**Rulemaking on Certificates of Need (Chapter 7849) and Site and Route Permits (Chapter 7850) for Large Electric Generating Plants and Large High Voltage Transmission Lines**

**Docket No. E,ET,IP-999/R- 12-1246**

**Synopsis of May 29, 2013 Advisory Committee Meeting**

**Members Present:**

Jerry Von Korff (Rinke Noonan, Attorneys at Law);

Deborah Pile (Department of Commerce, Energy Facility Permitting);

Richard Savelkoul (Martin & Squires P.A.);

David M. Aafedt (Winthrop and Weinstine, P.A.);

Christy Brusven (Minnesota Wind Coalition);

Paul Lehman (Xcel Energy);

Dave Grover (ITC Midwest LLC);

Lisa Agrimonti (Xcel Energy and ITC Midwest LLC);

Carole Schmidt (Great River Energy/Minnesota Power);

Tim Rogers (Xcel Energy);

Dave Seykora (Department of Transportation);

Susan Medhaug (Department of Commerce Energy Regulation and Planning);

John Wachtler (Barr Engineering);

Chuck Thompson (Dairyland Power Cooperartive);

Alan Mitchell (Otter Tail Power Company; Rochester Public Utilities; Southern Minnesota Municipal Power Agency; Missouri River Energy Services; Minnkota Power Cooperative; and Dairyland Power Cooperative );

Carol A. Overland (NoCapX 2020 and U–CAN); and

Suzanne Rohlfing (North Route Group).

**I. Issues Identified**

Committee members identified the following issues for development in this rulemaking:

- Address concerns about changes made to the certificate of need criteria in the draft and how those changes compare to the certificate of need criteria in statute

 - Improve process for public participation

 - Discuss the intersection between this rulemaking and possible changes to the rules of the Office of Administrative Hearings (Minnesota Rules, Chapters 1400 and 1405)

 - Ensure that processes are appropriate to the size of the project – some projects are smaller, not all are 345 kV

- Develop the role of regional transmission planning and distinctions in investor-owned utilities and cooperatives; change notice plan requirements; streamline procedures for smaller projects

- Find ways to ensure an efficient process that produces a thorough record for Commission decision-making and provides time for parties to weigh in

 - Provide a transparent process with relevant opportunities for people to participate

 - Clarify and streamline rules and resolve inconsistencies between rules and statutes

- Improve clarity, transparency, simplicity, and public participation

- Resolve inconsistencies in statutes and rules

- Identify effects on ratepayers

- Improve clarity and openness of the environmental report process

- Make the process user friendly to landowners; simplify the property acquisition process

- Make the process accessible to landowners

**II. Changes to the Working Rules Draft**

The committee also suggested a number of changes to the draft, which are discussed below.

**Definitions**

**Subpart 6a. Associated Facilities.** There was a suggestion to broaden the definition to include “other transmission lines directly associated with the plant that are necessary to interconnect the plant to the transmission system.” The committee appeared to agree on this change, and the draft has been updated to include this language.

**Subpart 14. LHVTL; large high voltage transmission line.** A suggestion was made to remove the final phrase “necessary for normal operation of the conductor, such as insulators, towers substations, and terminals.” There was no disagreement about this suggested change, and therefore the draft removes this phrase.

**Notice Requirements 7849.0130**

 **Subpart 4, item A**

The committee reached consensus on applying project notice requirements to power plants; the existing rules apply them only to high voltage transmission lines. The draft says that notice must be mailed to “properties adjacent to the site of the proposed facility and within the proposed facility’s footprint.”

There was concern that the language “properties adjacent to” is not clear enough and would likely cause confusion about who applicants must notify or limit notice to other properties nearby who should receive notice.

At least one person suggested changing the draft language to require notice to properties “within one-half mile of the proposed power plant.” This seems to be a reasonable approach to ensuring direct mail notice to those most directly and immediately within the vicinity of the proposed facility and avoids the problem of determining who is included in “adjacent to the site of the proposed facility”. Further, the draft requires newspaper notice to members of the public in the area of the proposed facility, which would inform local residents, as well as members of the general public, about the proposed power plant and therefore increase the likelihood of their participation in the process.

**Subpart 4, item B**

The draft language requires “direct mail notice to tribal governments, and to the governments of towns, statutory cities, home rule charter cities, and counties whose jurisdictions are located within or *directly adjacent to* the proposed facility’s footprint.” For the same reasons described above, the draft now says to those entities “whose jurisdictions are located within the proposed facility’s footprint or *within one-half mile* of the project footprint.”

And there was support for adding “townships” to the list of entities that would receive direct mail notice, and this change has been added to the draft (this change was also made to subp. 3, item C).

 **Subpart 4, item A (1)**

There was a suggestion to include in the notice for an LHVTL a map that shows the end point of the line and existing transmission facilities in the area, *including transmission facilities 64 kilovolts or greater.* This language has been added to the draft.

 **Subpart 3, item E and Subpart 4, item D**

There was a request to add a requirement that notice of a proposed project be sent to local radio stations in the form of a press release. There was concern about how to define “local radio station.” It is probably reasonable to describe local radio stations as ones that do not broadcast statewide but serve a single community or neighboring communities, or something along that line. It seems reasonable to require applicants to send a press release to local radio stations as a means of providing wider notice of the project and therefore this change has been made to the draft.

**Notice Plans generally**

The committee also seemed to agree on removing the rules’ requirement that applicants file notice plans prior to sending out notice. This change would require applicants to send notice of their projects prior to filing their CN applications but without pre-approval of the notice. Applicants would send project notice – at least 20 days but not more than 60 days before filing a CN application – to those listed by the method specified in the rules and subsequently file a compliance filing (under subp. 9) that includes a copy of the notice and a service list showing the persons and addresses to whom the notice was sent.

The notice plan requirements were originally put into place to increase the likelihood of producing highly effective notice plans by enabling notice to be tailored to the facts of a case and to ensure early notice. Early notice furthers the public policy objective of ensuring that those most likely to be affected by a proposed project are provided important information about how the proposed project could affect them.

To protect both applicants and notice recipients from claims of defective notice, it is reasonable to require the applicant to submit a compliance filing within seven days (instead of 60 as the draft had said) of implementing notice. Further, the draft now includes an application content requirement in part 7849.0220, subp. 1, that requires the applicant to include a statement that it has complied with the notice requirements.

These provisions (the compliance filing requirement and the application content requirement) will increase the likelihood of addressing notice concerns that arise prior to the staff’s determination of whether the application is complete.

As a result of eliminating notice plan filings, there is no longer a need for the provision describing notice plan filings and comment periods. This language was in subpart 2, and the draft shows this language with a strikethrough.

**Subpart 2, items D and F.**

Item D - There was a suggestion to eliminate the requirement that applicants notify persons on the “General List” required under part 7850.2100, subp. 1, items A ***and B*** - under B, the list includes a project contact list. However, that list is not established prior to a certificate of need filing, so it seems reasonable to remove the requirement to notify persons under 7850.2100, subp. 1, item B. The notice will go to the list under subp. 1, item A. And the draft includes this change.

Item F – There was a suggestion to include a more comprehensive list of other state agencies to the list of persons receiving notice of the notice plans. The draft now lists other state agencies, but because the draft does not include notice plans to be filed, the draft requires the notice itself to go to those agencies.

 **Subpart 6**

This subpart provides that the Commission shall require supplementary notice to persons reasonably likely to be affected by system alternatives developed in the course of the certification proceedings if it appears that those system alternatives are as likely to be certified as the proposed project. There was a suggestion to define “system alternatives.”

It seems that supplementary notice on alternatives in this Chapter is rarely applicable and that such notice might be more relevant to siting and routing proceedings, and therefore the draft eliminates this provision.