIFIC AMENDMENTS PROPOSED TO RULE 1400.7100**

**Subpart 1. Generally**

In my experience, ALJs have ordered parties to submit direct testimony, where there is no such requirement in law or rule. ALJs have further revoked party status for parties not submitting ordered testimony. Submission of testimony is not necessary, and may be against a party's interest, particularly where there is no intervenor compensation to cover witness costs. A party may well represent its interests through cross-examination, entry of exhibits through cross, briefing, motion practice, and as a party, may also preserve its right to appeal. Orders specifying any level of participation and revocation of party status is a barrier to public participation. The proposed amendment clarifies rights of parties.

**Subpart 2. Service list**

Previously, the service list had been limited to one representative on a service list per party. That has changed over the years, allowing additional persons to be on a service list, and service lists have become ungainly, cumbersome and burdensome, particularly to the extent that paper copies must be copied mailed. Hard copy requirements are a barrier to public participation. The proposed amendment limits service list, knowing docket filings are available online.

**Subp. 2 (renumbered 3) Necessary preparation.**

The eFiling and eDockets system at the PUC should be mandatory for ease of dissemination and to reduce paper copies, again, to reduce burdens to the public.

**Subpart 5 (renumbered 6). Representation by attorney**

The rules specifically state that a party need not be represented by an attorney, and party is defined as “each person named as a party by the agency in the notice of and order for hearing, or persons granted permission to intervene pursuant to part [1400.6200](#). The term "party" shall include the agency except when the agency participates in the contested case in a neutral or quasi-judicial capacity only.” A “person” is defined as “any individual, business, nonprofit association or society, or governmental entity.” Minn. R. 1400.5100, Supb. 7-8. However, parties have been required to provide proof of incorporation where no such requirement exists in rule or statute, and proof of organizational board approval of representation by non-attorney. This presents a burden to public participation. The proposed amendment clarifies this subpart.

**SPECIFIC AMENDMENTS PROPOSED TO RULE 1400.7100**

**1400.7100 RIGHTS AND RESPONSIBILITIES OF PARTIES.**

**Subpart 1. Generally.**

All parties shall have the right to present evidence, rebuttal testimony, and argument with respect to the issues, and to cross-examine witnesses. Once granted party status, party intervenors are not required to submit testimony or maintain any level of participation to retain party status.

**Subp. 2. Service list.**

The official service list in a contested case hearing shall be limited to one individual per party. Access to officially filed documents shall be available through subscription to eDockets or viewing the website for a particular docket.

**Subp. ~~32~~. Necessary preparation.**

A party shall have all evidence to be presented, both oral and written, available on the date for hearing. Requests for subpoenas, depositions, or continuances shall be made within a reasonable time after their need becomes evident to the requesting party. In cases where the hearing time is expected to exceed one day, the parties shall be prepared to present their evidence at the date and time ordered by the judge or as agreed upon at a prehearing conference. Parties shall have enough copies of exhibits so that they can provide a copy to each other party at the time the exhibit is introduced, unless that other party has already obtained a copy through discovery. Electronic filing and service shall be utilized to reduce use of paper copies.

**Subp. ~~43~~. Responding to orders.**

If the judge orders that parties do an act or not do an act, the parties shall comply with the order. If a party objects to an order, the objection shall be stated in advance of the order as part of the record. If the party had no advance knowledge that the order was to be issued, any objection shall be made as part of the record as soon as the party becomes aware of the order.

**Subp. 54. Copies.**

The judge shall send copies of all orders or decisions to all parties simultaneously. Any party sending a letter, exhibit, brief, memorandum, subpoena request, or other document to the judge shall simultaneously send a copy to all other parties.

**Subp. 65. Representation by attorney.**

A party need not be represented by an attorney. A party non-profit organization may be represented by a member of its board of directors. A party informal organization may be represented by a member of the organization. If a party has notified other parties of that party's representation by an attorney, all communications shall be directed to that attorney.

**Subp. 76. Communication with judge.**

No party or attorney may communicate with the judge on the merits of the case unless all parties are notified and have the opportunity to participate.

**RATIONALE FOR SPECIFIC AMENDMENTS PROPOSED TO RULE 1400.7150**

1400.7150, Subp. 3. Public testimony at public hearings  
Public hearings can be intimidating for novices, and procedures should be explained and people encouraged to speak. Because members of the public testifying at public hearings are often new to the hearing process and procedure, they are not aware that there is typically a different weight to testimony provided under oath, and should be provided with that option as a matter of course.

**SPECIFIC AMENDMENTS PROPOSED TO RULE 1400.7150**

**1400.7150 RIGHTS AND RESPONSIBILITIES OF NONPARTIES.**

**Subpart 1. Offering evidence.**

With the approval of the judge, any person may offer testimony or other evidence relevant to the case. Any nonparty offering testimony or other evidence may be questioned by parties to the case and by the judge.

**Subp. 2. Questioning witnesses.**

The judge may allow nonparties to question witnesses if deemed necessary for the development of a full and complete record.

### **Subp. 3. Public testimony at public hearings**

The administrative law judge shall make best efforts to facilitate testimony at public hearings and shall actively encourage members of the public to testify at public hearings. The administrative law judge shall provide explanation of meaning of testimony under oath and shall offer to swear on oath or affirm all witnesses testifying at public hearings.

### **RATIONALE FOR SPECIFIC AMENDMENTS PROPOSED TO RULE 1400.7400**

Subp. 2. Transcript – costs of transcripts are prohibitive and are a significant burden to participation by the public. Cost of a condensed electronic copy of the transcript once prepared is relatively nominal and intervenor transcripts should be spread to applicants.

### **SPECIFIC AMENDMENTS PROPOSED TO RULE 1400.7400**

#### **1400.7400 HEARING RECORD.**

##### **Subpart 1. Content.**

The judge shall maintain the official record in each contested case until the issuance of the judge's final report, at which time the record, except for the audiomagnetic recordings of the hearing, shall be sent to the agency. The audiomagnetic recordings shall be retained by the office for five years from the date that the record is returned to the agency. Unless an agency requests a longer retention period for a specific case, the recordings may be erased or otherwise destroyed at the end of the five-year period.

The record in a contested case shall contain all pleadings, motions, and orders; evidence offered or considered; offers of proof, objections, and rulings thereon; the judge's findings of fact, conclusions, and recommendations; all memoranda or data submitted by any party in connection with the case; and the transcript of the hearing, if one was prepared.

##### **Subp. 2. Transcript.**

The verbatim record shall be transcribed if requested by the agency, a party, or in the discretion of the chief judge. The agency or party requesting a transcript is responsible for the cost. The parties may agree to divide the cost. Intervening parties requesting transcripts shall be provided at no cost a electronic condensed transcript and any costs shall be assessed to applicants. When the chief administrative law judge requests a transcript the agency is responsible for the cost.

### **RATIONALE FOR SPECIFIC AMENDMENTS PROPOSED TO RULE 1405.0600**

As above, the rules specifically state that a party need not be represented by an attorney, and that they may be represented by “legal counsel, or by a person of their choice, or they may represent themselves.” Party is defined as “each person named as a party by the agency in the notice of and order for hearing, or persons granted permission to intervene pursuant to part [1400.6200](#). The term "party" shall include the agency except when the agency participates in the contested case in a neutral or quasi-judicial capacity only.” A “person” is defined as “any individual,

business, nonprofit association or society, or governmental entity.” Minn. R. 1400.5100, Supb. 7-8. However, parties have been required to provide proof of incorporation where no such requirement exists in rule or statute, and proof of organizational board approval of representation by non-attorney. This presents a burden to public participation. The proposed amendment clarifies this subpart.

### **SPECIFIC AMENDMENTS PROPOSED TO RULE 1405.0600**

#### **1405.0600 RIGHT TO COUNSEL.**

All persons may be represented by legal counsel, or by a person of their choice, or they may represent themselves. A party non-profit organization may be represented by a member of its board of directors. A party informal organization may be represented by a member of the organization.

### **RATIONALE FOR SPECIFIC AMENDMENTS PROPOSED TO RULE 1405.0800**

The Power Plant Siting Act, clearly states:

*The commission shall adopt broad spectrum citizen participation as a principal of operation. The form of public participation shall not be limited to public hearings and advisory task forces and shall be consistent with the commission's rules and guidelines as provided for in section [216E.16](#).*

Minn. Stat. §216E.08, Subd. 2. Other public participation.

The rule amendments proposed serve to provide the public with information regarding process, specifically information about weight of evidence under oath. It also aims to facilitate questioning by non-party witnesses, which receives short shrift at public hearings, at times, the public has been refused the opportunity for questioning.

### **RATIONALE FOR SPECIFIC AMENDMENTS PROPOSED TO RULE 1405.0600**

#### **1405.0800 PUBLIC PARTICIPATION.**

At all hearings conducted pursuant to parts [1405.0200](#) to [1405.2800](#), all persons will be allowed and encouraged to participate without the necessity of intervening as parties. Such participation shall include, but not be limited to:

A. Offering direct testimony with or without benefit of oath or affirmation and without the necessity of prefilng as required by part [1405.1900](#). The judge shall provide explanation of meaning of testimony under oath and shall offer to swear on oath or affirm all witnesses testifying at public hearings.

B. Offering direct testimony or other material in written form at or following the hearing. However, testimony which is offered without benefit of oath or affirmation, or written testimony

which is not subject to cross-examination, shall be given such weight as the administrative law judge deems appropriate.

C. Questioning all persons testifying. Non-party members of the public shall be afforded reasonable time to question all persons testifying. Any person who wishes to cross-examine a witness but who does not want to ask questions orally, may submit questions in writing to the administrative law judge, who will then ask the questions of the witness. Questions may be submitted before or during the hearings.

## **1405.0900 INTERVENTION AS PARTY.**

### **Subpart 1. Petition.**

Any person desiring to intervene in the hearings as a party shall submit a timely petition to intervene to the administrative law judge and shall serve the petition upon all existing parties. If during the contested case the scope of impacts is broadened, the intervention deadline shall be extended to allow intervention by newly affected parties. Timeliness will be determined by the administrative law judge in each case based on circumstances at the time of filing. The petition shall show how the petitioner's legal rights, duties, or privileges may be determined or affected by the proceedings, how those rights, duties, and privileges are not otherwise represented, and shall set forth the grounds and purposes for which intervention is sought and shall indicate petitioner's statutory or legal right to intervene, if one should exist. Parties wishing to intervene jointly, and counsel representing more than one party, must specify distinct interests and demonstrate that distinct interests are not in conflict or duplicative. Where interests overlap or are duplicative, such petitioners shall petition to intervene as one party. The administrative law judge, with the consent of all parties, may waive the requirement that the petition be in writing.

### **Subp. 2. Objection.**

Any party may object to the petition for intervention by filing a notice of objection with the administrative law judge within ~~seven~~ten days of service of the petition. The notice shall state the party's reasons for objecting and shall be served upon all parties and the person petitioning to intervene.

### **Subp. 3. Order.**

The administrative law judge shall allow intervention upon a proper showing pursuant to subpart 1 unless the administrative law judge finds that the petitioner's interest is adequately represented by one or more parties participating in the case. In the event the administrative law judge finds that one or more petitions are similar, the administrative law judge may order the petitions to be consolidated as one, allowing all such petitioners intervention but only as one party.

### **Subp. 4. Responsibilities of intervenors.**

Once a petition to intervene has been granted, an intervenor shall have all of the rights and responsibilities of a party. Once granted party status, party intervenors are not required to submit testimony or maintain any level of participation to retain party status.

## **1405.1400 CONDUCT OF HEARING.**

The proceedings shall be conducted substantially in the following manner. After opening the hearing, the administrative law judge shall indicate the procedural rules for the hearing including, but not limited to, the following:

- A. all persons may present evidence and argument with respect to the issues and cross-examine witnesses;
- B. all persons may be represented by legal counsel, but such representation is not required; and
- C. the rules of evidence as set forth in part [1405.1700](#), subparts 3 to 8.

Cross-examination shall be conducted in a sequence determined by the administrative law judge. The record of the hearing shall be closed at a date to be set by the administrative law judge. Such date will correspond to a specific number of calendar days beyond the close of the last hearing date, computed pursuant to part [1405.0700](#), subpart 1. Written comment will be accepted if postmarked no later than the date set by the administrative law judge. However, the record shall remain open beyond that date for the sole purpose of receiving ~~board~~-responses to relevant comments received on the final environmental impact assessment or statement.

## **1405.1500 SEQUENCE OF PROCEEDINGS.**

### **Subpart 1. Recess.**

All hearings shall recess at 11:00 p.m. unless the administrative law judge determines that the public interest will best be served in any given hearing by continuing the hearing beyond 11:00 p.m. The administrative law judge may, in the judge's discretion, order a time and place for a continuance of that hearing.

### **Subp. 2. Two-stage hearing.**

The hearing may be scheduled in two stages. The first stage shall be for the purpose of introducing into evidence all of the prefiled direct testimony of the parties, and the cross-examination of each witness by all other parties. The subsequent stage shall be for the purpose of allowing all other interested persons to present their direct testimony and to question witnesses that offered testimony during the first stage of the hearing process. Non-party members of the public shall be afforded reasonable time to question all persons testifying.

Nothing contained herein shall be interpreted so as to prevent the public from being present during the first stage of the proceedings or to question witnesses at an appropriate time during the first stage of the proceedings, should time allow. The administrative law judge may give

priority to those members of the public desiring to ask questions which would enable them to better prepare for cross-examination during subsequent stages. It is the intended purpose of the two-stage process to establish specific hearing dates for the primary purpose of public participation in order to avoid inconveniencing the general public by requiring them to wait until late at each hearing before having opportunity to offer direct testimony and ask questions. However, at the discretion of the administrative law judge, the applicant and other parties may present a brief summary of the prefiled direct testimony at the beginning of each session.

### **Subp. 3. Additional hearing dates.**

~~Nothing contained herein shall be interpreted so as to prevent the administrative law judge from shall~~ establishing additional hearing dates on motion or at the judge's discretion.

## **1405.1600 REPRESENTATION OF STATE AGENCIES.**

State agencies shall participate as a party in those dockets where the agency has an interest. This participation shall include submission of comments, and an agency representative shall be available for testimony if requested by a party. Any state agency which participates in the proceedings as a party may only participate through its designated representative or counsel. Exceptions to this rule may be allowed at the discretion of the administrative law judge for good cause shown.

## **1405.1800 HEARING RECORD.**

### **Subpart 1. Preparation.**

Pursuant to Minnesota Statutes, sections [14.04](#) to [14.36](#), the Office of Administrative Hearings, upon certification of the official record of the case by the board to it, shall prepare and maintain the official record in each proceeding.

### **Subp. 2. Contents.**

The record in a hearing shall contain: all pleadings, motions, and orders; evidence received or considered; offers of proof, objections, and rulings thereon; the administrative law judge's findings of fact, conclusions, and recommendations; all memoranda or data submitted by any person and considered by the administrative law judge in connection with the case; and the transcript of each hearing, if any.

### **Subp. 3. Recorder or reporter.**

Unless the chief administrative law judge determines that the use of a court reporter is more appropriate, an audiomagnetic recording device shall be used to keep a record at any hearing which takes place under parts [1405.0200](#) to [1405.2800](#).

The audiomagnetic recordings shall be retained by the office for five years from the date that the record is returned to the agency. Unless an agency requests a longer retention period for a

specific case, the recordings may be erased or otherwise destroyed at the end of the five-year period.

#### **Subp. 4. Transcript.**

The verbatim record shall be transcribed if requested by a person or in the discretion of the chief administrative law judge. If a transcription is made, the chief administrative law judge may require the requesting person and other persons who request copies of the transcript to pay a reasonable charge therefor. Intervening parties requesting transcripts shall be provided at no cost a electronic condensed transcript and any costs shall be assessed to applicants. The charge shall be set by the chief administrative law judge, and all moneys received for transcripts shall be payable to the commissioner of management and budget and shall be deposited in the state Office of Administrative Hearings account in the state treasury.

#### **Subp. 5. Environmental documents.**

The environmental impact statement or assessment ~~prepared pursuant to parts 4400.1210 and 4400.3210~~ shall be entered into the record at a point during the hearing process which will allow all persons an opportunity to review and comment on the material. In addition, all comments and responses to comments ~~which the board desires to consider~~ shall be entered into the contested case record and eDockets promptly after they are received.

#### **1405.2500 ~~BOARD-COMMISSION~~ DECISION.**

Following receipt of the administrative law judge's report, the ~~board~~ Commission shall proceed to make its final decision in accordance with Minnesota Statutes, chapters 14 and ~~H6C216E~~.

#### **7829.0700 OFFICIAL SERVICE LIST.**

##### **Subpart 1. Content.**

The official service list for each proceeding consists of the names of the parties and the names of participants who have filed a written request for inclusion on the service list with the executive secretary. The official service list shall be limited to one individual per party. Those on service lists must identify party represented. Access to officially filed documents shall be available through subscription to eDockets or viewing the website for a particular docket.

##### **Subp. 2. Establishment and updating.**

The commission shall establish the official service list at the conclusion of the initial comment period and shall mail a copy of the list to the parties and to participants who have filed written requests for inclusion. A list established before commission action on a petition for intervention must include those persons whose intervention petitions are pending. The commission shall mail an updated official service list to the parties and participants if the official service list is later expanded or reduced. The commission need not mail the official service list in proceedings when the only parties are the department and a petitioner, complainant, or respondent.

### **Subp. 3. Limiting service list.**

The official service list shall be limited to one individual per party. Access to officially filed documents shall be available through subscription to eDockets or viewing the website for a particular docket. On its own motion or at the request of a party, the commission shall limit the service list to parties to the proceeding if it finds that requiring service on participants is unduly burdensome.

### **Subp. 4. Name and address change.**

A party or participant who wishes to change the name or address of a person receiving service on behalf of the party or participant shall provide written notice of the change to the executive secretary and to persons on the official service list.

### **Subp. 5. Proceeding before administrative law judge.**

In proceedings before an administrative law judge in which the judge establishes a service list, the names on that service list must remain on the official service list for the remainder of the proceeding. The official service list in a contested case hearing shall be limited to one individual per party.

## **7829.0800 PETITION TO INTERVENE.**

### **Subpart 1. Filing and service.**

A person who desires to become a party to a proceeding shall file a petition to intervene within the time set in this chapter. The petition must be served on known parties and those persons on the utility's general service list for the matter, if applicable. If during the contested case the scope of impacts is broadened, the intervention deadline shall be extended to allow intervention by newly affected parties. The administrative law judge, with the consent of all parties, may waive the requirement that the petition be in writing.

### **Subp. 2. Grounds for intervention.**

The petition must allege the grounds for intervention and must be granted upon a showing that: the person is specifically considered by statute to be interested in the particular type of matter at issue; the person is specifically declared by statute to be an interested party; or the outcome of the proceeding will bind or affect the person with respect to an interest peculiar to that person, as distinguished from an interest common to the public or other ratepayers in general, or the person's interests are not adequately represented by one or more other parties participating in the case. Parties wishing to intervene jointly, and counsel representing more than one party, must specify distinct interests and demonstrate that distinct interests are not in conflict or duplicative. Where interests overlap or are duplicative, such petitioners shall petition to intervene as one party.

### **Subp. 3. Intervention as of right.**

The department and the Office of the Attorney General, through its Residential Utilities Division, may intervene as of right in any proceeding before the commission. They become parties upon filing comments under this chapter and need not file petitions to intervene, except when the rules of the Office of Administrative Hearings require it.

**Subp. 4. Objection to intervention.**

An objection to intervention must be filed within ten days of service of the petition to intervene.

**Subp. 5. Disposition of petition.**

If there is no objection to intervention and a petition to intervene is not denied or suspended within 15 days of filing, the petition to intervene must be considered granted, unless the matter is referred to the Office of Administrative Hearings for contested case proceedings before the expiration of the 15-day period. Once granted party status, party intervenors are not required to submit testimony or maintain any level of participation to retain party status.

**Subp. 6. Proceeding before administrative law judge.**

During the time that a matter is before an administrative law judge, intervention procedures are governed by the rules of the Office of Administrative Hearings and by orders issued under those rules by the administrative law judge.

**7829.1000 REFERRAL FOR CONTESTED CASE PROCEEDING.**

If a proceeding involves contested material facts and there is a right to a hearing under statute or rule, upon petition, or if the commission finds that all significant issues have not been resolved to its satisfaction, the commission shall refer the matter to the Office of Administrative Hearings for contested case proceedings, unless:

A. all parties have expressly waived their rights to contested case proceedings and instead request informal or expedited proceedings, and the commission finds that informal or expedited proceedings would be in the public interest; or

B. a different procedural treatment is required by statute.

**7829.1100 PUBLIC HEARING.**

When a public hearing is held in connection with a contested case proceeding, the commission shall, whenever possible, schedule the public hearing to be held before the evidentiary hearings in the area where the infrastructure in question would be located.

**7829.2600 STAFF COMMENTS.**

Written comments on a filing by commission staff must be made available to those persons on the service list at the same time they are provided to the commission. If commission staff

recommend action not advocated by any party, all interested and formal parties must be provided opportunity for written comment, and written commentors be granted oral comment at the request of any interested or formal party.

## **7829.2700 PROCEDURE AFTER ADMINISTRATIVE LAW JUDGE REPORT.**

### **Subpart 1. Exceptions to administrative law judge's report.**

Except in cases subject to statutory deadlines not waived by applicant, parties shall file and serve on the other parties any exceptions to an administrative law judge's report within 20 days of its filing. In cases subject to statutory deadlines, exceptions must be filed and served within 15 days of the filing of the report.

### **Subp. 2. Replies to exceptions.**

Except in cases subject to statutory deadlines not waived by applicant, a party shall file and serve on all other parties any replies to exceptions within ten days of the due date for exceptions. In cases subject to statutory deadlines not waived by applicant, replies are not permitted.

### **Subp. 3. Oral argument.**

Parties must be granted an opportunity for oral argument before the commission, when requested, as required under Minnesota Statutes, section 14.61.

## **7850.1000 DEFINITIONS.**

### **Subpart 1. Scope.**

As used in parts 7850.1000 to 7850.5600, the following terms have the meanings given them.

### **Subp. 2. Act.**

"Act" means the Power Plant Siting Act of 1973, as amended, Minnesota Statutes, chapter 216E.

### **Subp. 3. Associated facilities.**

"Associated facilities" means buildings, equipment, and other physical structures that are necessary to the operation of a large electric power generating plant or a high voltage transmission line, including nuclear waste storage facilities.

### **Subp. 4. Commission.**

"Commission" means the Public Utilities Commission.

### **Subp. 5. Certified HVTL list.**

"Certified HVTL list" means the transmission projects certified by the Public Utilities Commission as priority projects under Minnesota Statutes, section [216B.2425](#).

**Subp. 6. Developed portion of the plant site.**

"Developed portion of the plant site" means the portion of the LEPGP site that is required for the physical plant and associated facilities.

**Subp. 7. Environmental assessment.**

"Environmental assessment" means a written document that describes the human and environmental impacts of a proposed large electric power generating plant or high voltage transmission line and alternative routes or sites and methods to mitigate such impacts. An environmental assessment does not satisfy the requirements of Minnesota Statutes, section 116D.04.

**Subp. 8. Environmental impact statement or EIS.**

"Environmental impact statement" or "EIS" means a detailed written statement that describes proposed high voltage transmission lines and large electric power generating plants and satisfies the requirements of Minnesota Statutes, section [116D.04](#).

**Subp. 9. High voltage transmission line or HVTL.**

"High voltage transmission line" or "HVTL" means a conductor of electric energy and associated facilities designed for and capable of operating at a nominal voltage of 100 kilovolts or more either immediately or without significant modification. Associated facilities shall include, but not be limited to, insulators, towers, substations, and terminals.

**Subp. 10. Large electric power facilities.**

"Large electric power facilities" means high voltage transmission lines and large electric power generating plants.

**Subp. 11. Large electric power generating plant or LEPGP.**

"Large electric power generating plant" or "LEPGP" means electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more. Associated facilities include, but are not limited to, coal piles, cooling towers, ash containment, fuel tanks, water and wastewater treatment systems, nuclear waste storage facilities and roads.

**Subp. 12. Mail.**

"Mail" means either the United States mail or electronic mail by e-mail, unless another law requires a specific form of mailing.

### **Subp. 13. Person.**

"Person" means any individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however whether or not formally organized.

### **Subp. 14. PUC.**

"PUC" means the entire Public Utilities Commission, including the commission and staff.

### **Subp. 15. Right-of-way.**

"Right-of-way" means the land interest required within a route for the construction, maintenance, and operation of a high voltage transmission line.

### **Subp. 16. Route.**

"Route" means the location of a high voltage transmission line between two end points. A route may have a variable width of up to 1.25 miles within which a right-of-way for a high voltage transmission line can be located. The "alignment" is the proposed placement of a transmission line within the route.

### **Subp. 17. Route segment.**

"Route segment" means a portion of a route.

### **Subp. 18. Site.**

"Site" means an area of land required for the construction, maintenance, and operation of a large electric power generating plant.

### **Subp. 19. Utility.**

"Utility" means any entity-public service corporation engaged or intending to engage in this state in the generation, transmission, or distribution of electric energy including, but not limited to, a private investor owned utility, a cooperatively owned utility, a public or municipally owned utility, a limited liability company, or a private corporation.

## **7850.1200 APPLICABILITY.**

Parts [7850.1000](#) to [7850.5600](#) establish the requirements for the processing of permit applications by the Public Utilities Commission for large electric power generating plants and high voltage transmission lines. Requirements for environmental review of such projects before the commission are established in the applicable requirements of chapter 4410, and parts [7849.1000](#) to [7849.2100](#) and [7850.1000](#) to [7850.5600](#).

## **7850.1500 EXCEPTIONS TO PERMITTING REQUIREMENT FOR CERTAIN EXISTING FACILITIES.**

### **Subpart 1. No permit required.**

The following projects are not considered construction of a large electric power generating plant or high voltage transmission line and may be constructed without a permit from the commission:

A. equipment additions at an existing substation that do not require expansion of the land needed for the substation and do not involve an increase in the voltage or changes in the location of existing transmission lines, except that up to the first five transmission line structures outside the substation may be moved to accommodate the equipment additions provided the structures are not moved more than 500 feet from the existing right-of-way;

B. high voltage transmission lines:

(1) maintenance or repair of a high voltage transmission line within an existing right-of-way;

(2) reconductoring or reconstruction of a high voltage transmission line with no change in voltage or capacity and no change in right-of-way, provided that any new structures that are installed are not designed for and capable of operation at higher voltage; or

(3) relocation of a high voltage transmission line that is required by a local or state agency as part of road, street, or highway construction; or

C. large electric power generating plants:

(1) maintenance or repair of a large electric power generating plant;

(2) modification of a large electric power generating plant to increase efficiency as long as the capacity of the plant is not increased more than ten percent or more than 100 megawatts, whichever is greater, and the modification does not require expansion of the plant beyond the developed portion of the plant site. If a subsequent modification results in a total of more than 100 megawatts of additional capacity, this provision does not apply. An increase in efficiency is a reduction in the amount of BTUs (British Thermal Units) required to produce a kilowatt hour of electricity at the facility;

(3) refurbishment of a large electric power generating plant that does not expand the capacity of the plant or expand the plant beyond the developed portion of the plant site and the refurbishment does not require a certificate of need from the public utilities commission;

(4) conversion of the fuel source of a large electric power generating plant to natural gas, as long as the plant is not expanded beyond the developed portion of the plant site; or

(5) start-up of an existing large electric power generating plant that has been closed for any period of time one year or less at no more than its previous capacity rating and in a manner that does not involve a change in the fuel or an expansion of the developed portion of the plant site.

### **Subp. 2. Minor alteration.**

In the event a modification or other change in an existing substation, high voltage transmission line, or large electric power generating plant does not qualify for an exception under this part, the modification or change may qualify for a minor alteration under part [7850.4800](#).

### **Subp. 3. Notice.**

Any person proposing to move transmission line structures under subpart 1, item A, or to reconductor or reconstruct a high voltage transmission line under subpart 1, item B, subitem (2), or to implement changes to a large electric power generating plant under subpart 1, item C, subitem (2), (3), (4), or (5), must notify the commission in writing at least 30 days before commencing construction on the modification or change.

## **7850.1900 APPLICATION CONTENTS.**

### **Subpart 1. Site permit for LEPGP.**

An application for a site permit for a large electric power generating plant must contain the following information:

- A. a statement of proposed ownership of the facility as of the day of filing and after commencement of commercial operation;
- B. the precise name of any person or organization to be ~~initially~~ named as permittee or permittees and the name of any other person to whom the permit may be transferred if transfer of the permit is contemplated;
- C. at least two proposed sites for the proposed large electric power generating plant and identification of the applicant's preferred site and the reasons for preferring the site;
- D. a description of the proposed large electric power generating plant and all associated facilities, including the size and type of the facility;
- E. the environmental information required under subpart 3;
- F. the names of the owners of the property for each proposed site;
- G. the engineering and operational design for the large electric power generating plant at each of the proposed sites;
- H. a detailed cost analysis of the large electric power generating plant at each proposed site, including the costs of constructing and operating the facility that are dependent on design and site;
- I. an engineering analysis of each of the proposed sites, including how each site could accommodate expansion of generating capacity in the future;
- J. identification of transportation, pipeline, and electrical transmission systems that will be required to construct, maintain, and operate the facility;
- K. a listing and brief description of federal, state, and local permits ~~that may be~~ required for the project at each proposed site; and
- L. a copy or link to ~~of~~ the Certificate of Need for the project from the Public Utilities Commission or documentation that an application for a Certificate of Need has been submitted or is not required.

### **Subp. 2. Route permit for HVTL.**

An application for a route permit for a high voltage transmission line shall contain the following information:

- A. a statement of proposed ownership of the facility at the time of filing the application and after commencement of commercial operation;
- B. the precise name of any person or organization to be ~~initially~~ named as permittee or permittees and the name of any other person to whom the permit may be transferred if transfer of the permit is contemplated;
- C. at least two feasible distinct proposed routes for the proposed high voltage transmission line without overlap and identification of the applicant's preferred route and the reasons for the preference;
- D. a description of the proposed high voltage transmission line and all cumulative and associated facilities including the size and type of the high voltage transmission line, including conductor specifications, voltage and capacity;
- E. the environmental information required under subpart 3;
- F. identification of land uses and environmental conditions along the proposed routes;
- G. the names and addresses of each owner whose property is within any of the proposed routes for the high voltage transmission line;
- H. United States Geological Survey topographical maps or other maps acceptable to the commission showing the entire length of the high voltage transmission line on all proposed routes;
- I. identification of existing corridor of utility and public rights-of-way along or parallel to the proposed routes that have the potential to share the right-of-way with the proposed line;
- J. the engineering and operational design concepts for the proposed high voltage transmission line, including information on the range of electric and magnetic fields of the transmission line from light loading, expected loading, and thermal limits;
- K. detailed cost analysis of each route, including the itemized costs of constructing, operating, and maintaining the high voltage transmission line that are dependent on design and route;
- L. a description of possible design options and costs to accommodate expansion of the high voltage transmission line in the future;
- M. the procedures and practices proposed for the acquisition and restoration of the right-of-way, construction, and maintenance of the high voltage transmission line;
- N. a listing and brief description of federal, state, and local permits ~~that may be~~ required for the proposed high voltage transmission line; and
- O. a copy of the Certificate of Need or the certified HVTL list containing the proposed high voltage transmission line or documentation that an application for a Certificate of Need has been submitted or is not required.

### **Subp. 3. Environmental information.**

An applicant for a site permit or a route permit shall include in the application the following environmental information for each proposed site or route to aid in the preparation of an environmental impact statement:

- A. a description of the environmental setting for each site or route;
- B. a description of the effects of construction and operation of the facility on human settlement, including, but not limited to, public health and safety, displacement, noise, aesthetics, socioeconomic impacts, cultural values, recreation, and public services;

- C. a description of the effects of the facility on land-based economies, including, but not limited to, agriculture, forestry, tourism, and mining;
- D. a description of the effects of the facility on archaeological and historic resources;
- E. a description of the effects of the facility on the natural environment, including effects on air and water quality resources and flora and fauna;
- F. a description of the effects of the facility on rare and unique natural resources;
- G. identification of human and natural environmental effects that cannot be avoided if the facility is approved at a specific site or route; and
- H. a description of measures that might be implemented to mitigate the potential human and environmental impacts identified in items A to G and the estimated costs of such mitigative measures.

## **7850.2000 APPLICATION REVIEW.**

### **Subpart 1. Review by commission.**

Within ten working days of receipt of an application for a site permit or a route permit, the commission shall issue notice of receipt of application and 15 day comment period. After 15 day comment period has run, the commission shall determine whether the application is complete and notify the applicant in writing of the acceptance or rejection of the application. If the commission rejects an application, the commission shall advise the applicant of the deficiencies in the application.

### **Subp. 2. Resubmission of rejected application.**

If the commission should reject an application, an applicant may decide to address the deficiencies identified by the commission and resubmit the application with additional information. In this event, the commission shall again issue notice of receipt of application and 15 day comment period and after the 15 day comment period has run, review the application within ten days and determine whether the application is complete and advise the applicant of the commission's determination.

### **Subp. 3. Reasons for rejection.**

The commission shall not reject an application if the information that is missing can be obtained from the applicant within 60 days from the date of the application and the lack of the information will not interfere with the public's ability to review the proposed project. If the missing information is not provided, the application will be deemed dismissed and applicants shall resubmit with missing information.

### **Subp. 4. Schedule.**

The date of the commission's determination that an application is complete marks the start of the schedule for the commission to make a final decision on a permit application, unless waived by applicants.

## **7850.2100 PROJECT NOTICE.**

### **Subpart 1. Notification lists.**

The PUC shall maintain the notification lists described in items A and B.

A. The PUC shall maintain a list of persons who want to be notified of the acceptance of applications for site permits or route permits. Any person may request to have that person's name or an organization's name included on the list. The PUC may from time to time request that persons whose names are on the list advise the PUC whether they want to remain on the list, and the PUC may delete any names for which an affirmative response is not received within a reasonable time with notice that the person has been deleted from the list. A person whose name has been removed may request to have the name added back on the list. The PUC shall provide an applicant with the general list upon acceptance of an application.

B. The PUC shall maintain a project contact list for each project for which an application for a permit has been accepted. The project contact list must contain the names of persons who want to receive notices regarding the project. Any person may request to have that person's name or an organization's name included on a project contact list. The PUC shall coordinate with and include names from other sections or agencies, and may add a person's name to the list if the PUC believes the person would like to receive notices about the particular project. The PUC shall provide an applicant with the project contact list upon request.

### **Subp. 2. Notification to persons on general list, to local officials, and to property owners.**

Within 15 days after submission of an application, the applicant shall mail written notice of the submission to the following people:

- A. those persons whose names are on the general list maintained by the PUC for this purpose;
- B. each regional development commission, county, incorporated municipality, and township in which any part of the site or route or any alternative is proposed to be located; and
- C. each owner whose property is adjacent to any of the proposed sites for a large electric power generating plant or within any of the proposed routes for a high voltage transmission line. For purposes of giving notice under this item, owners are those persons shown on the records of the county auditor or, in any county where tax statements are mailed by the county treasurer, on the records of the county treasurer, or any other list of owners approved by the commission.

### **Subp. 3. Content of notice.**

The notice mailed under subpart 2 shall contain the following information:

- A. a description of the proposed project, including a map showing the general area of the proposed site or proposed route and each alternative;

- B. a statement that a permit application has been submitted to the PUC, the name of the permit applicant, and information regarding how a copy of the application may be obtained;
- C. a statement that the permit application will be considered by the PUC under the provisions of parts [7850.1000](#) to [7850.5600](#) and the Power Plant Siting Act and describing the time periods for the PUC to act;
- D. a statement that the PUC will hold a public meeting within 60 days and the date of the meeting if it is known at the time of the mailing. If the date of the public meeting is not known, a subsequent notice must be mailed when the meeting is scheduled;
- E. the manner in which the PUC will conduct environmental review of the proposed project, including the holding of a scoping meeting and formation of an Advisory Task Force at which additional alternatives to the project may be proposed;
- F. the name of the PUC staff member who has been appointed by the commission to serve as the public advisor, if known, or otherwise, a general contact at the PUC;
- G. the manner in which persons may register their names with the PUC on the project contact list;
- H. a statement that a public hearing will be conducted after the EIS is prepared;
- I. a statement indicating whether a certificate of need or other authorization from the Public Utilities Commission is required for the project and the status of the matter if such authorization is required;
- J. a statement indicating whether the applicant may exercise the power of eminent domain to acquire the land necessary for the project and the basis for such authority, including “Buy the Farm” Minn. Stat. §216E.12, Subd. 4; and
- K. any other information requested by the commission to be included in the notice.

**Subp. 4. Publication of notice.**

Within 15 days after submission of an application, the applicant shall publish notice in a legal newspaper of general circulation in each county in which a site, route, or any alternative is proposed to be located that an application has been submitted and a description of the proposed project. The notice must also state where a copy of the application may be reviewed. The Commission shall send the mailed notice as a press release to legal newspapers in each affected county.

**Subp. 5. Confirmation of notice.**

Within 30 days after providing the requisite notice, the applicant shall submit to the PUC documentation that all notices required under this part have been given. The applicant shall

document the giving of the notice by providing the PUC with affidavits of publication or mailing and copies of the notice provided.

#### **Subp. 6. Failure to give notice.**

The failure of the applicant to give the requisite notice does not invalidate any ongoing permit proceedings provided the applicant has made a bona fide attempt to comply, although the commission ~~may~~ shall extend the time for the public to participate if the failure has interfered with the public's right to be informed about and participate the project.

### **7850.2200 PUBLIC ADVISOR.**

Upon acceptance of an application for a site or route permit, the commission shall designate a staff person to act as the public advisor on the project. The public advisor ~~must be available~~ shall ~~to~~ answer questions from the public about the permitting process and provide information about participation, comment and intervention opportunities. This information shall include dissemination of siting and routing statutes and rules for guidance. The public advisor shall not give legal advice or other advice that may affect the legal rights of the person being advised, and the public advisor shall not act as an advocate on behalf of any person or any project applicant.

### **7850.2400 CITIZEN ADVISORY TASK FORCE.**

#### **Subpart 1. Authority.**

The commission has the authority to appoint a citizen advisory task force. The commission shall determine whether to appoint such a task force as early in the process as possible. The commission shall establish the size of the task force and appoint its members in accordance with Minnesota Statutes, section [216E.08](#). The commission shall advise of the appointment of the task force at the next monthly commission meeting.

#### **Subp. 2. Commission decision.**

If the commission decides not to appoint a citizen advisory task force and a person would like such a task force appointed, the person may request that the commission create a citizen advisory task force and appoint its members. Upon receipt of such a request, the commission shall place the matter on the agenda for the next regular monthly commission meeting.

#### **Subp. 3. Task force responsibilities.**

Upon appointment of a citizen advisory task force, the commission shall specify in writing the charge to the task force. The charge shall include the identification of additional sites or routes or particular impacts to be evaluated in the environmental impact statement. The commission may establish additional charges, including a request that the task force express a preference for a specific site or route if it has one. Task forces appointed to evaluate sites or routes considered for designation shall be comprised of as many persons as may be designated by the commission,

but at least four citizens and non-governmental organization representatives and one representative from each of the following: Regional development commissions, counties and municipal corporations and one town board member from each county in which a site or route is proposed to be located. It is the responsibility of the citizens advisory task force to address the breadth of the scope of the environmental review, to propose alternate routes, and raise environmental concerns. The citizens advisory task force shall issue a report inclusive of all issues raised and siting/routing options suggested. The public shall be afforded opportunity to make public comments at a designated time in the meeting.

#### **Subp. 4. Termination of task force.**

The task force shall meet as many times as is necessary to complete its charge, and expires upon completion of its charge, designation by the commission of alternative sites or routes to be included in the environmental impact statement, or the specific date identified by the commission in the charge, whichever occurs first.

### **7850.2500 EIS PREPARATION.**

#### **Subpart 1. EIS required.**

The commissioner of the Department of Commerce shall prepare an environmental impact statement on each proposed large electric power generating plant and high voltage transmission line for which a permit application has been accepted by the commissioner.

#### **Subp. 2. Scoping process.**

The commissioner of the Department of Commerce shall provide the public with an opportunity to participate in the development of the scope of the environmental impact statement by holding a public meeting and by soliciting public comments. The public meeting required under part [7850.2300](#) satisfies the requirement to hold a scoping meeting if noticed as such. The commissioner shall provide a period of at least seven days from the day of the public meeting for the public to submit comments on the scope of the EIS. The commissioner shall determine the scope of the environmental impact statement as soon after holding the public meeting as possible. Within five days after the decision, the commissioner shall mail notice of the scoping decision to those persons whose names are on either the general list or the project contact list. The scoping decision may be appealed to the Department of Commerce Commissioner within 10 days of issuance of the scoping decision. After an appeal, the Commissioner's decision may be brought before the Commission for review. Once the commissioner has determined the scope of the environmental impact statement, the scope must not be changed except upon decision by the commissioner, upon his own or upon Petition, that substantial changes have been made in the project or substantial new information has arisen significantly affecting the potential environmental effects of the project or the availability of reasonable alternatives.

#### **Subp. 3. Alternative sites or routes.**

During the scoping process, a person may suggest alternative sites or routes to evaluate in the environmental impact statement. A person desiring that a particular site or route be evaluated shall submit to the commissioner of the Department of Commerce, during the scoping process, an explanation of why the site or route should be included in the environmental impact statement and any other supporting information the person wants the commissioner to consider. The commissioner shall provide the applicant with an opportunity to respond to each request that an alternative be included in the environmental impact statement. The commissioner shall include a listing of suggested sites and routes in the scoping decision, but shall include the suggested site or route in the scope of the environmental impact statement only if the commissioner determines that evaluation of the proposed site or route will assist in the commissioner's decision on the permit application.

#### **Subp. 4. Scope of EIS.**

The scoping process must be used to reduce the scope and bulk of an environmental impact statement by identifying the potentially significant issues and alternatives requiring analysis and establishing the detail into which the issues will be analyzed. The scoping decision by the commissioner of the Department of Commerce shall at least address the following:

- A. the issues to be addressed in the environmental impact statement;
- B. the alternative sites and routes to be addressed in the environmental impact statement; and
- C. the schedule for completion of the environmental impact statement.**
- D. copies of all agency comments received in the scoping process.

#### **Subp. 5. Matters excluded.**

When the Public Utilities Commission has issued a Certificate of Need for a large electric power generating plant or high voltage transmission line or placed a high voltage transmission line on the certified HVTL list maintained by the commission, the environmental impact statement shall not address questions of need, including size, type, and timing; questions of alternative system configurations; or questions of voltage.

#### **Subp. 6. Draft EIS.**

The draft environmental impact statement must be written in plain and objective language. The draft environmental impact statement shall follow the standard format for an environmental impact statement prescribed in part [4410.2300](#) to the extent the requirements of that rule are appropriate. The Draft EIS shall include copies of all agency comments received in the scoping process.

#### **Subp. 7. Public review.**

Upon completion of the draft environmental impact statement, the commissioner of the Department of Commerce shall make the document available for public review by placing a copy

of the document in a public library or other governmental office in each county where the proposed project may be located. The commissioner shall send notice of the availability of the draft environmental impact statement to each person on the project contact list maintained under part [7850.2100](#), subpart 1. The commissioner shall also place a notice in the EQB Monitor of the availability of the draft environmental impact statement. The commissioner shall post the environmental impact statement on the agency's Web page if possible.

#### **Subp. 8. Informational meeting.**

The commissioner of the Department of Commerce shall schedule ~~an informational meeting hearing~~ hearing to provide an opportunity for the public to comment on the draft environmental impact statement. The ~~meeting-hearing~~ hearing must not be held sooner than 20 days after the draft environmental impact statement becomes available. The meeting must be held in a location convenient to persons who live near the proposed project. The commissioner shall send notice of the informational meeting to each person on the project contact list maintained under part [7850.2100](#), subpart 1. The commissioner shall also place notice in the EQB Monitor. The ~~informational meeting hearing~~ hearing may be held just prior to the holding of a contested case hearing on the permit application. The commissioner shall hold the record on the environmental impact statement open for receipt of written comments for not less than ~~ten-thirty~~ ten days after the close of the ~~informational meeting hearing~~ hearing.

#### **Subp. 9. Final EIS.**

The commissioner of the Department of Commerce shall respond to the timely substantive comments received on the draft environmental impact statement consistent with the scoping decision and prepare the final environmental impact statement. The commissioner may attach to the draft environmental impact statement the comments received and its response to comments without preparing a separate document. The commissioner shall publish notice of the availability of the final environmental impact statement in the EQB Monitor and shall supply a press release to at least one newspaper of general circulation in the areas where the proposed sites or routes are located. The contested case hearing record shall remain open for at least ten days for comments regarding the Final EIS.

#### **Subp. 10. Adequacy determination.**

The Public Utilities Commission shall determine the adequacy of the final environmental impact statement. The commission shall not decide the adequacy for at least ~~ten-thirty~~ ten days after the availability of the final environmental impact statement is announced in the EQB Monitor. The final environmental impact statement is adequate if it:

A. addresses the issues and alternatives raised in scoping to a reasonable extent considering the availability of information ~~and the time limitations for considering at the time of~~ the permit ~~application review~~;

B. provides responses to the timely substantive comments received during the draft environmental impact statement review process; and

C. was prepared in compliance with the procedures in parts [7850.1000](#) to [7850.5600](#).

If the commission finds that the environmental impact statement is not adequate, the commission shall direct the staff to respond to the deficiencies and resubmit the revised environmental impact statement to the commission as soon as possible.

**Subp. 11. Cost.**

The applicant for a site permit or route permit shall pay the reasonable costs of preparing and distributing an environmental impact statement. The costs must not be assessed separately from the assessment under part [7850.1800](#) unless that assessment is inadequate to cover the commissioner's reasonable costs of considering the permit application.

**Subp. 12. Environmental review requirements.**

The requirements of chapter 4410 and parts [7849.1000](#) to [7849.2100](#) do not apply to the preparation or consideration of an environmental impact statement for a large electric power generating plant or high voltage transmission line except as provided in parts [7850.1000](#) to [7850.5600](#).

The need or reasons for the rulemaking you request are detailed in my testimony at the 2010 Annual Power Plant Siting Act hearing and above in my comment letter.

This petition is being filed via email and posting to the PPSA Annual Hearing docket, 10-222, and is also filed as required by Minn. R. 1400.2020 and 1400.2500 with the Raymond Krause, Chief Administrative Law Judge of the Office of Administrative Hearings by United States mail.



Date: March 8, 2011

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Carol A. Overland, Petitioner