

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 August 28, 2013 Advisory Committee Meeting

Members Present:

Deborah Pile (Department of Commerce, Energy Facility Permitting);
Jerry Von Korff (Rinke-Noonan);
Christy Brusven (Minnesota Wind Coalition);
Paul Lehman (Xcel Energy);
Lisa Agrimonti (Xcel Energy and ITC Midwest LLC);
Carole Schmidt (Great River Energy/Minnesota Power);
Tim Rogers (Xcel Energy);
Susan Medhaug (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);
David Grover (ITC Midwest);
Carol A. Overland (NoCapX 2020 and U-CAN);
Suzanne Rohlfing (North Route Group);
Richard Savelkoul (Martin and Squires); and
John Wachtler (Barr Engineering).

The following is a discussion of changes to the August 12 draft based on advisory committee comment and discussion.

1. Definitions – 7849.0010

Subpart 6a. Associated Facilities

There was a suggestion to correct the draft language by using a word other than “plant” to avoid excluding transmission facilities. The draft has been updated to use the word “facility.”

Subpart 9. Construction

There was a suggestion to clarify that “site” does not preclude the area constructed for a transmission line. The draft has therefore been updated to state “physical alteration of *an area...*”

New Definitions

There was a suggestion to add definitions of “independent power producer” and “transmission company.”

Subpart 12a – Independent Power Producer

There was a suggestion to define independent power producer to mean “persons, corporations, or other legal entities and their lessees, trustees, and receivers, engaged in the business of owning, operating, maintaining, or controlling in this state equipment or facilities for furnishing electric generation service in Minnesota, but does not include public utilities, municipal electric utilities, municipal power agencies, cooperative electric associations, or generation and transmission cooperative power associations.”

This definition will be used in a separate rule part to describe the application content requirements for these types of applicants. Because these applicants do not own or operate systems that serve ultimate (i.e., end user) customers, the data they include in their applications is different from the data required of utilities that serve end users. The draft has been updated to include this definition. The draft states that an IPP is “*any person* engaged in the business...” The draft also includes a phrase at the end to exclude “any other entity serving end user customers.”

Subpart 21 – Participation Power

There was a suggestion to eliminate this definition because the draft eliminates the definition of “seasonal participation power,” the only place in the Chapter where the term is used. The draft has been updated to strike this definition.

Subpart 24a – Region

There was a suggestion to clarify that region includes Canadian provinces within the same RTO as Minnesota, and the draft has been updated to include this change.

Subpart 25 – RTO

There was a question on whether the definition should identify a specific RTO. Most of the provisions referring to an RTO govern information the applicant must submit from the RTO on the proposed project. Because the RTO information filed will be from the RTO of which Minnesota is a member state, the draft has been updated to state that an RTO is an organization that “includes Minnesota as a member state.”

Subpart 30 – Transmission Company

Transmission Company. There was a suggestion to define transmission company to mean “persons, corporations, or other legal entities and their lessees, trustees, and

receivers, engaged in the business of owning, operating, controlling, or maintaining in this sated equipment or facilities for furnishing electric transmission service in Minnesota, but does not include public utilities, municipal electric utilities, municipal power agencies, cooperative electric associations, or generation and transmission cooperative power associations.”

The draft has been updated to include this change, in a manner similar to how “independent power producer” is defined.

Subpart 32 – Utility

There was a suggestion to modify the definition of “utility” to mean “any entity engaged in the generation, transmission, or distribution of electrical energy, including but not limited to a ~~private investor owned utility or a public or municipally owned utility~~ public utility, municipal electric utility, municipal power agency, cooperative electric association, generation and transmission cooperative power association, transmission company, or independent power producer.”

The draft has been updated to include this change. The draft also removes the phrase “but not limited to.”

2. Purpose of Criteria – 7849.0100.

The last sentence of this rule requires the Commission to make specific findings on each certificate of need criterion. There was a suggestion to move this sentence into the rule (.0120) that lists the criteria. The draft has been updated to include this change in .0120 under “Assessment of Need Criteria. The draft now states that “the Commission shall consider, *and make findings on*, the criteria contained in...”

3. Alternatives Consideration – 7849.0110

The draft has been updated to rephrase the statement citing Minn. Stat. § 116D.04, subd. 6, to state that the Commission shall comply with the requirements of the statute, which governs prohibited “state action significantly affecting the quality of the environment.”

4. Project Notice – 7849.0130

Subpart 2 – Notice Recipients

This subpart includes the list of recipients to whom notice must be provided. The list had included the Metropolitan Council, which is a regional development commission. The draft has been updated, however, to remove the Metropolitan Council because subpart 2, item G, requires notice to regional development commissions. Further, the draft has been updated to require notice to watershed districts under subpart 2, item G.

Subparts 5 – 7 Renumbering

Subpart 5 is now “notice content,” which applies to the notice sent under subparts 2 - 4. Subparts 6 and 7 are now listed as “newspaper notice” and “press release.”

Under subpart 6, the draft had stated that “the notice must include a description of the proposed project and project information, including where to obtain additional project information.” To eliminate confusion over the difference between *a description of the proposed project* and *project information*, the draft removes the language *project information* and requires the notice to include “a description of the proposed project and where to obtain additional project information.”

Subpart 8 – Good Faith Sufficient

There were suggestions to set out specific remedies for defective notice. And although the appropriate remedy will likely turn on case-specific facts, it is reasonable to clarify in the rules the remedies the Commission will consider if notice was defective, and the draft has therefore been updated to include this change.

Subpart 9 – Compliance Filing

There was a suggestion to remove references to “notice plan” and to ensure that the compliance filing requirements clearly set out the type of notice (e.g., mailed, newspaper, press release) they apply to. The draft has been updated to remove “notice plan.” And the draft has also been updated to clarify that a copy of the notice *sent under subparts 2 – 4* must be filed, along with a map. The draft has also been update to require a copy of the press release and the list of stations where it was sent.

5. Application Procedures and Timing – 7849.0200

There was a suggestion to rename this provision “Form and Manner.” The draft has been updated to include this change. There were also suggestions on changing the organization of this rule, and these are discussed below.

Subpart 1 – Electronic Filing

There was a suggestion to describe electronic filing requirements in subpart 1, and the draft has been updated to include this change.

Subpart 2 – Non-electronic Filing

There was a suggestion to describe the filing requirements for non-electronic filing in subpart 2, and the draft has been updated to include this change.

Subpart 3 – Form

There was a suggestion to include the form requirements in this subpart and to require correct the list of rule parts the table of contents must reference, and the draft has been updated to include these changes.

Subpart 4 – Changes to the Application

This provision has been moved and is now located after “Cover letter and summary.”

There was a suggestion to apply this subpart to supplemental filings, as well as to other changes, and the draft has also been updated to include this suggestion. There was also was a suggestion to clarify that filings made in proceedings not before an administrative law judge be filed with the Commission, and the draft also includes this change.

Other Subparts

There were suggestions to move the subparts on “completeness” and “exemptions” to separate/later provisions. It would be helpful to discuss this further as we continue the discussion of process issues.

6. 7849.0220 – Application Contents

There was a suggestion to add a statement to this provision identifying which application data content requirements will apply to independent power producers and transmission companies. The draft addresses this in 7849.0255 and 7849.0256.

Subpart 3 – Joint Proceedings

There was a suggestion to include language to clarify that joint proceedings apply to the same project, and the draft has been updated to include this change.

7. 7849.0255 – Independent Power Producer Application

This provision governs the application content requirements for independent power producer applicants. The draft has been updated to include letters A – F under subpart 2 (instead of numbers 1 – 6).

The draft has been updated to remove use of the terms “system operator” and “non-system operator.” Instead, the draft uses the term “independent power producer” (which is now defined in the draft) and “utility.”

The definition of “utility” has been updated, however, to include independent power producers, which are entities that do not serve end-user customers. To ensure accurate use of the term “utility” in this rule part, the draft states that the applicant must provide

the data under this rule only if it “has not entered into a power purchase agreement with a utility serving end user customers.”

Subpart 2, item C

There was a suggestion to require not only planning studies by the RTO but also by other agencies and commissions. The draft has been updated to require that the applicant of a proposed renewable LEGF intended to satisfy renewable energy standards be required to file “planning studies relied upon by the applicant to demonstrate the need for renewable generation to meet those standards.”

Subpart 2, item E

There was a suggestion to include “impacts on *Minnesota* ratepayers.” The draft has been updated to include this change.

8. 7849.0265 – Transmission Company LHVTL Applications

This provision is new and has been added to set forth the requirements for a transmission company, as that term is now defined in the draft. These requirements are different from the requirements for applicants who are utilities serving end-user customers.

9. Conservation Programs – 7849.0290

There was some concern that it is unnecessary to require an applicant to file summaries of its integrated resource plan, its conservation improvement plan, and its extended forecast filing.

There was also a suggestion to leave C and F in the rules and to amend C to require the utility to describe how conservation compares as an alternative to the proposed project.

It is reasonable to require applicants to carefully consider conservation and to provide information that will assist in this analysis. The draft therefore leaves C and F in place. And the draft continues to require summaries of the information filed in a utility’s resource plan, conservation improvement plan, and extended forecast.

10. Environmental Information Required – 7849.0310 - .0340

There was discussion on updating the environmental information required under these provisions. Further suggestions on this are welcome.

No- Facility Alternative – 7849.0340

The first sentence includes a reference to the three levels of demand in part 7849.0300. Because the draft strikes the “three levels of demand” language in .0300, the draft has been updated to also strike this language in the first sentence of .0340.