

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 June 26, 2013 Advisory Committee Meeting

Members Present:

Deborah Pile (Department of Commerce, Energy Facility Permitting);
Richard Savelkoul (Martin & Squires P.A.);
Christy Brusven (Minnesota Wind Coalition);
Paul Lehman (Xcel Energy);
Kodi Church for Lisa Agrimonti (Xcel Energy and ITC Midwest LLC);
Carole Schmidt (Great River Energy/Minnesota Power);
Tim Rogers (Xcel Energy);
Stephen Rakow (Department of Commerce Energy Regulation and Planning);
Paula Maccabee (Just Change Law Offices);
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
Marie McNamara for Suzanne Rohlfing (North Route Group).

The following is a discussion of changes to the June 5 draft based on our advisory committee discussions.

1. Definitions – 7849.0010

Subp. 24a. The draft has been updated to define “region.”

Subp. 25. The draft has been updated with a more specific definition of “RTO.”

There were also suggestions to define:

Summer Peak;
Winter Peak;
Coincident Peak;
Non-coincident Peak;

If there are specific suggestions on these, please let us know.

2. Project Notice Requirements – 7849.0130

The draft includes several updates to notice requirements and contains the earlier draft's elimination of the requirement that applicants obtain pre-approval of notice plans prior to implementing notice. The latest changes to notice requirements are explained in further detail below.

Direct Mail Notice vs. Service – Subparts 2 – 4

There was a suggestion to remove the requirement to send direct mail notice to landowners and government entities and instead require notice to be “served” on those entities (Minn. Stat. § 216E.03, subd. 04, does not explicitly require mailed notice in siting and routing cases but does describe who property owners are, *for the purpose of giving mailed notice...*).

The rules of practice and procedure (Chapter 7829) are in the process of being amended with “service” to mean by first class mail or in person, *or electronically* by recipients who have agreed to receive electronic service. It seems reasonable to change draft to require “service” of the project notice (instead of direct mail notice), as long as “service” means by mail or in person, *unless the recipient has agreed to electronic service*. The draft has therefore been updated to include use of the term “serve.”

Government Entities – Subpart 2

As a result of this change (requiring notice to be served), the draft now lists all government entities that must be served notice under subpart 2, instead of under subparts 2 *and* 3.

There were two concerns raised about the list of government entities. First, should the Metropolitan Council receive notice of every project? And second, what is the appropriate list of government entities?

The draft includes the Met Council because it is one of the entities listed by the Environmental Quality Board in its non-EQB “technical representatives list.” The link to that list is at: <http://www.eqb.state.mn.us/resource.html?Id=17968>
If the list is too broad and includes entities that would not benefit from receiving project notice, we can remove them. Additional input on this point would be helpful.

To ensure that local units of government receive notice of proposed projects, the list of government entities should be broad as well as accurate in describing which entities must be notified. There are references throughout Minnesota statutes to various terms for government entities. The draft requires notice to “tribal governments, and to the governments of towns, townships, statutory cities, home rule charter cities, and counties.”

There was a suggestion to change the list and require notice to “each county, incorporated municipality, township, and regional development commission.” Unless there is a reason to limit the list, it seems reasonable to add “incorporated municipality” and “regional development commission” to the list. Therefore the draft has been updated with the additional terms.

Notice to Government Entities within “X” distance – Subpart 2 (G)

There was a suggestion to require notice to government entities “within 10 miles of a proposed project” and a suggestion to require notice to entities that are “adjacent to” a proposed project. This language would replace the requirement that notice be given to government entities “reasonably likely to be affected by the proposed transmission line.” The draft has been updated to include these suggestions.

Landowner Notice – Subparts 3 and 4

Proposed transmission line projects – subpart 3

There was a suggestion to require notice to landowners who are on or adjacent to a proposed route (in addition to landowners reasonably likely to be affected, as the current rules *and current draft* state); in siting and routing cases, Minn. Stat. § 216E.03, subd. 4 requires notice to owners whose property is “along any of the proposed routes.” The draft has been updated to include the phrase “along any of the proposed routes.” The draft does not, however, remove the language “reasonably likely to be affected.”

Proposed wind projects – subpart 4

There was a suggestion to require notice to landowners within two miles of a proposed wind project footprint (not only within one-half mile as the draft currently states) to better correlate notice with guidelines used by the U.S. Fish and Wildlife Service regarding buffers between proposed wind project footprints and eagle activity.

The Service has numerous guidelines on eagle conservation and uses various factors to evaluate proposed wind projects. And importantly, the agency is not limited by its guidelines, where distance, whether two miles or ten, is one factor the Service considers among many, including migration patterns. This underscores the importance of agency input on proposed projects, which is why the rules’ draft requires notice to the Service and to other agencies that would benefit from receiving notice.

To achieve the goal of broad public notice, however, the rules draft requires use of multiple methods of notice to increase the likelihood of broad public participation. It is important to notify not only landowners within “X” distance, but also to notify local units of government, and to require newspaper notice and issuance of a press release to local radio stations.

Newspaper Notice – Subpart 5

There was a suggestion to require newspaper notice in a legal newspaper of general circulation in each county of the proposed project (instead of newspaper notice “in areas reasonably likely to be affected by the proposed transmission line” or in the “area of the proposed facility”). The draft has been updated to include this change.

There was a suggestion to include in the newspaper notice a list of the counties that are shown on the maps that must be sent to landowners under subpart 7, (A) and (B). The draft has been updated to include this change.

Press Release – Subpart 6

There was a suggestion to require press releases to be sent to at least one radio station in each county of the proposed project. The draft includes this change. There were also suggestions on information that should be required in the press release and the draft has been updated to include the suggested information.

Notice Content – Subpart 7

Maps and Proposed Project Description – Subparts 7 (A) and (B)

There was a suggestion to require that the map, which shows the location of the proposed project, specifically include shaded-in areas that encompass possible routes. There was also a suggestion to require the project notice to include a description of the proposed project, including the type of facility, (e.g., fuel source) and its approximate size. The draft has been updated to include these changes.

There was also a suggestion to include “a description of general right-of-way requirements for a line of the size and voltage proposed (or for a facility of the size proposed) and a statement on whether the applicant intends to acquire property rights for the right-of-way that the proposed project will require.” The draft includes this statement for LHVTLs and LEGFs.

Statement on biennial transmission projects reports – Subpart 7 (C) (3)

There was a suggestion to state that “if the applicant is a utility subject to Minn. Stat. § 216B.2425, the address of the website on which the applicant has posted its most recent biennial transmission projects report.” This language replaces “if the applicant is a utility subject to chapter 7848, the address of the website on which the utility applicant will post or has posted its biennial transmission projects report required under that chapter.” The draft has been updated to include this change.

Statement on environmental review – Subpart 7 (C) (4)

There was a suggestion to include a statement that the Department will be conducting “environmental review” (not preparing an “environmental report”) of the project. To ensure that anyone receiving the notice clearly understands the document that the Department will prepare, it is probably most helpful to name the document. If we make changes to the environmental review provisions, we can update this requirement to include a change in terms.

Applicable Laws – Subpart 7 (C) (5)

The draft updates this language to cite the entirety of Chapter 7849, not various provisions within the Chapter.

Public Meeting – Subpart 7(C) (6)

There was a suggestion to change the provision requiring a statement about a public meeting from “a public meeting will be held by the commissioner” to “a public meeting will be held by the *Commission and* the Commissioner. The draft includes this change and uses the phrase “public meetings will be held” (the rules draft does not require the public meeting and scoping meeting to be held jointly).

Eminent Domain – Subpart 7 (C) (8)

There was some question on the necessity – at the CN stage – of requiring a statement on the possible use of eminent domain. We have added a more specific requirement on this point to subp. 7 (A) and (B). Therefore we no longer need to include subp. 7 (C) (8), and the draft therefore removes this language.

Good Faith Sufficient – Subpart 9

There was a suggestion to change this provision so that “a request for certification of a high-voltage transmission line *or LEGF*” not be denied on grounds of defective notice if the applicant acted in good faith.

There was also some concern raised about whether this provision is reasonable and would allow for lapses in notice. This rule is not new; it is an existing provision and is consistent with the statutory language in Minn. Stat. § 216E.03, subd. 4, which states that “failure to give mailed notice to a property owner, or defects in the notice, does not invalidate the proceedings, provided a bona fide attempt to comply” with notice requirements has been made.

The draft has been updated to include the suggested change to add “*or LEGF*.”

Compliance Filing – Subpart 10

There was a suggestion to allow applicants to file a compliance filing “within 30 days” of implementing notice, instead of “7 days.”

It is important to allow adequate time for review of the compliance filing prior to the date the application is filed and prior to a determination on whether the application is complete. The draft therefore includes an update to subpart 1 to require notice to be sent between 45 and 60 days prior to filing an application. That would allow at least 15 days for review of the compliance filing prior to the application filing date.

Public Advisor

There was a suggestion to list the contact information for the public advisor. Minn. Stat. § 216E.08, subd.3, makes it clear that the Commission has a public advisor to provide useful information to the public on participation. It would be helpful to follow up on this once we begin discussion of the review process and public participation.

3. Certificate of Need Requirements – 7849.0120

There was a suggestion to change some of the language in this rule part to eliminate potential conflict over burdens of proof. Specifically, there were suggestions to improve the language in subp. 3, items A and C, which uses the term “whether.” The draft has been updated to rephrase these provisions.

The draft has also been updated with changes to subp. 1. That subpart now reads “an applicant for a certificate of need must demonstrate that the projected demand for electricity cannot be met using existing resources, or more cost effectively through energy conservation and load-management measures, unless the applicant otherwise justifies its need.” This subpart was updated to ensure consistency with Minn. Stat. § 216B.243, subd. 3.

The draft also adds to the list of factors for consideration a new subpart 3, *item C* that states “the potential and cost of energy efficiency conservation and demand side management to meet the need.”

There was also a suggestion to change part 7849.0110 on “alternatives consideration.” Please send us any suggested changes to this part for further discussion and inclusion in the draft.

4. Application Content Requirements – Parts 7849.0220 -.0340.

Application Contents – 7849.0220, Subpart 2

There was a suggestion to describe more specifically the role of the RTO – or MISO – in part 7849.0220, subp. 2. To ensure clarity in this rule part, the draft continues to use the term “RTO” rather than MISO (apparently MISO’s name has changed recently).

More specifically, there was a suggestion to require a description of regional transmission planning promotional practices; there was a separate suggestion to require discussion of the applicable RTO planning process that identified the need for the facility and whether the facility is part of an RTO region or interregional plan. The draft has been updated to include these changes.

And there was a suggestion to apply the rule to proposed generating facilities, not just to LHVTLs, and the draft includes this change.

Proposed LEGF and Alternatives Application – 7849.0250

There was a suggestion that an applicant include in its application a narrative describing the need for the project, not just a project summary (and to remove multiple requirements for project summaries). In Docket No. ET-6675/CN-12-1053, ITC Midwest includes in part 2 of its March 22, 2013 filing: a Description of Need in section 4. Here’s the link to the document:

<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={916AEA85-0B5F-4D51-925C-F50B106E914A}&documentTitle=20133-84946-02>

This section of the filing appears to be more like a narrative than a summary. Is this useful information to require in a narrative?

Energy Mandates – (A) (7)

There was a suggestion that the rules require information from the applicant on the relationship between the facility and energy mandates. The draft has been updated to request this information from the applicant.

There was also a suggestion to require “a narrow and specific definition of the need for the facility;” and a map showing the “regional system, and a plat map of each affected county.” The rules draft currently includes a requirement to describe the need for the proposed project. See part 7849.0220, subp. 1. Further discussion on the use of county plat maps would be helpful.

There was a suggestion to add “capacity factor” to D (3), and the draft includes this change.

There was a suggestion to add language to D (7), including, “an estimate of its effect on rates systemwide and in Minnesota, assuming a test year beginning with the proposed in-service date; and an explanation of cost allocation.” Are there other thoughts on use of a test year for calculating cost?

Proposed LHVTL and Alternatives Application – 7849.0260

There was a suggestion that the rules require the applicant to provide the status of the proposed project with the RTO. The draft shows this requirement as B (2).

There was a suggestion to separate the provision/s on reliability, and the draft has been updated to include this change, The draft shows this as a new C.

Under the new C, the draft adds a requirement on NERC's reliability study. There was a suggestion to require the filing of the most recent reliability report from NERC. Because the report is an annual report on the bulk power system and not project-specific, it seems reasonable to require the applicant to include a link to the report, which is public. The draft shows this requirement as C (1).

There was a suggestion to require the MVA capacity. The draft has been updated to include this change. The draft shows this change in D (3).

Methodology, Data Base, and Assumptions – 7849.0270, Subpart 1

There was a suggestion to require peak demand data in the project area/where need is claimed, by either zip code or feeder substation, and to require applicants to identify interruptible load customers. Subpart 1 of the draft has been updated to include these changes.

5. Exemptions – 7849.0200, Subpart 6

Our discussion of application data requirements briefly segued into discussion of exemption requests, and there seems to be support to eliminate the requirement that they be filed prior to the application, and instead, allow them to be filed with the application. The draft does not yet include this change, and to ensure clarity on this point, it would be helpful to touch on it again before changing the draft.