**Explanation of part 7849.0130**

**7849.0130. PROJECT NOTICE**

**General Comments.** Part 7849.0130 establishes the notice requirements that an applicant must follow when submitting a certificate of need application. The latest draft from the PUC staff (June 5) incorporates the sentiment expressed at the first advisory committee meeting that it was unnecessary to establish a separate process for creating a notice plan when the rule itself could identify what notice is required. The Participating Utilities support this approach.

There are several aspects to any notice requirement. It is important to consider whether a rule is establishing who gets notice, or what type of notice is required, what the content of the notice must include, the timing of the notice, or how the notice is served. In their draft, the Participating Utilities have attempted to clarify many of these points.

It is also helpful to make the notice requirements consistent and similar to the notice requirements that apply when a permit application is submitted. The Participating Utilities find Minnesota Rules part 7850.2100 to be helpful in clarifying the notice requirements in chapter 7849.

A redline version showing the changes from the June 5 draft prepared by the PUC staff was not prepared. Because of the renumbering of the rules, along with a number of suggested changes, a redline with strikeouts and underlines was not easy to follow. The changes being suggested are readily apparent from a comparison of the drafts. Also, the discussion below will explain the rationale behind the proposed changes.

**Subp. 1. Basic Requirements.** Rather than “form and manner,” this version says “in accordance with the requirements,” simply to clarify that everything required in this rule must be complied with.

**Subpart 2. Service of Notice.** This partlists in one place all the people and entities that are required to be served with a written copy of a notice that contains all the information specified in subparts 5 and 6. Obviously, it is written notice that is required, but it is helpful to state that right in the rule.

The timing of the notice is important. Chapter 7850, applying to the permit application, requires notice to be given after the permit application is filed. This rule requires the notice to be given before the application is filed. The Commission might want to make these consistent, or explain the reason for the distinction.

The list of persons to be given written notice seems appropriate. This draft adds a couple that were listed separately in the staff draft.

**F. State agencies.** Just the observation that those agencies that are part of the Environmental Quality Board do not need to be served twice.

**G. Local Government.** It is reasonable to simply list local government in one place, regardless of whether the project is a transmission line or a power plant. An applicant is not going to cut corners on notifying local government so the rule might as well describe a broad list of local governments to notify. We suggest any governmental body within ten miles of a proposed project be given notice, since these governmental bodies are easily identified and their number is not so large that giving notice is difficult. Incidentally, there are no “towns” in Minnesota; there are only counties, municipalities (cities), and townships. Regional development commissions are not actually governing bodies but are listed here since they are local bodies.

**H. Tribal Government.** It is neither burdensome nor unreasonable to simply require notice to be provided to any tribal governments that are near a proposed project. Ten miles is the proposed distance but other distances could be established.

**Subd. 3. Additional notice for LHVTL.** There is really only one category of people who have to be identified to get notice that depends on whether the project is a transmission line or a power plant, and that is the landowners who are to be given notice depending on their location relative to the proposed project. Everybody else listed in subparts 2 and 3 of the staff draft must get notice regardless of the project type.

We think it is appropriate to notify landowners who are on or adjacent to a proposed transmission line. Some on the advisory committee members expressed a desire to expand the list of landowners who get notice about a proposed transmission line, but the term “reasonably likely to be affected” is quite subjective. The difference between landowners in item A. and mailing addresses in item B. in the staff version is unclear. We have left in the “reasonably likely to be affected” language, but it would be better if language could be developed that was less subjective.

**Subp. 4. Additional notice for LEGF.** One-half mile seems like a reasonable distance to determine what landowners have to be given written notice of a project with a specific footprint.

**Subp. 5. Notice content.** Subparts 2, 3, and 4 establish that the notice must be in writing, whom it must be given to, and when it must be given. This subpart establishes what information must be included in the notice. The language is primarily the language from the staff’s subpart 5.C, with some edits explained below. Because a separate subpart is created, the proper numbering is capital letters rather than numbers.

1. The notice certainly should contain a description of the proposed project, even though a map will be included.

C. A particular piece of information that would be helpful is the docket number, so interested persons can find documents on the edockets page. It may be that since the notice is given before the application is filed, that no docket number has been assigned, but that can be easily remedied by the applicant simply requesting a docket number. Also, the rule does not require an applicant to give everybody notice at the same time; the Commission could be notified before others are, as long as the time limits in subpart 1 are complied with.

D. A cite to the statute requiring the biennial transmission projects report is more apropos than a cite to the rules implementing the statute.

E. The staff language talks about the preparation of an environmental report. It is possible that an EIS or an environmental assessment could be prepared on a particular project under Minn. Rules part 7849.1900, rather than an environmental report. Wording this language to simply talk about environmental review will not cause confusion if an environmental report ends up not being prepared.

F. The term “Minnesota law” is too broad, since that includes statutes, rules, and perhaps caselaw and local ordinances. It is better to refer to statutes and rules.

H. The staff language talks about copies, plural, and “pertinent information.” The Participating Utilities suggest using the word copy, singular, and only reference the application. “Pertinent information” might be found in a number of locations, such as the federal government or other state agencies or regional transmission operating organizations. The Participating Utilities recognize that interested persons must have access to pertinent information but it is difficult to know what to say in the notice at the beginning of the project. Giving the docket number and identifying a public advisor will help ensure that persons can obtain the information they are interested in.

1. Since the Commission has appointed a person to act as a public advisor, it would be helpful to put the public advisor’s contact information in the notice.

**Subp. 6. Map and right-of-way.** :

Subpart 6 is a combination of the staff’s subparts 5 and 6, without any changes in substance.

**Subp. 7. Service of written notice.** This subpart is proposed to be added to clarify how notice is to be completed. It seems reasonable to allow the applicant to rely on email or regular mail and also on personal service. As long as the service is accomplished, it shouldn’t matter how it was done. Under Subpart 11, the applicant can certify how service was completed.

**Subp. 8. Publication of notice.** The staff’s draft combines newspaper publication with the requirement to serve notice on various people and entities. The obligation to publish notice in the newspaper needs to be addressed separately, however, because what is published in the paper will not be identical to what is served. The language proposed here is taken from Minn. Rules part 7850.2100, subp. 4.

**Subp.9. Press release.** Similarly, the press release sent to local radio stations will not be identical to the notice that is served on the required people and entities.

**Subp. 11.** **Compliance filing.** The staff has suggested that a compliance filing be done within seven days of notice. (The reference to a notice plan is no longer needed.) The Participating Utilities would recommend a 30 day requirement, the same as is required for a permit application under Minn. Rules part 7850.2100, subp. 5. The applicant can keep the PUC staff advised of the notices that are given as they happen but it would be reasonable to give the applicant a longer period of time to gather all the affidavits and other documents required to demonstrate that the requisite notice was given.