

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: March 9, 2017** Agenda Item 1

Company(s): Electric, Electric Transmission, and Independent Power Producers

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

In the Matter of Possible Amendments to Rules Governing Certificates of Need and Site and Route Permits for Large Electric Power Plants and High-Voltage Transmission Lines, *Minnesota Rules*, Chapters 7849 and 7850; and to Rules Governing Notice Plan Requirements for High-Voltage Transmission Lines, *Minnesota Rules*, part 7829.2550

Issue(s): Whether to publish the attached rules draft as proposed rules in the *State Register*

Staff: Kate Kahlert..... (651) 201-2239

The attached materials are workpapers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

This document can be made available in alternative formats (e.g., large print or audio) by calling 651-296-0406 (voice). Persons with hearing loss or speech disabilities may call us through their preferred Telecommunications Relay Service.

Relevant Documents

Rule Drafts.....February 2017
Request for Comments, published in the *State Register*.....December 10, 2012
Comments, NoCapX 2020 and United Citizens Action Network.....January 23, 2013
Comments, Xcel Energy.....January 24, 2013
Comments, Minnesota Wind Coalition.....January 24, 2013
Comments, Allen Muller.....January 24, 2013
Comments, Great River Energy and Minnesota Power.....January 24, 2013

Comments, Department of Commerce, Energy Environmental Review and Analysis.....	January 24, 2013
Comments, ITC Midwest LLC.....	January 24, 2013
Comments, Dairyland Power Cooperative, Minnkota Power Cooperative, Missouri River Energy Services, Otter Tail Power Company, Rochester Public Utilities, and Southern Minnesota Municipal Power Agency.....	January 24, 2013
Comments, Department of Commerce, Division of Energy Resources.....	January 24, 2013
Comments, Goodhue Wind Truth.....	January 25, 2013
Comments, North Route Group.....	January 30, 2013
Certificate of Need Legislative Changes.....	2005, 2014, and 2016
Siting and Routing Legislative Changes.....	2005

Table of Contents

INTRODUCTION

I. Background.....	1
II. Summary of Staff Recommended Drafts.....	2
III. Advisory Committee Input.....	2
IV. Overview of Draft Changes – Chapter 7849.....	2
V. Overview of Draft Changes – Chapter 7850.....	7
VI. Technical Corrections.....	12

INDIVIDUAL RULE ANALYSIS – CHAPTER 7849

I. Terminology

7849.0010 Definitions.....	13
7849.0010 Repeal of Definitions.....	14

II. General Requirements

7849.0030 Scope.....	14
7849.0100 Purpose of Criteria.....	15
7849.0110 Alternatives Consideration.....	15
7849.0115 Certificate of Need Requirements.....	15
7849.0120 Certificate of Need Criteria.....	15
7849.0125 Notice Lists.....	16
7849.0130 Project Notice.....	16
7849.0200 Application Form and Manner of Filing.....	18
7849.0208 Completeness Determination.....	19

III. Application Content Requirements

7849.0220 Application Contents.....	20
7849.0230 Environmental Report.....	21
7849.0240 Need Summary and Additional Considerations.....	21
7849.0250 Proposed LEGF and Alternatives Application.....	21
7849.0255 Independent Power Producer LEGF Application.....	21
7849.0260 Proposed HVTL and Alternatives Application.....	22
7849.0270 Engineering Data.....	22
7849.0275 Forecast Methodology, Data Base, and Assumptions.....	22

7849.0280	System Capacity.....	23
7849.0290	Conservation Programs, Application.....	23
7849.0300	Consequences of Delay.....	23
7849.0310	Environmental Information Required.....	24
7849.0320	Generating Facilities.....	24
7849.0330	Transmission Facilities.....	24
7849.0340	No-facility Alternative.....	24
IV. Conditions and Changes		
7849.0400	Certificate of Need Conditions and Changes.....	24
V. Comments and Record Development.		
7849.1000	Notice and Comments; Petition to Intervene.....	25
7849.1100	Record Development.....	25
VI. Environmental Report Process		
7849.1200	Environmental Report.....	26
7849.1300	Information Required for Environmental Review.....	26
7849.1400	Process for Environmental Report Preparation.....	26
7849.1410	Notice to Commission.....	27
7849.1475	Scoping Decision.....	27
7849.1500	Environmental Report Content.....	28
7849.1525	Environmental Report; Filing.....	28
7849.1530	Public Comments.....	28
7849.1550	Public Hearing.....	28
7849.1600	Agency Assistance and Filing of Agency Comments.....	29
7849.1800	Environmental Report to Accompany Project.....	29
7849.1900	Joint Proceeding.....	29
INDIVIDUAL RULE ANALYSIS – CHAPTER 7850		
I. Terminology		
7850.1000	Definitions.....	30
7850.1000	Other Recommended Changes to Definitions.....	30
II. General Requirements		
7850.1200	Applicability.....	31
7850.1300	Permit Requirement.....	32
7850.1400	Exempt Projects.....	32
7850.1500	Exceptions to Permitting Requirement for Certain Existing Facilities.....	32
7850.1600	Joint Proceeding.....	33
7850.1610	Notice Lists.....	33
III. Preapplication Procedures		
7850.1620	Preapplication Meetings; Transmission Lines.....	33
7850.1630	Notice of Intent to File.....	34
7850.1640	Draft Permit Application Required.....	34
7850.1650	Notice of Draft Application.....	36
7850.1680	Comments and Process.....	36

IV. Filing Requirements	
7850.1700 Permit Application and Manner of Filing.....	37
7860.1710 Application Completeness; Schedule.....	37
7850.1800 Permit Fees.....	38
7850.1900 Application Contents.....	38
7850.2000 Application Review.....	39
7850.2100 Notice of Application.....	39
V. Procedural Steps	
7850.2110 Comments on Application.....	40
7850.2120 Commission Referral.....	41
7850.2140 Joint Proceedings.....	41
VI. Public Participation	
7850.2200 Public Advisor.....	41
7850.2300 Public Information and Scoping Meeting.....	42
7850.2400 Citizen Advisory Task Force.....	42
VII. Full Permitting Process	
7850.2500 Environmental Impact Statement Preparation.....	43
7850.2520 Notice to Commission.....	43
7850.2530 Scoping Decision.....	44
7850.2540 Supplemental Filing By Applicant.....	45
7850.2550 Draft Environmental Impact Statement.....	45
7850.2570 Public Hearing.....	46
7850.2600 Contested Case Hearing.....	46
7850.2650 Final Environmental Impact Statement.....	47
7850.2675 Procedure after Administrative Law Judge Report.....	47
VIII. Alternative Review Process	
7850.2800 Eligible Projects.....	47
7850.2900 Repeal Parts 7850.2900 to 7850.3600.....	48
7850.3700 Environmental Assessment Preparation.....	48
7850.3720 Notice to Commission.....	49
7850.3730 Scoping Decision.....	49
7850.3740 Supplemental Filing by Applicant.....	49
7850.3750 Environmental Assessment.....	50
7850.3800 Public Hearing.....	50
IX. Factors for Commission Consideration	
7850.4000 Standards and Criteria.....	51
7850.4100 Factors Considered.....	51
7850.4200 Factors Excluded.....	51
X. Use of Prime Farmland	
7850.4400 Prohibited Sites.....	51
XI. Permit Administration and Local Review	
7850.4600 Permit Conditions.....	51
7850.4650 Compliance Filing.....	52
7850.4700 Delay in Route or Site Construction.....	52
7850.4800 Changes to Generating Plant or Transmission Line.....	52

7850.4900	Amendment of Permit Conditions.....	52
7850.4925	Complaint Procedures.....	53
7850.4950	Reports.....	53
7850.5000	Permit Transfer.....	53
7850.5100	Permit Revocation or Suspension.....	54
7850.5300	Local Review of Proposed Facilities.....	54
 COMMISSION DECISION OPTIONS		
I.	Next Steps.....	55
II.	Alternatives for Commission Consideration.....	55
 APPENDIX OF PROCESS SCHEDULES.....		57

INTRODUCTION

I. Background

In 2005, the Legislature transferred authority for the siting and routing of large electric generating plants and high-voltage transmission lines from the Environmental Quality Board to the Commission. Since that time, the Commission's experience in overseeing both the certificate of need process as well as the siting and routing process has led to the need for rule changes to clarify and align existing rule procedures.

The Commission therefore opened a rulemaking to consider amending the Commission's rules governing certificates of need (Chapter 7849) and site and route permits for large electric generating facilities and high-voltage transmission lines (Chapter 7850). The rulemaking is aimed at updating, improving, and clarifying the Commission procedures for evaluating applications for certificates of need and site and route permits and incorporating new statutory criteria governing certificates of need.

On December 12, 2012, we published a Request for Comments in the *State Register* and did a mass mailing to the rulemaking list, requesting comments on possible rule amendments and input on whether to appoint an advisory committee.

In response to comments received, the Commission appointed an advisory committee, which met approximately once a month between May 2013 and September 2014. We subsequently met individually with advisory committee members, updating the drafts in response to that input, and then circulated an updated draft for input in August 2015.

The committee included the following stakeholders:

- Department of Commerce, Energy Environmental Review and Analysis
- Department of Commerce, Division of Energy Resources
- Xcel Energy
- Just Change Law
- Midcontinent Independent Transmission System Operator
- Great River Energy
- NoCapX 2020 and United Citizens Action Network
- Minnesota Power
- Department of Transportation
- North Route Group
- Chamber of Commerce
- Minnesota Wind Coalition
- Richard Savelkoul
- Barr Engineering
- David Aafedt
- Jerry Von Korff
- ITC Midwest LLC

- Jointly, Rochester Public Utilities, Southern Minnesota Municipal Power Agency, Missouri River Energy Services, Minnkota Power Cooperative, and Dairyland Power Cooperative, and Otter Tail Power Company.

Several other interested individual stakeholders also provided input throughout the advisory committee process, including Marie McNamara, Barbara Stussey, and Kristi Rosenquist.

II. Summary of Staff-Recommended Drafts

At the outset of this rulemaking process, staff developed drafts of Chapters 7849 and 7850 consistent with the Commission's objectives to align the procedures of both rule chapters, to clarify the structural framework of the processes, to resolve inherent timing conflicts, to maximize public participation, and to incorporate new statutory criteria required for demonstrating that a project is needed. The changes also included moving the notice plan requirements for high-voltage transmission lines from the Commission's rules governing practice and procedure, under Minn. R. 7829.2500, into Chapter 7849.

III. Advisory Committee Input

Throughout the advisory committee process, the committee identified issues and provided staff with input and recommendations on the drafts, and the drafts were updated in response to that input. And while the committee reached consensus on many issues, there were also some issues on which the committee did not reach consensus.

Below is a discussion of key changes to both rule chapters, followed by individual rule analysis of draft changes in each rule chapter.

IV. Overview of Draft Changes to Certificate of Need Rules, Chapter 7849

In 2005, the Legislature transferred responsibilities for development of the environmental report in certificate of need cases from the Environmental Quality Board (EQB) to the Commission. Prior to the transfer, Chapter 7849 included only parts 7849.0010 to 7849.0400, which govern the Commission's role in evaluating certificate of need applications. As a result of the transfer, the EQB rule parts governing the environmental report process (7849.1000 to 7849.2100) were transferred into Chapter 7849. We will work with the Revisor's Office to address any necessary renumbering.

And because applicants have the option to file both a certificate of need application and a permit application, the drafts of both chapters incorporate joint application procedures to clarify the process when multiple applications are filed, as explained in further detail below.

Below is a discussion of key changes to Chapter 7849. Part-by-part analysis of Chapter 7849 is set forth in the second section of these briefing papers.

A. Changes to Notice Plan Requirements

Minn. R. 7829.2550 governs notice plan filing requirements for certificate of need applications for high voltage transmission lines. As part of this rulemaking proceeding, those requirements will be transferred from Chapter 7829 (the Commission's rules of practice and procedure) into Chapter 7849.

The committee discussed possible changes to the notice plan requirements and concurred that there is no longer a need to require applicants to file a notice plan *for approval prior to giving notice* of a proposed project. Under the existing notice plan rules, an applicant must file its notice plan at least three months prior to filing a certificate of need application and must implement the approved notice plan within 30 days of Commission approval.

In practice, many applicants request a variance to these timing requirements to either vary the three-month time period (to allow the notice plan and the certificate of need application to be filed at the same time), or to vary the 30-day time period for implementing the notice plan (to allow implementation of the notice plan to more closely coincide with notice of the filing of the certification of need application). As a result, the draft rule requires applicants to give notice of their projects at least 45 days, but not sooner than 60 days, prior to filing an application.

The committee concurred on removing the *notice plan* filing requirements under rule part 7829.2550 but emphasized retaining requirements governing: notice timing, notice recipients, notice content, and notice format. In addition to retaining these requirements, the committee also concurred on incorporating new requirements, such as requiring applicants to issue press releases and to make compliance filings demonstrating compliance with the notice requirements.

B. Notice Lists

The draft rule incorporates notice lists, which will be used to notify people of the application, of public information and scoping meetings, of the environmental report, and of public hearings.

There are five lists that will be maintained under this rule. The Commission will maintain three of the lists. The first is a general list of persons who want to be notified of *permit* applications under Chapter 7850. This list will be used to also notify people of certificate of need applications. The second list is a project list that will include anyone who has requested to receive notice of a specific project. The third is a public agency list that primarily includes state and federal agencies that are likely to be interested in certificate of need filings.

Applicants must maintain two lists under the draft rule. The first is a list of landowners whose property is within a project footprint, or within a half-mile of the footprint, and landowners whose property is along a proposed transmission line. The second is a list of local and tribal governments located in the project area.

The draft rule requires that names remain on the list, unless an individual requests to be removed from the list.

C. Application Completeness Determination

Minn. Stat. § 216E.03, subd. 3, requires – in permitting cases – that the Commission determine whether an application is complete, as follows:

The commission shall determine whether an application is complete and advise the applicant of any deficiencies within 10 days of receipt. An application is not incomplete if information not in the application can be obtained from the applicant during the first phase of the process and that information is not essential for notice and initial public meetings.

The attached draft rule incorporates this statutory requirement by delegating to the Executive Secretary the authority to determine, within the 10-day time period, whether an application is complete. To align the procedures of both rule chapters, the draft of Chapter 7849 incorporates this same 10-day timeframe for determining whether a *certificate of need* application is complete and delegates to the Executive Secretary the authority to make the decision.

This change modifies the existing rule, which requires the Commission to notify applicants within 30 days if a certificate of need application is not substantially complete. The advisory committee concurred on incorporating the 10-day statutory deadline applicable to permit applications into both rule chapters. In permitting cases, the draft rule changes require an applicant to file a draft application, ensuring that the Executive Secretary has as much information as possible prior to making a completeness decision on the final application.

The completeness decision is *as to form only* and does not imply any judgment about the merits of an application, which will be developed throughout the duration of the proceeding. If the Executive Secretary determines that an application is not complete, the application will be brought to the Commission for further review at the earliest possible Commission meeting, depending on the applicant's availability.

Further, anyone wanting to comment on the merits of an application, after the completeness decision, will have the opportunity to do so during a 21-day initial comment period on the application and a 14-day reply comment period. The Commission will have the opportunity to consider those comments when deciding to either refer the case for contested case proceedings or develop the record using the Commission's informal review process.

In the case of an application for a certificate of need and a site or route permit, joint proceedings on both applications will not begin until after both applications are found to be complete.

D. Process Schedule

The draft rule states that upon receipt of a certificate of need application, Commission staff must consult with the Department and the applicant to set a proposed process schedule for completing the permitting process, considering applicable statutory deadlines. Developing a process schedule furthers the policy goal of establishing, strengthening, and maintaining an open,

orderly, and timely process that takes into consideration applicable statutory deadlines for Commission action on the application.

Use of a schedule will enable the public and the parties to more effectively prepare for further record development. And, establishing and tailoring a process schedule to best fit a particular project provides flexibility to address project-specific issues.

Attached to these briefing papers is an appendix with an example process schedule for the certificate of need process.

E. Independent Power Producers

Recent legislative changes to Minn. Stat. § 216B.243, subd. 8(7), apply the certificate of need requirements to independent power producers who intend to sell electric output to retail electric utilities and wholesale service providers, excluding sales to the Midcontinent Independent Transmission System Operator (MISO). The attached draft rule therefore incorporates requirements for applications filed by independent power producers, which are entities that own, operate, maintain, or control facilities for furnishing electric generation but that do not directly serve end user customers.

Most certificate of need applications are filed by utility companies, which must file data, such as forecasting information on consumers' energy consumption. But independent power producers do not necessarily have access to utility data that supports the need for a proposed project, and the draft therefore requires utility data only if the independent power producer has entered into a power purchase agreement with a utility. At a minimum, independent power producers must provide ownership information, data on regional capacity, availability of renewable resources, reliability, and costs.

F. Application Content Requirements

The attached draft rule amends existing application content requirements that were adopted at a time when a transmission line project was typically linked directly to a generation project. The existing rules require data on annual electrical consumption for *all* customer classes across the applicant's Minnesota service area. But in recent years, proposed projects are often intended to address increased demand at peak times in concentrated load centers without regard to consumption by other classes of customers in other parts of the applicant's service area.

In other words, many projects are now intended to address, for example, demand at the substation level. This means that data on usage for some classes, such as the irrigation and drainage pumping class, might not be relevant to a project that proposes to address peak demand of residential consumers within a limited geographic area. As a result, applicants have often requested, and the Commission has granted, exemptions from existing data requirements.

The advisory committee concurred that the rules should be updated to reflect the need for other data that better supports the claimed need for proposed projects. The draft rule therefore updates

the application content requirements by requiring an engineering analysis, in lieu of annual electrical consumption data for all customer classes.

For example, an applicant must file an engineering analysis that includes a base case model, such as a power flow study, which is an analysis of the system's capability to adequately support the connected load. An applicant must file detailed information about the base case model used, such as changes made to the base case model, performance criteria, contingencies and conditions modeled, methods of power transfer simulated, and software input and output data.

The draft rule also requires updated forecasting information, including a list of the analytical techniques and the software used in making the forecast. It also requires the applicant to file the data sets used in the forecast in the form of an electronic spreadsheet that can be used to replicate the results of the forecast. The spreadsheet must include both raw and adjusted data, as well as input and output data. Making data available in the form of an electronic spreadsheet is likely to increase public participation in the process by making the data more readily available in a form that is easier for the general public to understand.

G. Environmental Report Process

The advisory committee concurred that it would be helpful to update rule parts governing the environmental report process. The attached draft rule therefore updates language governing notice of the public information and scoping meetings, the scoping decision, and the content of the environmental report.

The public information and scoping meeting gives members of the public the opportunity to meet with Commission and Department staff, as well as the applicant, to obtain information about the proposed project, to provide input, and to suggest alternatives to the proposed project. The Department's scoping decision identifies the alternatives that will be studied in the environmental report, which the Department prepares.

The existing rules require the Department to give notice of the scoping meetings. The draft rule instead requires the Commission to send the notice, and broadens the notice requirements to include notice to landowners. And the draft requires the applicant, instead of the Commission, to publish newspaper notice of the meetings.

In addition, the draft rule requires the Department to file a copy of its scoping decision with the Commission and to send notice of the decision to those who are on a project contact list and to other government agencies. The scoping decision must list all alternatives identified throughout the scoping process and must include the reasons for excluding any alternatives for evaluation in the environmental report.

The draft rule also updates the list of potential impacts that must be addressed in the environmental report by including potential impacts on, for example, hydrological resources, ecological resources, and land use.

V. Overview of Draft Changes to Site and Route Permit Rules, Chapter 7850

As mentioned in the preceding section, applicants have the option to file both a certificate of need application and a permit application; they may also file multiple permit applications. The drafts of both chapters therefore incorporate joint application procedures to clarify the process when multiple applications are filed. The changes address application completeness (proceedings will not begin until all applications are found to be complete) and require the Commission to decide whether to hold joint scoping meetings, joint public hearings, and joint evidentiary hearings. And in the case of multiple applications, an applicant must proceed with the draft site or route permit application process prior to filing a certificate of need application.

In all cases, whether joint or not, proceedings will be coordinated using a process schedule developed by Commission staff in conjunction with the Department and applicants, considering applicable statutory deadlines.

Below is a discussion of key changes to Chapter 7850. Part-by-part analysis of Chapter 7850 is set forth in the third section of these briefing papers.

A. Notice Lists

The draft modifies the existing requirement that the Commission maintain two notice lists – a list of persons who want to be notified of any permit application that is accepted by the Commission, and a project contact list that is used to notify people who are only interested in a particular project.

The draft rule adds three additional notice lists. The first is a public agency contact list that includes federal and state agencies; this list will be maintained by the Commission. The other two will be maintained by the applicant and include: a landowner list that includes persons whose property is near or along proposed sites and routes, and a local and tribal government contact list that includes tribal governments and local units of government.

The draft rule also requires that names remain on the list, unless an individual requests to be removed from the list.

The notice lists will be used to notify people of the following: a draft application, a final application, public information and scoping meetings, the scoping decision, the draft EIS, the final Environmental Impact Statement (EIS), the Environmental Assessment (EA), public hearings, and possible changes to either permit conditions or to projects for which permits have already been issued.

B. Preapplication Procedures

The committee concurred that it would be helpful to establish preapplication procedures, including: requiring public outreach meetings; requiring that a draft permit application be filed; establishing comment periods on the draft application; and requiring staff to work with the

Department and the applicant to set a process schedule after the draft application is received.

Adding these steps largely codifies existing practice in a manner that engages members of the public earlier in the process and that furthers the statutory objective to have an orderly and timely process for considering proposed projects.¹

1. Public Outreach Meetings

The draft rule requires an applicant proposing a transmission line to hold public outreach meetings prior to filing a route permit application. Meetings must be held in each county where a high-voltage transmission line would be located based on routes the applicant is actively considering or intending to propose in its application. It is common practice for applicants to hold public outreach meetings, and the draft codifies this practice to increase consistency and uniformity among applicants and to promote public participation early in the process.

The draft rule requires applicants to give notice of the meetings, to provide the public the opportunity to offer oral or written comments, and to prepare a summary of the meetings held and the comments received.

The committee agreed that public outreach meetings should be required only in transmission line cases. These projects are more likely to affect larger numbers of people, ultimately requiring more time to develop issues and consider possible alternatives. As a result, the draft rule does not require applicants proposing a power plant to hold public outreach meetings, and no committee members recommended it.

2. Draft Applications

It is current practice that applicants provide a draft application to the Department to informally begin discussions on a proposed project. The draft rule codifies this step by requiring an applicant to file a draft permit application at least 45 days prior to filing the final application.

We considered requiring applicants to file a draft permit application 90 days in advance of filing a final application, and some committee members support a 90-day timeframe. Other committee members stated, however, that in practice, draft permit applications are filed approximately 45 days in advance. As a result, the draft rule incorporates the 45-day timeframe. To increase public awareness of the draft permit application, the draft rule requires the Commission to invite comments on it.

The draft application must include all the information currently required of a final application, including environmental information. This is consistent with the information applicants currently provide to the Department on an *ad hoc* basis.

In addition to existing content requirements, the draft application must state whether the

¹ Minn. Stat. § 216E.02, subd. 1.

applicant is retaining the option to exercise eminent domain, and if so, the percentage of property that the applicant has obtained under contract and the percentage of contiguous land that is subject to a fee interest by condemnation under Minnesota Statutes, section 216E.12, subd. 4.

For site permit applications, an applicant will be required to identify the name of each zoning authority with responsibility over each property within each proposed site and the present zoning classification of the property.

3. Process Schedule

The draft rule states that as soon as the Commission receives a draft application, Commission staff must consult with the Department and the applicant to set a proposed process schedule for completing the permitting process, considering applicable statutory deadlines. Timeframes will be developed based on an applicant's projected date for filing the final application. Using a process schedule is a useful mechanism for resolving inherent timing conflicts that currently exist in the rules and result from the transfer of authority over siting and routing from the EQB to the Commission.

For example, under the alternative review process, the Department must hold a scoping meeting and allow seven days following the meeting for the public to submit written comments to the Department. The Department must make a scoping decision within ten days after the close of the public comment period. But that rule is often varied to allow the Commission time to provide input on site and route alternatives prior to the Department's scoping decision. Furthermore, the ten-day scoping decision deadline only applies to the alternative review process, which requires the Department to prepare an EA. There is no corresponding deadline, however, for the scoping decision when an EIS is required.

Setting timeframes that are project-responsive, considering applicable statutory deadlines for completing the permitting process, will help those involved in the process to be more clearly informed about the steps and be better prepared to participate.

Attached to these briefing papers is an appendix with example process schedules for both the full permitting process and the alternative review process.

C. Public Information and Scoping Meeting

The draft rule expands the notice provisions to require that notice of the public information and scoping meeting be given not only to persons who signed up to receive notice of projects or who are on the official service list, but also to landowners, public agencies, and local and tribal governments.

The meeting notice must include not only the meeting dates and times but also relevant project information, such as location and each proposed site or route, as well as information on where to find the application. The notice must also include the Commission's contact information, including contact information for the public advisor assigned to the case. In addition, the draft

rule requires the applicant to give notice of the meeting to the general public by newspaper publication.

The draft rule also removes the requirement that the meeting be held no later than 60 days after the acceptance of the application. The draft instead requires the meeting to be held consistent with the process schedule.

D. Development of the Environmental Impact Statement or Environmental Assessment

The draft rule requires the draft EIS to be completed consistent with the process schedule. This increases clarity, while maintaining flexibility. Use of a schedule will increase orderliness and timeliness of the process and enable the public and the parties to more effectively prepare for further record development, including participation in the draft EIS public meeting, which is held after the draft EIS becomes available. And, establishing a project-responsive schedule provides needed flexibility to address project-specific issues.

The draft rule also requires that notice of the draft EIS be sent to landowners, in addition to those on the project contact list as is currently required.

The draft rule requires the Department to complete the final EIS according to the process schedule and to include in the final EIS responses to comments received on the draft EIS. The draft rule also establishes a 25-day public comment period on the final EIS.

F. Prime Farmland

The current rules, part 7850.4400, prohibit the siting of large power plants on prime farmland, unless there is no feasible and prudent alternative. The draft amends this rule to permit use of prime farmland for large solar-powered plants if the Commission approves a farmland mitigation plan developed in consultation with the Minnesota Department of Agriculture and if, at the time of the application, there is no local zoning ordinance prohibiting the construction of solar-powered plants on prime farmland.

G. Repeal of Redundant Rule Parts

To remove unnecessary redundancy in the rules and avoid potential confusion between the full permitting process and the alternative review process, the draft rule repeals parts 7850.2900 to 7850.3600.

Minn. Stat. Ch. 216E sets forth two review processes. The procedures applicable to larger projects is referred to in the Commission's rules as the full permitting process, and the procedures applicable to eligible (usually smaller) projects, listed under Minn. Stat. § 216E.04, subd. 2, is referred to as the alternative review process. There are three primary differences between the two.

Under the full permitting review process, an applicant is required to propose at least two sites or routes, the record is developed using contested case proceedings held by an administrative law judge, and the Department is required to prepare an EIS.

Under the alternative review process, an applicant is required to propose only one site or route (and identify any sites or routes the applicant considered and rejected), the record is developed using informal proceedings rather than contested case proceedings, and the Department is required to prepare an Environmental Assessment, not an EIS.

Parts 7850.2900 to 7850.3600 provide mostly the same information set forth in separate rule parts that govern the full permitting process. For example, rule part 7850.3300 addresses project notice as follows:

Part 7850.2100, regarding obligations to give notice of the project, applies to projects being considered under the alternative permitting process.

To avoid this unnecessary redundancy, the draft rule repeals parts 7850.2900 to 7850.3600 and amends remaining parts as necessary to distinguish between the full and alternative review processes.

H. Post-permitting Process

1. Compliance Filing

The draft rule codifies the existing practice in which applicants file a plan and profile (a preliminary design plan for the project) after a permit is issued for the project. An applicant must file the plan 30 days prior to construction; the Executive Secretary must decide whether the plan is consistent with applicable permit conditions and notify the applicant of the decision.

2. Project Changes

The draft rule modifies the existing rule governing changes to projects after permits have been issued. The Permittees will still be required to ask the Commission for approval prior to implementing those changes. However, the draft rule requires persons requesting a change to the project to notify landowners whose property is along the portion of the route or adjacent to the site affected by the proposed change.

3. Amendment of Permit Conditions

The draft rule modifies the existing rule governing changes to permit conditions. The draft rule clarifies that anyone *affected by a permit condition* may request a change to a permit condition. The Commission must give notice of a comment period on the change request to landowners whose property is along the portion of the route or adjacent to the site affected by the proposed change.

In addition, the draft rule removes the deadline requiring the Commission to make a decision on the request within 10 days after the close of the comment period. The Commission is required to give a 10-day notice of its meetings under the Open Meeting Law, making the deadline impracticable.²

4. Complaint Procedures and Reports

Two new draft rule parts govern complaint procedures and reporting requirements.

The first governs complaints about permit conditions. The draft rule allows persons in a dispute with a permittee over permit conditions to file a complaint with either the permittee or the Commission. A local unit of government may also file a complaint on behalf of a resident. A permittee is required to notify the Commission of complaints by the end of the next business day following receipt of the complaint. Any complaint received by the Commission must be sent to the permittee for response. Commission staff will investigate the complaints and work to informally resolve them.

The second requires a permittee to file monthly reports with the Commission that summarize the complaints received during the preceding month and that provide the status of those complaints. These reports must be filed monthly until the permittee completes the project and files a notice of project completion with the Commission.

VI. Technical Corrections

Both rule chapters require technical corrections to increase clarity and consistency. These include using “Department” in place of “the Commissioner of the Department of Commerce,” and using “Commission” in place of “the PUC” or “the Public Utilities Commission.”

In Chapter 7849, use of the term “large high voltage transmission line” will become “high voltage transmission line,” consistent with the certificate of need statutes (Minn. Stat. §§216B.243 and 216B.2421), the siting and routing statute (Minn. Stat. §216E), and the siting and routing rules (Chapter 7850).

In both drafts, the term “mail” is used in place of “send.” The term “mail” is defined in Chapters 7849 and 7850 as “either the United States mail or electronic mail by e-mail.”

The draft also replaces “shall” with “must,” consistent with a recent decision by the Office of Administrative Hearings that recommends such use in rules.

² Minn. Stat. Ch. 13D.

INDIVIDUAL RULE ANALYSIS – CHAPTER 7849

TERMINOLOGY

7849.0010 DEFINITIONS.

Subpart 1. Scope.

Under the 2005 legislative changes, parts 7849.1000 to 7849.2100 were added to the Chapter, and the draft rule therefore updates this subpart to clarify that the definitions for the entire chapter are included in part 7849.0010.

Subp. 6. Associated Facilities.

The draft rule modifies the existing definition (renumbered from part 7849.1000) to clarify that other transmission lines that are necessary to interconnect a facility to the electrical grid will also be treated as associated facilities.

Subp. 9a. Department.

The draft rule includes a definition of “Department” because there are numerous rule parts that use the term.

Subp. 12a. Independent Power Producer.

This term is defined in the draft because independent power producers are subject to certificate of need requirements if they plan on selling output from a wind or solar facility to retail and wholesale providers (other than a regional transmission organization or independent system operator), and if the facility is not intended to be used to meet an electric utility’s renewable energy obligations under Minn. Stat. § 216B.1691.

Subp. 14. ~~LHVTL~~; **large high voltage transmission line.**

The draft rule strikes “large” from the rule chapter because the certificate of need statute uses the term “high-voltage transmission line,” without “large.”

Subp. 25. Region.

The draft rule defines this term because “region” is used in a subsequent rule part incorporating a statutory change requiring that the Commission consider regional need, including the potential benefits of a proposed facility to the reliability of energy supply in Minnesota and the region, in evaluating a certificate of need application.

Subp. 26. Regional Transmission Organization or RTO.

The draft rule defines this term, which is used in a subsequent rule part requiring that proposed projects include information on regional transmission planning.

Subp. 27. Transmission company.

The draft rule defines this term because it is used in the definition of “utility” and clarifies that a transmission company is subject to certificate of need requirements.

Subp. 32. Utility.

The draft rule updates the term “utility” because it is used in draft rule parts governing forecast data required of a utility in its application. The draft rule therefore includes several other entities that will be required to provide or obtain the data.

Repeal of Definitions – Part 7849.0010

The draft repeals the following definitions because these terms will no longer be used throughout the chapter. The draft incorporates new terminology in subsequent rule parts governing application data requirements, rendering the following rule definitions unnecessary.

- Subp. 2. **Adjusted net capability.**
- Subp. 3. **Adjusted net demand.**
- Subp. 4. **Annual adjusted net demand.**
- Subp. 6. **Annual system demand.**
- Subp. 10. **Firm purchases; firm sales.**
- Subp. 11. **Forecast years.**
- Subp. 16. **Load factor.**
- Subp. 18. **Net generating capacity.**
- Subp. 19. **Net reserve capacity obligation.**
- Subp. 21. **Participation power.**
- Subp. 22. **Participation purchases; participation sales.**
- Subp. 25. **Seasonal adjusted net demand.**
- Subp. 26. **Seasonal participation power.**
- Subp. 27. **Seasonal system demand.**
- Subp. 28. **Summer season.**
- Subp. 30. **System demand.**
- Subp. 33. **Winter season.**

The Department stated that “seasonal” definitions should be retained because electrical energy is typically sold and purchased on a seasonal basis and those transactions are relevant to whether the capacity of an applicant’s existing system can meet the applicant’s forecasted demand for electrical energy. The Department stated that MISO is considering proposing two procurement seasons, the summer season, which would run from June to September, and the winter season, which would run from October to May.

The “summer season,” as defined in the existing rule, however, runs from May 1 to October 31, potentially conflicting with the approach under consideration by MISO. Furthermore, the draft rule includes subsequent changes requiring applicants to file data on system capacity that includes all generation owned and purchased by the applicant, as well as existing exchange agreements. The result is that an applicant will be required to file capacity data on all sales and purchases regardless of the duration of the agreement or the season to which the agreement applies.

GENERAL REQUIREMENTS

7849.0030 SCOPE.

The changes to this rule part are housekeeping changes that update the rule to more accurately

reflect the scope of the chapter, as well as recent legislative changes affecting exemptions.

7849.0100 PURPOSE OF CRITERIA.

This draft rule contains housekeeping changes to update the rule consistent with other draft rule changes to subsequent rule parts.

The draft rule eliminates the reference to the list of factors in part 7849.0100 because that rule part has been updated to reorganize and modify the list of criteria the Commission must consider.

The draft rule updates the language to refer to the entire chapter, rather than a range of rule parts because rule parts 7849.0100 to 7849.2100 were added to Chapter 7849 as a result of the 2005 Legislative changes.

The draft rule also removes the requirement that the Commission make a specific written finding on criteria the Commission must consider. The Commission's reasoning for its decision will be explained in Commission orders.

7849.0110 ALTERNATIVES CONSIDERATION.

Some committee members suggested the following change to this rule part:

The Commission shall comply with the requirements contained in Minnesota Statutes, section 116D.04, subd. 6, governing prohibited state action significantly affecting the quality of the environment.

The draft rule does not include this statement, however, because the statute cited governs the process for developing an EIS, which is not required under Chapter 7849. The Commission's approved alternative form of review applicable to certificates of need is an Environmental Report. References to other forms of review that are either not required or approved could cause confusion about what form of environmental review is required.

7849.0115 CERTIFICATE OF NEED REQUIREMENTS.

The draft rule incorporates statutory language governing standards applicable to certificate of need applications. Specifically, under Minn. Stat. § 216B.243, an applicant must demonstrate in certificate of need cases that: use of energy conservation would not meet the stated need more cost-effectively than the proposed project, and for proposed non-renewable energy projects, that use of renewable energy resources was considered in meeting the stated need for electricity. Committee members recommended including this language in the draft rule.

7849.0120 CERTIFICATE OF NEED CRITERIA.

The draft rule reorganizes the list of criteria and factors the Commission must consider, and it updates the rule, consistent with recent statutory changes.

Instead of using lists of criteria and sub-lists of factors, the draft rule contains a single list of the criteria that the Commission must consider when evaluating an application, including the list of criteria set forth under Minn. Stat. § 216B.243. Citing to the statute, rather than restating it, helps

prevent the rules from becoming outdated if the statute is subsequently amended.

The draft rule also strikes criteria now listed in the statute, including criteria concerning environmental quality because the statute requires the Commission to consider environmental quality and because the Commission will consider impacts identified through the Environmental Report process, which is governed by subsequent rule parts that the Legislature transferred to the Commission in 2005.

7849.0125 NOTICE LISTS.

The draft rule incorporates notice lists, which will be used to notify people of the application, public information and scoping meetings, the Environmental Report, and public hearings.

There are five lists that will be maintained under this rule. The Commission will maintain three of the notice lists. The first is a general list of persons who want to be notified of *permit* applications under Chapter 7850. This list will also be used to also notify people of certificate of need applications. The second list is a project list that will include anyone who has requested to receive notice of a specific project. The third is a public agency list that primarily includes state and federal agencies likely to be interested in certificate of need filings.

Applicants must maintain two lists under the draft rule. The first is a list of landowners who are within the project footprint or are reasonably likely to be affected by the project. The second is a list of local and tribal governments located in the project area.

It is important to include landowners who are within, or near, a proposed project footprint, or who are reasonably likely to be affected by a proposed project. This ensures that they will receive early notice, and it furthers the policy goal of maximizing public participation by providing opportunities for input.

In addition, the draft rule requires that names remain on the list, unless an individual requests to be removed from the list.

7849.0130 PROJECT NOTICE.

The project notice requirements of the draft rule replace the notice plan filing requirements that exist under part 7829.2500.

The committee concurred that there is no longer a need to require applicants to file a notice plan *for approval prior to giving notice* of a proposed project. Under the existing notice plan rules, an applicant must file its notice plan at least three months prior to filing a certificate of need application and must implement the approved notice plan within 30 days of Commission approval.

In practice, many applicants request a variance to existing timing requirements to either vary the three month time period (to allow the notice plan and the certificate of need application to be filed at the same time), or to vary the 30-day time period for implementing the notice plan (to allow implementation of the notice plan to more closely coincide with notice of the filing of the

certification of need application). As a result, the draft rule requires applicants to give notice of their projects at least 45 days, but not sooner than 60 days, prior to filing an application.

The committee concurred on removing the requirement that a notice plan be filed and approved, as long as the rules retain existing notice requirements governing: notice timing; notice recipients; notice content; and notice format. As a result, some of the language in the draft rule is not underlined because it is taken from part 7829.2550.

Subpart 1. Notice required.

Requiring an applicant to give project notice approximately two months before filing a certificate of need application will further the policy goal of maximizing public participation by providing early notice to people who are likely to be affected by a proposed project.

Subp. 2. Notice recipients. All projects.

Requiring early notice of a proposed project to various entities and agencies at the local, state, and federal levels furthers the policy of goal of obtaining relevant input from these organizations throughout the certificate of need process. It is also important to ensure early notice to maximize public participation in the process.

Subp. 3. Notice content.

The committee concurred that much of the existing notice *content* requirements should be retained as shown above. The draft rule adds the requirement that the notice include statements about public meetings and where to obtain copies of relevant filings.

Subp. 4. Newspaper notice.

Some committee members recommended modifying the existing rule to require that newspaper notice be given in each county where a project is proposed and to include a description of the location of the proposed project and where to obtain additional project information. The draft rule incorporates these suggestions.

Subp. 5. Press release.

Some committee members recommended adding a requirement to issue a press release to radio stations, stating that in rural areas in particular, people might be more likely to hear about a proposed project on the radio. The draft rule requires the press release to include relevant project information, where to obtain additional project information, and a statement that the applicant could use eminent domain proceedings to obtain property for the project.

Subp. 6. Compliance filing.

The committee concurred that applicants should be required to make compliance filings to demonstrate compliance with the notice requirements, and the draft rule incorporates this suggestion.

Subp. 7. Good faith sufficient.

The draft rule adds language addressing defective notice, as requested by some committee members who recommended clarifying that if the Commission determines that notice was

defective, the process schedule could be modified to ensure that parties have a reasonable opportunity to subsequently participate.

7849.0200 APPLICATION PROCEDURES AND TIMING FORM AND MANNER OF FILING.

Subpart 1. ~~Form and manner.~~ Electronic filing.

The draft rule modifies this subpart to include a reference to electronic filing requirements under Minn. Stat. § 216.17, subd. 3.

Subp. 2. ~~Copies, title, table of contents~~ Non-electronic filing.

The draft rule modifies this subpart to clarify the filing requirements of applicants who are not required to file electronically under the statute. Although it is more likely than not that applicants will file electronically, it is important to retain requirements that will apply if an applicant does not file electronically.

Subp. 4. Cover letter and summary.

The draft rule incorporates a summary requirement that currently exists under part 7829.2500 for all certificate of need applications. Transferring this requirement into Chapter 7849 incorporates current practice and ensures that the summary will be clearly visible to the public and other parties.

Subp. 3 5. Changes to application.

The draft rule includes housekeeping changes to clarify existing language and to require that amended filings be made with the Commission if there are no proceedings underway with an Administrative Law Judge.

Subp. 5. ~~Complete applications.~~

The draft rule strikes this subpart because application completeness will be governed by a separate rule part, 7849.0208.

Subp. 6. Exemptions.

The draft rule strikes one sentence of subpart 6 that requires the Commission to act on exemption requests within 30 days of receipt. Because Minn. Stat. Ch. 13D (the Open Meeting Law) requires Commission meetings to be open, with 10 days' advance public notice, it can take longer than 30 days to develop a notice, provide comment periods, and provide ten-days' notice of a Commission meeting. The Commission acts promptly on filings, while ensuring that there is adequate time to consider comments received, and as a result, it is not necessary to include a time limit on Commission action in the rule.

The committee did not reach consensus on possible changes to this rule, which allows an applicant to request an exemption from filing required data if the data is unnecessary to determine the need for the proposed facility or if the requirement may be satisfied by submitting another document. The exemption request must be filed before the applicant files a certificate of need application.

Some committee members recommended removing the option that allows applicants to provide other documents in lieu of the required data, stating that exemptions should be allowed only if the data requirement is not relevant to the claimed need. Other committee members took issue with limiting the flexibility to offer other documents to meet data requirements, stating that alternative documents have been useful to the Commission's decision-making process in prior cases.

Exemption request filings have increased over the years due, in part, to outdated application data requirements that reflect an electrical infrastructure designed to address electrical consumption, not necessarily peak demand. Updates to other rule parts governing data requirements will likely reduce the need for exemption requests, but the draft rule retains the exemption request process because it is not clear that the process will no longer be needed.

Subp. 7. Service.

The draft rule requires that service of the certificate of need application be made on the Department and OAG, which are automatically parties to Commission proceedings. The rule also requires that notice of the application be sent to the general list, the public agency contact list, the landowner list, and the local and tribal government contact list. At the time of the certificate of need application, it is unlikely that the Commission will have developed a project contact list. That list will likely be developed based on requests from people who are on the general list; as a result, the project contact list is not included in notice of the draft rule.

Subp. 8. Docket Number.

Subpart 8 ensures that the docket number for the case is clearly visible on the application and attached to documents that are part of the application filing.

Subp. 9. Joint applications.

Subpart 8 clarifies that an applicant intending to file both a certificate of need application and a permit application do so by first filing a draft *permit* application under Chapter 7850. Once the applicant has completed the steps governing draft permit applications, the applicant may then file both the certificate of need and the completed permit application. The Commission will subsequently decide, under part 7850.2140, whether to hold joint proceedings on both applications, including whether to hold joint scoping meetings, joint public hearings, and joint proceedings for developing the record. Existing rule part 7849.1900 addresses the circumstances for conducting joint environmental review on multiple applications.

7849.0208 COMPLETENESS DETERMINATION.

The draft rule governs the Commission's completeness determination. The existing rule (part 7849.0200, subp. 5), requires the Commission to notify applicants within 30 days if an application is not substantially complete. But there is no statutory basis for this deadline, and the 30-day period is not a reasonable period of time for obtaining comments, developing analysis, and setting the item for a Commission meeting. The draft therefore delegates the completeness determination to the Executive Secretary and requires that the determination be made with 10

days of receiving the application. The 10-day deadline is the deadline for making a completeness determination on applications for route and site permits under Minn. Stat. § 216E.03, subd. 3. The draft rule aligns the procedures of both rule chapters.

The completeness determination is *as to form only* and does not imply any judgment about the merits of an application, which will be developed throughout the duration of the proceeding. If the Executive Secretary determines that information is missing from the application, a Commission meeting will be scheduled for further consideration of the issue, considering the applicant's availability.

If an applicant believes that a data requirement is not applicable, the applicant has the option to request an exemption from the Commission prior to filing a certificate of need application. The exemption request process allows exemptions from a data requirement if the requirements is either unnecessary to determine the need for a proposed project or can be met with other documentation.

Further, anyone wanting to comment on the merits of an application, after completeness has been determined will have the opportunity to do so during a comment period on the application. The Commission will then have the opportunity to consider those comments when deciding whether to refer the case for contested case proceedings or to develop the record using an informal comment and reply process.

APPLICATION CONTENT REQUIREMENTS

Parts 7849.0250 to 7849.0340 set forth application content requirements for different types of applications.

7849.0220 APPLICATION CONTENTS.

The draft rule modifies this part to standardize the information required of applicants because subsequent rule parts set forth separate requirements for specific types of projects.

Subpart 1. ~~Large electric generating facilities (LEGF).~~ All Applicants.

This subpart requires an applicant to affirmatively state that it has complied with the notice requirements, which are incorporated into part 7849.0130 and which replace the *notice plan* filing requirements. It is important to emphasize the need for an applicant to comply with the new notice requirements.

This subpart also requires the application to include an explanation as to how the proposed project satisfies the statutory and rule criteria the Commission must consider when evaluating a certificate of need application.

Subp. 2. ~~Large high voltage transmission lines (LHVTL).~~ Regional Transmission Planning.

This subpart requires regional planning information, which is relevant to the Commission's evaluation of the applicable statutory criteria, including the consideration of regional energy needs.

Subp. 3. Joint Proceedings.

To ensure an orderly process from the outset, this subpart requires each applicant to state whether a site or route permit application will also be filed and whether the applicant will request that joint proceedings be held on both applications.

7849.0230 ENVIRONMENTAL REPORT.

The draft rule repeals this part because the process for developing the Environmental Report is governed by subsequent rule parts that the Legislature transferred to the Commission in 2005. The process for developing the Environmental Report is addressed beginning at part 7849.1200.

7849.0240 NEED SUMMARY AND ADDITIONAL CONSIDERATIONS.

The draft rule repeals this part because a need summary is separately required by draft changes to parts 7849.0200 and .0220, and because the list of criteria is not the full list of criteria the Commission must consider when evaluating an application. Recent changes to Minn. Stat. §216B.243 set forth additional criteria the Commission must consider, and rule part 7849.0120 incorporates the statutory changes. As a result, this rule part is no longer necessary.

7849.0250 PROPOSED LEGF AND ALTERNATIVES APPLICATION.

The draft rule governs the filing requirements for an application for a large power plant. The draft updates the existing rule language to require information on renewable energy resources, potential costs, and environmental impacts. The applicant is also required to provide scaled maps showing the area where the applicant's system is located. This will be useful to the public in identifying the applicant's system in relation to the proposed project.

7849.0255 INDEPENDENT POWER PRODUCER LEGF APPLICATION.

The committee concurred on adding this rule part, which governs applications for large power plants by independent power producers, entities that own, operate, maintain, or control facilities for furnishing electric generation but do not serve end user customers.

Subp. 1. Utility data.

If the applicant has entered into a power purchase agreement with a utility, the draft rule requires the applicant to file the data that a utility would be required to file.

Subp. 2. Ownership Information.

This subpart requires the independent power producer to provide information about its business and ownership structure and to keep the Commission informed of changes to the information provided.

Subp. 3. Relevant available data.

This subpart sets forth the type of information that an applicant must provide in lieu of utility data, including data on regional capacity, availability of renewable resources, reliability, and the expected costs to ratepayers.

Subp. 4. Subsequent Power Purchase Agreement.

If an applicant enters into a power purchase agreement with a utility after filing its certificate of

need application, this subpart requires the applicant to file a copy of the agreement with the Commission within three business days of entering into the agreement.

7849.0260 PROPOSED LHVTL AND ALTERNATIVES APPLICATION.

The draft rule governs application content requirements for high voltage transmission lines. Changes to this rule add new requirements, including a description of the portion of the system affected, regional transmission planning and reliability information, evaluations of lower voltage and no-build alternatives, energy storage alternatives, and cost estimates.

7849.0270 PEAK DEMAND AND ANNUAL CONSUMPTION FORECAST ENGINEERING DATA.

The draft rule reorganizes and amends this rule part, which requires data on peak demand, forecast content, forecast methodology, and the assumptions made in preparing the forecast. The draft rule separates the rule into two parts. The first governs engineering data, and the second governs forecast methodology.

The existing application content requirements were adopted at a time when a transmission line project was typically linked directly to a generation project and require an applicant to file data on annual electrical consumption for *all* customer classes across the applicant's Minnesota service area. But in recent years, proposed projects are often intended to address increased demand at peak times in concentrated load centers without regard to consumption by other classes of customers in other parts of the applicant's service area. Addressing demand at the substation level is one example of this shift.

This means that data on usage for some classes, such as the irrigation and drainage pumping class, might not be relevant to a project that proposes to address the peak demand of residential consumers within a limited geographic area. As a result, applicants have often requested, and the Commission has granted, exemptions from existing data requirements.

The advisory committee concurred that the rules should be updated to reflect the need for better data that supports the claimed need for a proposed project, including an engineering analysis that includes a base case model, such as a power flow study. An applicant must also file changes made to the base case model, performance criteria, contingencies and conditions modeled, methods of power transfer simulated, and software input and output data. The applicant must also make available, in the form of an electronic spreadsheet, the data used in the base case model. Requiring data in this format is likely to make the data easier for the public to access and use. Finally, the draft rule requires the applicant to explain the correlation between its extended forecast filing under Minn. R. Ch.7610 and the proposed project.

7849.0275-Subp. 3. Forecast methodology FORECAST METHODOLOGY, DATA BASE, AND ASSUMPTIONS.

Subp. 1. Forecast methodology.

The draft rule relocates existing language on analytical and statistical techniques to subpart 2, which is more specific about the data an applicant must file.

Subpart 4 2. Data base for forecasts.

The draft rule requires the applicant to file the data sets in the form of an electronic spreadsheet that can be used to replicate the results of the forecast, including raw and adjusted data, and input and output data. Making data available in the form of an electronic spreadsheet is likely to increase public participation in the process by making the data more readily available in a form that is easier to understand and to use. The draft rule also requires that the applicant demonstrate the relationship between the specific analytical techniques used and the statistical techniques (software, statistical model, results) used.

Subp. 5 3. Assumptions and special information.

The draft rule updates the language on assumptions in the forecast to require discussion of “the sources, sinks, and dispatch assumptions.”

7849.0280 SYSTEM CAPACITY.

The draft rule requires applicants to file information about the capacity of their existing systems to meet increased demand, including information on the applicant’s reserve margins, system capacity, generation owned and purchased by the applicant, and existing exchange agreements. This information replaces existing rule language requiring seasonal system demand data, annual system demand data, and firm purchases and sales information that is no longer generally applicable.

Previous applicants have successfully sought exemptions from this rule part by arguing that system-wide data is not relevant to a proposed transmission line project that is, for example, intended to address need within a specific geographic area. In those cases, applicants have instead provided data on the area affected by the proposed project, also described as the affected load center.

7849.0290 CONSERVATION PROGRAMS, APPLICATION.

The draft rule updates this rule part by striking outdated language and instead requiring applicants to list the conservation programs they have considered as alternatives to the proposed project. The draft rule requires applicants to explain the correlation between the proposed project and the applicant’s integrated resource plans and extended forecast filings, which are relevant to the Commission’s consideration of the claimed need for a proposed project.

7849.0300 CONSEQUENCES OF DELAY.

The draft rule requires information on system impacts if the proposed project is delayed up to three years but strikes the reference to the three levels of demand, which are no longer used in part 7849.0270.

Just Change Law suggested adding language, to replace the requirement that information on the three levels of demand, as follows:

The information must be provided for a reasonable range of forecasts developed under 7849.0270, including low demand forecasts as well as projection of historic demand.

The draft rule does not, however, include this information because it is not clear what a “reasonable” range of forecasts would include or what amount of historic demand would be required to support the applicant’s position on the potential consequences of delay.

7849.0310 ENVIRONMENTAL INFORMATION REQUIRED.

The draft rule contains a housekeeping change to update citations to other rule parts also modified by the draft.

7849.0320 GENERATING FACILITIES.

The draft rule incorporates changes suggested by the advisory committee to update the environmental data requirements for generating facilities. An applicant must file data on estimated greenhouse gas air emissions and criteria pollutants, on water sources and usage, and on the potential impacts to human health, hydrological resources, ecological resources, and land use. The draft rule also requires an applicant to list any other agency permits required for the proposed project.

7849.0330 TRANSMISSION FACILITIES.

The draft rule incorporates similar changes to the environmental data required for transmission facilities. An applicant must file data on the potential impact on human health and safety, hydrological resources, ecological resources, and must list any other agency permits required for the proposed project.

7849.0340 NO-FACILITY ALTERNATIVE.

The draft rule strikes the reference to the “three levels of demand” because those are no longer used in other rule parts.

CONDITIONS AND CHANGES

7849.0400 CERTIFICATE OF NEED CONDITIONS AND CHANGES.

Subp. 2. Proposed changes in size, type, and timing, and ownership.

The draft rule requires an applicant to report to the Commission changes to the size, type, and timing of a facility before it is placed into service. The changes are not subject to recertification of the project, but requiring notice ensures that the Commission will know about changes potentially affecting operation of the facility.

H Subp. 4. Commission decision.

The draft rule requires the applicant to give notice of its request for changes to the facility to the official service list for the docket.

COMMENTS AND RECORD DEVELOPMENT

Rule parts 7849.1000 to 7849.2100 primarily govern the process for developing and considering the Environmental Report and were transferred to the Commission from the Environmental Quality Board in 2005, at the same time rules governing the siting and routing process in Chapter 7850 were transferred to the Commission. The draft rule updates and modifies existing

requirements and sets forth new requirements, as explained below.

7849.1000 APPLICABILITY AND SCOPE. NOTICE AND COMMENTS; PETITION TO INTERVENE.

The draft rule strikes “applicability” and “scope” because they are separately governed by parts 7849.0020 and 7849.0030 at the beginning of the chapter. This rule part will instead govern notice of and comments on the application, petitions to intervene, and record development.

Subpart 1. Publication in State Register.

The draft rule requires the Commission to give public notice of the certificate of need filing in the *State Register*.

Subp. 2. Comment period.

The draft rule sets forth the notice and comment process, allowing 21 days for comments on the procedural treatment of the application, and 14 days for reply comments. The Commission must send notice of the comment period to the project contact list, the public agency contact list, and the local and tribal government contact list. At this stage of the proceeding, the Commission invites comments to identify possible contested issues and to determine whether the project should be referred to the Office of Administrative Hearings for contested case proceedings or whether the case should be developed using the Commission’s informal process under 7829.1200.

By the time this meeting is scheduled, the Department is likely to have identified alternatives for evaluation in the Environmental Report. The Commission could therefore also consider, at this meeting, whether to include any additional alternatives in the scope of the Environmental Report.

Subp. 3. Petition to intervene.

The draft rule states that petitions to intervene are governed by part 7829.2500, subpart 8, which reads as follows:

Petition to intervene.

The commission shall entertain a petition to intervene until the matter is referred to the Office of Administrative Hearings for a contested case proceeding or until the commission issues a notice under part 7829.1200, subpart 3, stating its intention to decide the matter on the basis of an informal or expedited proceeding.

Subp. 4. Process Schedule.

The draft rule requires Commission staff to develop a process schedule upon receipt of an application, in consultation with the Department and the applicant. This is consistent with changes to Chapter 7850 requiring staff to develop a process schedule that will be used to facilitate an orderly process considering applicable statutory deadlines on the Commission’s decision.

7849.1100 DEFINITIONS RECORD DEVELOPMENT.

The draft rule strikes the definitions because they will be either relocated to part 7849.0010

(governing all other definitions) or are already defined by part 7849.0010. The draft rule will instead use this part to describe the process for record development, consistent with the manner in which the Commission ordinarily processes certificate of need applications. Cases will be referred to the Office of Administrative Hearings for contested case proceedings or will be developed using the Commission's informal comment and reply process under part 7829.1200.

ENVIRONMENTAL REPORT PROCESS

7849.1200 ENVIRONMENTAL REPORT.

Just Change Law suggested modifying the last sentence as follows:

The department shall be responsible for the completeness, ~~and~~ accuracy and sufficiency under Minn. Stat. § 116D.04 of all information in the environmental report.

The draft rule does not, however, incorporate this change because the statute cited governs the process for developing an EIS, which is not required under Chapter 7849. The Commission's approved alternative form of review applicable to certificates of need is an Environmental Report. References to other forms of review that are either not required or approved could cause confusion over the process for environmental review in certificate of need cases.

~~7849.1300 INFORMATION REQUIRED FOR ENVIRONMENTAL REVIEW.~~

The draft rule strikes this part because filing requirements are governed by part 7849.0200 and because, with the Commission's electronic filing system, there is no longer a need to require applicants to make separate filings with the Department.

7849.1400 PROCESS FOR ENVIRONMENTAL REPORT PREPARATION.

The existing rule requires the Department to give notice of the certificate of need application and to include the time, date, and location of public information and scoping meetings. It also governs the scoping decision and the timeframe for completing the Environmental Report. In the draft rule, this part only governs notice of the public information and scoping meeting. Notice of the certificate of need application will be given by the applicant before the applicant files the application (under draft rule 7849.0130) and after the application has been filed (under draft rule 7849.0200, subpart 7).

To increase clarity as to the steps of the process, the draft rule also relocates the parts governing the scoping decision and the Environmental Report, as explained below.

Subpart. 3 1. Public meeting.

The draft rule requires the Commission and the Department to hold a public information and scoping meeting, consistent with the process schedule developed under part 7849.1000, subp. 4.

Subp. 2. Meeting notice.

The draft rule requires notice of the meeting to be sent at least 15 days prior to the meeting to the project contact list, the public agency contact list, the landowner list, and the local and tribal

government contact list. Notice will not be sent to those on the general list because at this stage, those on the general list will have likely signed up for the project contact list for the project if they want to continue receiving notices about the proposed project. The draft rule also requires applicants to give newspaper notice of the meeting and requires the Department and the Commission to post notice of the meeting on their websites.

Subpart. 4 3. Conduct of public information and scoping meeting.

The draft rule retains most of the existing language explaining the opportunities for public input at the meeting. But the draft rule does strike one sentence, which governs the written comment period after the close of the meeting; the comment period is separately addressed in a subsequent subpart.

Subp. ~~5~~ 4. Applicant role.

The draft rule explains the applicant's role, which uses existing language but is set out in a separate subpart.

Subp. 6 ~~5~~. ~~Alternatives and impacts~~. Scoping process.

The draft rule retains most of the existing language explaining the scoping process and the opportunity for public input on alternatives to, and potential impacts of, the proposed project.

Subp. 6. Comment period.

The draft rule requires the Department to provide 20 days following the close of the meeting for interested persons to submit written comments. This is existing language, set out in a separate subpart to increase clarity as to the process steps.

Subp. 7. Department analysis.

The draft rule governs the Department's analysis and requires the Department to explain its reasons for excluding an alternative in its analysis.

7849.1410 NOTICE TO COMMISSION.

The draft rule adds this part to ensure that the Commission has the opportunity to identify additional alternatives to the proposed project that will be evaluated in the Environmental Report. The draft rule requires the Department to give notice to the Commission, prior to filing its scoping decision, of the alternatives it intends to include in the scope, giving the Commission time to identify any other alternatives.

7849.1475 SCOPING DECISION.

The draft rule moves existing language on the scoping decision (from part 7849.1400) and relocates it to this separate rule part to increase clarity.

Subp. 7 1. ~~Commissioner~~ Scoping decision.

The draft rule modifies the existing rule language to clarify that the Department will be making a scoping decision (rather than issuing an order).

Subp. 8 2. Notice of decision.

The draft rule strikes the citation to part 4405.0600 because that rule applies to the procedures of the Environmental Quality Board. Persons interested in commenting on alternatives will have the opportunity to do so through the scoping process. Prior to filing the scoping decision, the Department will notify the Commission of the alternatives the Department intends to evaluate, including alternatives the Commission identifies.

7849.1500 ENVIRONMENTAL REPORT CONTENT.

The draft rule incorporates input from the advisory committee on additional relevant environmental information that the Department must address in the Environmental Report, which will assist the Commission's decision on whether to grant a certificate of need. Under separate draft rule changes, applicants are required to include information in their applications addressing these environmental issues.

Subpart 1. Content of environmental report.

The draft rule requires the Environmental Report to discuss alternatives or *combinations* of alternatives, including distributed generation, consistent with a separate draft rule requiring applications for power plants to consider distributed generation as an alternative to the proposed project.

Subp. 2. Impacts of power plants.

The draft rule updates the language requiring evaluation of pollutants and environmental impacts.

7849.1525. ENVIRONMENTAL REPORT; FILING.

The draft rule relocates language from part 7849.1400 into this rule to increase clarity as to process steps.

Subpart. 9 1. Time frame for completion of environmental report.

The draft rule requires the Department to complete the Environmental Report consistent with the process schedule.

Subp. 40 2. Notification of availability of environmental report.

The draft rule requires the Department to send notice of the Environmental Report to all the lists, except the general list.

7849.1530 PUBLIC COMMENTS.

The draft rule requires that the Department give interested person 10 days to file comments on the Environmental Report.

7849.1550 PUBLIC HEARING.

Subpart 1. Public hearing.

The draft rule cites Minn. Stat. § 216B.243, subd. 4, which requires that the Commission hold a public hearing on a certificate of need application under Minn. Stat. Ch. 14.

Subp. 2. Public hearing notice.

Because an Administrative Law Judge will conduct the hearing, the draft rule requires that the Commission coordinate notice of the hearing with the ALJ.

Subp. 3. Notice recipients.

The draft rule requires notice of the public hearing to be sent to the project contact list the public agency contact list, the landowner list, and the local and tribal government contact list.

Subp. 3 4. Newspaper notice.

The draft rule requires an applicant to give newspaper notice of the public hearing in the county where the hearing will be held. The applicant must subsequently file its affidavit of publication.

7849.1600 AGENCY ASSISTANCE AND FILING OF AGENCY COMMENTS.

The draft rule adds a requirement to ensure that comments of other agencies are clearly marked in e-dockets. There is no statutory requirement that a participating agency electronically file comments, but it is important that the comments of another agency received by someone at the Department or the Commission be labeled as comments of the participating agency, not as “public comments.” This ensures that comments from other agencies will be clearly identifiable in e-dockets, and it prevents comments of agencies, such as the Department of Natural Resources, from being filed either in a batch along with other public comments or as comments of the Department.

The committee discussed other possible changes, such as requiring a deadline for filing other agencies’ comments and requiring that all correspondence between agencies be e-filed. The committee did not, however, reach consensus on these issues. There was not agreement on whether to impose a deadline, although there is consensus that comments should be promptly filed. If the Department receives correspondence from another agency outside a comment period, it is possible that the Department will need time to determine whether the correspondence should be treated as comments and included in the record.

Both the Department and the Commission have worked to clarify to other agencies that they should directly file comments in e-dockets if they intend those comments to be made part of the record. The draft rule does not, however, require that all correspondence between agencies be filed into the record because it could result in an overly broad rule that limits the flexibility of agencies to informally discuss issues as they work through a case.

7849.1800 ENVIRONMENTAL REPORT TO ACCOMPANY PROJECT.

The draft rule incorporates a housekeeping change to require the Department to participate in Commission proceedings *and* contested case proceedings.

7849.1900 JOINT PROCEEDING.

The draft rule includes a housekeeping change citing the rule part in Chapter 7850 governing the Commission’s decision on whether to hold joint proceedings on multiple applications.

INDIVIDUAL RULE ANALYSIS – CHAPTER 7850

TERMINOLOGY

7850.1000 DEFINITIONS.

Subp. 3. Associated Facilities.

The draft rule modifies this definition to include transmission lines that are necessary to connect a plant to the transmission system., consistent with the definition in Chapter 7849.

Subp. 5a. Department.

The draft rule adds a definition of “Department,” which is used frequently throughout the rules.

Subp. 9. High voltage transmission line or HVTL.

The draft rule incorporates a recent change to Minn. Stat. § 216.01, subd. 4, which includes the language “and is greater than 1,500 feet in length.”

~~Subp. 14. PUC.~~

The draft rule strikes this definition because the chapter includes two definitions for the commission, both “PUC” and “Commission.” The draft retains “Commission.”

Other Recommended Changes to Definitions – Part 7850.1000

No CapX 2020 and U-CAN, as well as Just Change Law Office, recommended amending the other definitions, as explained below.

Subp. 7. Environmental Assessment or EA.

No CapX 2020 and U-CAN, as well as Just Change Law Office, recommended amending the definition of “environmental assessment” as follows:

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 and satisfies the requirements of Minnesota Statutes, section 116D.04.

The draft rule does not incorporate this change because an environmental assessment is governed by Minn. Stat. Ch. 216E, not Minn. Stat. Ch. 116D, and it is not clear which sections of 116D would apply, potentially causing confusion about what the rule requires.

Subp. 8. Environmental Impact Statement

No CapX 2020 and U-CAN recommended amending the definition of “environmental impact statement” as follows:

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, the human and environmental impacts of a proposed large electric power generating plant or high voltage transmission line and alternative routes or sites, methods to mitigate such impacts, and satisfies the requirements of Minnesota Statutes, section 116D.04.

The draft rule does not incorporate this change because the existing definition cites the statute that describes an EIS (there is no statutory definition), rather than quoting a portion of the statute, which reads:

The environmental impact statement ~~shall~~ must be an analytical rather than an encyclopedic document which describes the proposed action in detail, analyzes its significant environmental impacts, discusses appropriate alternatives to the proposed action and their impacts, and explores methods by which adverse environmental impacts of an action could be mitigated. The environmental impact statement ~~shall~~ must also analyze those economic, employment, and sociological effects that cannot be avoided should the action be implemented.

Subp. 19. Utility.

No CapX 2020 and U-CAN, as well as Just Change Law Office, recommended amending the definition of “utility” as follows:

Subp. 19. **Utility.** "Utility" means any entity 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, or a public or municipally owned utility, ~~a limited liability company, or a private utility company.~~

They stated that the existing rule definition is inconsistent with the statutory definition of “utility,” which does not include limited liability companies or private utilities. The term “utility” is used in subsequent rule parts governing the location of existing utility rights-of-way (7850.1900); permit revocation or suspension of a utility’s permit (part 7850.5100); emergency permits for utilities due to major unforeseen events affecting a utility’s electric power system (7850.5200), and annual assessments on utilities (7850.5500). It is unclear how the existing rule language is problematic, and further comment on this issue might be helpful.

GENERAL REQUIREMENTS

7850.1200 APPLICABILITY.

The draft rule strikes outdated references and clarifies that the environmental review process for site and route permits is conducted under Chapter 7850.

No CapX 2020 and U-CAN, as well as Just Change Law Office recommended including a

reference to Minn. Stat. Ch. 116D, the Minnesota Environmental Policy Act (MEPA). The draft rule does not incorporate this change because a general reference to the Act does not clarify what specific provisions or procedures of MEPA would apply that are not already addressed in this rule chapter.

7850.1300 PERMIT REQUIREMENT.

Subp. 4. Local authority.

The draft rule includes a housekeeping change that replaces “local governmental authorities” with “local units of government.” This is consistent with the language of Minn. Stat. § 216E.05, as well as the first sentence of the subpart.

7850.1400 SMALL EXEMPT PROJECTS.

Subpart 1. No PUC commission permit required.

The draft rule modifies the existing rule to incorporate the statutory change to the definition of a high voltage transmission line, which includes the “1,500 feet in length” language.

Subp. 2. Environmental review.

The draft rule strikes language citing Chapter 7849 because it governs certificates of need, not permits.

7850.1500 EXCEPTIONS TO PERMITTING REQUIREMENT FOR CERTAIN EXISTING FACILITIES.

Subpart 1. No permit required.

The draft rule adds one item to the list of projects that do not require a permit. Modification of a solar powered energy facility that is not expanded beyond the developed portion of the plant site is exempt under the draft rule. This is consistent with recent changes to the certificate of need statute, which exempts such projects from the certificate of need requirements.³

Some committee members also recommended adding to the list a 115 kV transmission line that is less than 1,500 hundred feet in length. But a 115 kV that is less than 1,500 hundred feet in length does not meet the definition of a high voltage transmission line and it is therefore unnecessary to modify the rule to specifically exempt projects that do not fit within the definition of projects that require permits.

Subp. 2. Minor alteration.

The draft rule adds one technical clarification to this subpart, replacing “minor alteration” with the word “change.” This is consistent with the draft rule change to part 7850.4800, which replaces “minor alteration” with “change.” The draft rule incorporates this change in terminology because some changes – but not all changes – are minor alterations.

³ Minn. Stat. §216B.243, subd. 8(7).

7850.1600 JOINT PROCEEDING.

The draft rule strikes this part because an applicant is required, in its draft application, to state whether the applicant intends to request joint proceedings on multiple applications, and the Commission is required to make a decision on the request for joint proceedings in a separate rule, part 7850.2140.

7850.1610. NOTICE LISTS.

Subparts 1 to 5 of the draft rule establish new notice lists that must be maintained by the Commission and by applicants. The current rules require the Commission to maintain two lists – a list of persons who want to be notified of any permit application that is accepted by the Commission, and a project contact list that is used to notify people of particular projects only.

The draft adds three additional notice lists. The first is a public agency contact list for notifying federal and state agencies and will be maintained by the Commission. The applicant will maintain the other two – a landowner list of persons whose property is near or along proposed sites and routes; and a local and tribal government contact list that includes local units of government. These lists are used to notify people of permit applications and opportunities for public input, such as comment periods, and public meetings and hearings.

Subpart 6 of the draft governs maintenance of the lists to ensure that names remain on the list, unless an individual requests removal from the list, or the Commission or applicant receive no response within 30 days after asking whether an individual intends to remain on the list. There are instances in which people move and mail is returned, and this provision enables the Commission and the applicant to maintain an accurate and updated list. The draft rule is consistent with current rule language in part 7850.2100 that gives the Commission the authority to add names to the list and remove names from the list after making a request for an affirmative response from an individual and no response is received within a “reasonable time.”

PRE-APPLICATION PROCEDURES

The committee concurred that incorporating pre-application procedures would reasonably balance the interest to increase public participation early in the process with the interest to increase process clarity and efficiency. Much of the draft language codifies existing practice, which, when formalized into rule language, better enables the Commission to fulfill its statutory obligations to maximize public participation while meeting applicable statutory deadlines.

The committee concurred that these meetings are needed for transmission line projects, which are likely to affect larger numbers of people and generate greater public interest. The draft rule does not apply this requirement to power plants.

7850.1620. PREAPPLICATION MEETINGS, TRANSMISSION LINES.

Subpart 1. Meetings required.

The draft rule requires applicants to hold pre-application meetings on transmission line projects in each county where the applicant is considering locating the line.

Subp. 2. Notice.

The applicant is required to notify the Commission, the Department, and landowners with property along a route that the applicant is actively considering as a location for the transmission line.

Subp 3. Public input.

The draft also requires an applicant to make available at the meeting maps and written materials identifying potential routes. An applicant must provide members of the public the opportunity to provide written or oral comments, which the applicant must consider in deciding which routes to propose. In addition, the applicant must prepare a summary of each meeting held and comments received.

Supb. 4. Meeting summary.

The draft rule requires the applicant to prepare a summary of each meeting held and comments received.

Great River Energy, Minnesota Power, and Xcel recommended that public outreach meetings be held only in a county “in which a major portion” or a “material portion” of a route would be located, rather than requiring a public outreach meeting in every county where any portion of a route would be located. The draft does not incorporate this change because it is unclear what “material portion” means and how many meetings would be required to ensure compliance. Further comment on this might be helpful.

Great River Energy, Minnesota Power, and Xcel also recommended changing the draft rule to require notice to landowners whose property is “on or adjacent to” a route, rather than “along” a route. Minn. Stat. 216E.03, subd. 4, requires an applicant to mail notice of its application to landowners whose property is “along any of the proposed routes for the transmission line.” The draft rule incorporates the statutory language.

7850.1630. NOTICE OF INTENT TO FILE.

The draft rule requires that applicants proposing projects subject to the full permitting process under Minn. Stat. § 216E.03, subd. 3a, notify local units of government of their intent to file a permit application 90 days prior to filing an application. This requirement does not apply to projects eligible for alternative review under Minn. Stat. § 216E.04, which does not require advance notice to local units of government. Other draft rule parts do, however, require applicants to file draft applications, with notice to local units of government, as explained below.

7850.1640. DRAFT PERMIT APPLICATION REQUIRED.

The draft rule requires applicants to file a draft site or route permit application. Applicants routinely file informal draft applications with the Department prior to filing an application with the Commission. The advisory committee concurred that it is reasonable to codify this practice.

The draft permit application requirement is likely to engage members of the public earlier in the process by requiring notice of the filing to go to persons likely to be interested in a proposed

project, such as landowners and local units of government.

Under this rule change, applicants would file, at the draft stage, the information they have been filing under part 7850.1900, at the application stage, including: proposed sites or routes; environmental information; ownership information; and cost information. Under the changes, an applicant would also be required to file a proposed application notice (to be sent when the final application is filed), to state whether the applicant intends to follow the alternative or full permitting procedures, and to provide information on use of eminent domain proceedings. Changes from the draft application must be filed as part of the subsequent application.

Subpart 1. Draft permit application.

The draft rule requires applicants to file a permit application 45 days prior to filing the application.

We asked the advisory committee for input on whether applicants should be required to file draft applications at the time they give the 90-day notice to local units of government of their intention to file an application (as required under Minn. Stat. § 216E.03, subd. 3a). Some committee members stated that the 90-day period was too early and that, in practice, they typically file draft applications with the Department 45 days in advance of filing with the Commission. The draft rule therefore incorporates a 45-day timeframe.

Subp. 2. Draft site permit application contents.

The draft rule incorporates the existing requirements for a route permit under part 7850.1900 with some modifications to increase clarity. In addition, the draft rule adds requirements, including a proposed application notice, a statement on whether the project is eligible for alternative review, a statement on whether the applicant will file joint applications, the name of local zoning authorities with authority over the project area, and whether the applicant intends to use eminent domain, including whether the applicant has already obtained land for the project.

Subp. 3. Draft route permit application contents.

The draft rule incorporates the existing requirements for a route permit under part 7850.1900 with some modifications to increase clarity. In addition, the draft rule adds requirements, including a proposed application notice, a statement on whether the project is eligible for alternative review, a statement on whether the applicant will file joint applications, the transmission planning study that concluded the proposed project is necessary, and whether the applicant intends to use eminent domain, and if so, whether the applicant has already obtained land for the project.

Xcel recommended revising the draft requirement that an applicant file “a summary of transmission planning that concluded that the project is necessary” to clarify that questions of need for a proposed project are not at issue in the permitting process. The draft rule does not incorporate this change because other rule parts state that if the Commission has granted a certificate of need for a project, questions of need will not be addressed in the permitting process.

Subp. 4. Draft environmental information.

Under this rule change, applicants will file the information required under part 7850.1900, which requires a description of potential effects on the environment.

7850.1650. NOTICE OF DRAFT APPLICATION FILING.

Subpart 1. Notice recipients.

The draft rule requires an applicant to give notice of its draft application to all notice lists, except the project contact list, which will be established based on requests received after this notice is sent. This requirement ensures that persons who are potentially interested in, or affected by, a proposed project will have early notice, furthering the public policy goal of maximizing public participation in the process.

Subp. 2. Notice content.

The draft rule requires the notice to include the Commission's contact information, as well as information on where the application can be obtained and when the applicant intends to file the application.

Subp. 3. Filing with commission.

The draft rule requires the applicant to file a copy of the notice with the Commission.

7850.1680. COMMENTS AND PROCESS.

Subpart 1. Comments.

The draft rule requires the Commission to request comments on the completeness of the draft application and on whether an advisory task force should be appointed for the proposed project.

Comments on completeness will assist the Executive Secretary in subsequently determining whether there is any missing information in the application and whether it is complete. And it is important for the Commission to decide as early as possible in the process whether to appoint an advisory task force to facilitate a task force process that runs concurrently with the scoping process.

Subp. 2. Notice of comment period.

The draft rule requires notice to be sent to all lists and sets a 21-day comment period and a 10 reply comment period.

Subp. 3. Process Schedule.

The draft rule requires Commission staff to consult with the Department and the applicant to develop a proposed process schedule when a draft application is received. This furthers the policy goal of establishing, strengthening, and maintaining an open, orderly, and timely process that takes into consideration applicable statutory deadlines for Commission action on the permit.

Use of a schedule will enable the public and the parties to more effectively prepare for further record development. And, establishing and tailoring a process schedule to best fit a particular

project provides flexibility to address project-specific issues.

Subp. 4. Application Process.

The draft rule directs applicants to follow the steps for filing its completed application once it has complied with the draft permit application requirements.

FILING REQUIREMENTS

7850.1700 PERMIT APPLICATION UNDER FULL PERMITTING PROCESS AND MANNER OF FILING.

Subpart 1. Filing of application for permit.

The draft rule modifies the existing rule to include electronic filing requirements, as set forth in Minn. Stat. §216.17, subd. 3.

Subp. 2. ~~Electronic copy.~~ Cover letter and summary.

The draft rule requires the application to include a cover letter and summary. Summaries typically include information such as a description of the proposed project, the intended purpose of the project, proposed sites or routes, and project contact information. This requirement aligns both rule chapters (part 7849.0200, subpp. 4, contains a “cover letter and summary” requirement).

7850.1710 APPLICATION COMPLETENESS; SCHEDULE

Subp. 1. Completeness determination.

The draft rule delegates to the Executive Secretary the authority to determine whether an application is complete. Under Minn. Stat. § 216E.03, subd. 3, the Commission is required to determine completeness within ten days of receiving an application. Under the statute, an application *is not incomplete* “if information not in the application can be obtained from the applicant during the first phase of the process and that information is not essential for notice and initial public meetings.”

There is no practicable way for the Commission to meet the 10-day statutory deadline except by delegating authority to make the determination of completeness and to refer incomplete applications to the Commission for further consideration at an agenda meeting. The draft also states, however, that if missing information can be obtained from an applicant within 20 days from the day the application was filed, the application must be deemed complete.

Otter Tail Power Company recommended clarifying that if the Commission receives comments on a draft permit application identifying new sites, routes, or route segments for further consideration, that those comments not be used to find an application incomplete. But the completeness determination is *as to form only* and does not imply any judgment on the merits of an application, which will be developed throughout the duration of the proceeding. If an applicant has met the statutory requirement to propose at least two sites or routes (under the full permitting process) or to propose one site or route, along with a list a list of other sites or routes that were rejected (under the alternative review process), comments recommending new sites or

routes do not warrant finding an application incomplete.⁴

Subp. 2. Incomplete application.

The draft rule states that applications are not incomplete if the missing information can be obtained from the applicant within 20 days from the date the application was found to be incomplete and the missing information will not interfere with the public's ability to participate. This ensures that the application will be complete in time for the scoping meeting, which will be held within approximately 30 days of the completeness determination.

Subp. 3. Joint application.

The draft rule states that the process for reviewing joint applications will not begin until all applications are found to be complete.

Subpart 4. Process schedule update.

The draft rule requires that the process schedule be updated as necessary to incorporate any changes to the schedule after the application is filed.

Subp. 5. Statutory deadline; extension.

The draft rule cites the applicable statute governing extensions to the deadline for making a final decision on a permit.

7850.1800 PERMIT FEES.

The draft rule includes housekeeping changes to require the permit fee to be paid to the Department and to require that the fee be determined at the time the application is filed. The draft rule also requires the Department to notify the Commission if the fee is not paid.

7850.1900 APPLICATION CONTENTS.

Subpart 1. Site permit for LEGPG.

The draft rule lists the content requirements for a site permit application, including all the information required for a draft permit application, along with any changes to that information, as well as information on sites considered and rejected, and where the application is available to the public.

Subp. 2. Route permit for HVTL.

The draft rule lists the content requirements for a route permit application, including all the information required for a draft permit application, along with any changes to that information, as well as information on routes considered and rejected, and where the application is available to the public.

Subp. 3. Environmental information.

The draft rule requires an applicant to update the information filed in the draft application.

⁴ See Minn. Stat. § 216E.03, subd. 3 and 216E.04, subd. 3.

7850.2000 APPLICATION REVIEW.

The draft rule strikes this part because the Executive Secretary will make the completeness determination under draft rule part 7850.1710.

7850.2100 PROJECT NOTICE OF APPLICATION.

Subpart 1. Notification lists.

To clarify the process, the draft rule strikes the language of subpart 1, which requires the Commission to maintain two lists – a general list of persons interested in receiving notice of permit applications and a project contact list for persons interested in a specific project. Notice lists are instead governed by draft rule part 7850.1610. The draft rule updates the requirements an applicant must follow for giving notice of the application to landowners, local officials, and the public.

Subp. 2. Subpart 1. Notification to persons on general list, to local officials, and to property owners.

The draft rule requires the applicant to give notice of its application to all lists, as well as the general service list maintained by a utility under part 7829.0600.

Subp. 3. Content of notice.

The draft rule retains most of the existing notice content requirements, with the exception of information concerning the scoping process and the public advisor. A separate joint notice from the Commission and Department will notify people of the scoping meeting, its purpose, and the opportunity to provide input. Although committee members differed on how much information the applicant's notice should contain, the draft rule does not require the applicant to provide information about the scoping process, other than to notify people of the Commission's role, and the applicable process schedule.

Just Change Law Office recommended adding notice language under subpart 2 (J) as follows:

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, and describing potential “buy the farm” rights of landowners pursuant to Minnesota Statutes, 216E.12, subd. 4.

This notice requirement is intended to ensure that the public receives notice that an application has been filed and where it is available. It also notifies people that eminent domain proceedings could be used by the applicant. The draft does not, however, require the applicant to describe or explain the rights of landowners in such proceedings.

Subp. 5. Confirmation of notice. Compliance filing.

The draft rule requires an applicant to file a compliance filing demonstrating compliance with the notice requirements.

PROCEDURAL STEPS

7850.2110 COMMENTS ON APPLICATION.

Subpart 1. Notice.

The draft rule provides a 20-day comment period on a permit application, with a 14-day reply comment period. Comments addressing procedural treatment will inform the Commission's decision on the issues to be addressed as the record is developed.

The EERA recommended striking this comment period, stating that the comment period on the *draft* permit application would be sufficient to inform the Commission's decision on procedural treatment and stating that the EERA would not conduct scoping concurrently with this comment period.

Otter Tail Power stated that numerous notices, including notice of the draft permit application, notice of the application, notice of comment periods, and notice of meetings, could cause confusion for people.

An earlier version of the draft rule that was circulated to the advisory committee had required that the Commission send notice of the comment period to all notice lists (the project contact list, the public agency list, the local and tribal government list, and the landowner list). To address concerns that numerous notices (notice of the draft application, notice of the final application, notice of public meetings, along with notice of the comment period) could cause confusion, the draft rule has been updated to require the Commission to solicit comments only from those who are on the project contact list. All notices also go to anyone on the official service list, which includes the Department.

This change ensures that anyone on the official service list, such as the Department, will have the opportunity to notify the Commission of any changes between the draft and final applications that could affect the issues that will be developed in the proceeding. Without this comment period, the Commission would not receive any input on potentially significant changes between the draft and the final application and how those changes could affect record development.

Subp. 2. Agency participation.

The draft rule requires that comments of other participating state or federal agencies be labeled in e-dockets as comments of those agencies. There is no statutory requirement that a participating agency electronically file comments, but it is important that such comments, if received by someone at the Department or the Commission, be labeled not as "public comments" in a batch along with other public comments but as comments of the participating agency. This ensures that comments from other agencies will be clearly identifiable.

The advisory committee discussed whether it would be reasonable to require a deadline for filing other agencies' comments and whether to require that all correspondence between agencies be e-filed. The committee did not, however, reach consensus on these issues. There was not agreement on whether to impose a deadline, although there is consensus that comments should be promptly filed. If the Department receives correspondence from another agency outside a

comment period, it is possible that the Department will need time to determine whether the correspondence is intended as comments and included in the record. The draft rule therefore does not include a deadline.

7850.2120 COMMISSION REFERRAL.

The draft rule requires the Commission to refer cases that are not eligible for alternative review to the Office of Administrative Hearings for contested case proceedings. This is consistent with current practice and consistent with Minn. Stat. § 216E.03, subd. 6, which states that “all hearings held for designating a site or route shall be conducted by an Administrative Law Judge from the Office of Administrative Hearings pursuant to the contested case procedures of chapter 14.”

7850.2140 JOINT PROCEEDINGS.

The draft rule sets forth the step for deciding how to proceed in cases where an applicant has requested that joint proceedings on multiple applications be held.

PUBLIC PARTICIPATION

7850.2200 PUBLIC ADVISOR.

No CapX 2020 and U-CAN recommended amending the rule governing the public advisor as follows:

Upon acceptance of an application for a site or route permit, the commission ~~shall~~ must designate a staff person to act as the public advisor on the project. The public advisor must volunteer information and be available to answer questions from the public about the permitting process, project schedules and opportunities for public participation such as comments, membership in advisory task force, intervention and contested case, and exceptions to ALJ recommendation and reconsideration for affected parties, and must present such information in process flow charts, handouts and presentations at public meetings and hearings and to members of the public. The public advisor ~~shall~~ must not give legal advice or other advice or omit information regarding participation opportunities that may affect the legal rights of the person being advised, and the public advisor ~~shall~~ must not act as an advocate on behalf of any person.

Just Change Law Office recommended amending the last sentence above to state that the “public advisor must facilitate public participation but shall must not give legal advice...”

The draft rule does not make any changes to the existing rule part. The role of the public advisor can vary from project to project, depending on the level of public involvement. Requiring that information be provided in a certain format might not be applicable in all cases. Furthermore, the statute governing the public advisor states that the purpose of the public advisor is “assisting and advising those affected and interested citizens on how to effectively participate” in the proceedings. The language of the rule and statute make it clear that the role of the public advisor is to help people participate in the process in an informed and meaningful way.

7850.2300 PUBLIC INFORMATION AND SCOPING MEETING.

Subpart 1. Scheduling public information and scoping meeting.

The draft rule governs the public information and scoping meeting, modifying the requirement that the meeting be held no later than 60 days after the acceptance of the application to instead require that the meeting be held consistent with the process schedule.

Subp. 2. Notice of public meeting.

The draft rule requires the applicant to give newspaper notice of the meeting, while the Commission must mail notice of the meeting using the lists in draft rule part 7850.1610. Requiring applicants to give newspaper notice is reasonable because in most cases, Commission staff will coordinate with applicants to issue the newspaper notice, as applicants are in the best position to know the local areas affected and where to publish the notice.

Subp. 3. Notice content.

The draft rule incorporates the notice content requirements set forth in existing rule part 7850.2100, which, under the draft rule, governs notice of the application. Requiring separate notices – notice of the application by the applicant and notice of the public meeting by the Commission – increases clarity. But bulky and lengthy notices that contain too much information or redundant information can cause confusion.

Subp. 3 4. Conduct of public meeting.

The draft rule states that the scoping portion of the meeting will be conducted by the Department under rule parts 7850.2500 to 7850.2700.

Subp. 4 5. Applicant role.

The draft rule requires the applicant to make its application available at the meeting and provide information showing an electronic link to the application.

7850.2400 CITIZEN ADVISORY TASK FORCE.

Subpart 1. Authority.

The draft rule strikes the sentence stating that the Commission will consider whether to establish a task force at its next monthly meeting. The Commission typically meets on a weekly basis and will decide whether to appoint a task force as early as possible in the process.

Subp. 3. Task force responsibilities.

The draft rule adds a sentence to require the Department to file a report summarizing the work of the task force.

Just Change Law Office recommended adding the following:

The task force must produce a report reflecting the charge to the task force, which must be promptly e-filed and included as an appendix to the environmental impact statement or environmental assessment for the project.

The draft rule incorporates the requirement that the Department file a report, which will

automatically be filed in e-dockets upon filing with the Commission. It is the Department's role, however, to decide how to incorporate the findings of the report into the EIS or EA.

Subp. 4. Termination of task force.

The draft rule adds language to clarify that the task force expires once the Commission decides on alternatives that will be developed in the EIS or in any subsequent hearing held on the proposed project.

FULL PERMITTING PROCESS

The draft rule is intended to make the process easier to follow by separating this rule into separate rule parts. The existing rule has 12 subparts that govern a variety of steps, such as the scoping process, the draft EIS process, and requirements for the final EIS. These steps are likely to be clearer if they are described in separate rule parts with updated language. The draft rule therefore governs only the public information and scoping meeting, with subsequent rule parts governing the scoping decision, the draft EIS, and the final EIS.

In addition, the draft rule moves language governing the public comment period that follows the meeting from subpart 2 into subpart 4. And the draft rule moves the requirement governing the Department's notice of its scoping decision, and the ability to change the scoping decision, into a separate rule part governing the scoping decision (part 7850.2530).

7850.2500 EIS PREPARATION.

Subp. 2. Scoping process.

The draft rule states that the Department will conduct the scoping portion of the meeting and provide the public with an opportunity to participate in the development of the scope of the EIS.

Subp. 3. Alternative sites or routes.

The draft rule states that the Department must ask the applicant to address the feasibility of recommended alternatives to the proposed routes.

Subp. 4. Comment period.

The draft rule moves language governing the public comment period that follows the meeting from subpart 2 into subpart 4 and requires the Department to provide a 10-day comment period for interested persons to submit written comments on the scope of the EIS after the close of the meeting.

The draft rule also moves the subpart governing the Department's notice of its scoping decision, and the ability to change the scoping decision, into a separate rule, part 7850.2530.

7850.2520 NOTICE TO COMMISSION.

The draft rule requires the Department to notify the Commission, prior to filing its scoping decision, of the alternatives the Department intends to include in scope of the EIS and to include any additional alternatives in the scope identified by the Commission.

Just Change Law Office recommended clarifying that the commission can identify alternatives, on its own motion or on the petition of an interested person. The draft rule does not include this change, however, because the Commission will take input on alternatives during the comment period on the application, will be notified of the scoping decision, and will consider input of the task force if one is appointed, before deciding whether to include other alternatives for further study. The Commission has the authority to consider alternatives, or take other action, on its own motion as needed.

7850.2530 SCOPING DECISION.

Subpart. 4-1. Scope of EIS.

The draft rule relocates the existing subpart governing the scoping decision into this rule part to increase clarity. The draft rule requires the Department to include in the scope of the EIS alternatives that the Department concludes will assist the Commission in making its decision on the permit.

Just Change Law Office recommended changing the first sentence of subpart 1 as follows:

The scoping process must be used to ~~reduce the scope and bulk of~~ focus and define 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 existing language comes from Minn. R. 4410.2100, and the draft leaves the existing language as it reads.

Just Change Law Office also recommended that any alternative identified either by the task force, if one is appointed, or by someone during the scoping process, be included in the scope of the EIS. The draft rule, however, does not include this change because Minn. Stat. 216E.03, subd. 5, requires that the Department “study and evaluate any site or route proposed by an applicant and any other site or route the commission deems necessary...” The Commission will be informed by the task force report in deciding whether to include additional alternatives in the scope.

Subp. 2. Filing with commission.

The draft rule requires the Department to file its scoping decision consistent with the process schedule.

Subp. 3. Notice of decision.

The draft rule requires the Department to give notice of the scoping decision to all notice lists, except the general list.

Subp. 4. Changes to scoping decision.

The draft rule relocates existing language into this subpart to increase clarity.

7850.2540 SUPPLEMENTAL FILING BY APPLICANT.

Subpart 1. Supplement filing.

The draft rule requires an applicant to file supplemental information on any new alternative included in the scope of the EIS to ensure that an equivalent comparison of alternatives can be made as the record is developed.

Subp. 2. Landowner list.

The draft rule requires the applicant to update the landowner list with any landowners whose property is along a route that will be considered in the scope of the EIS and who was not previously included in the list.

The EERA recommended striking this draft rule part, stating that the intent is unclear and that it could be read to mean that the applicant's filing replaces the EERA's analysis. The EERA stated that it gathers information from the applicant and other sources to conduct its analysis and that the draft rule is not necessary. The draft rule is intended, however, to ensure that the record is sufficiently complete to enable analysis by the parties and the public.

7850.2550 DRAFT EIS.

Subp. 6 2. Draft EIS.

The draft rule states that the draft EIS must be filed consistent with the process schedule. This change increases clarity, while maintaining flexibility. Use of a schedule will increase orderliness and timeliness of the process and enable the public and the parties to more effectively prepare for further record development, including participation in the draft EIS public meeting that is held after the draft EIS becomes available. And, establishing and tailoring a process schedule to best fit a particular project provides flexibility to address project-specific issues.

Subp. 7 3. Public review.

The draft rule requires the Department to give notice of the draft EIS to landowners (in addition to those on the project contact list as is currently required).

Subp. 4. Informational Environmental review meeting.

The draft rule replaces the phrase "informational meeting" with "environmental review meeting."

Subp. 9. Final EIS.

The draft relocates this subpart to a separate rule, part 7850.2650.

Subp. 10. Adequacy determination.

The draft relocates this subpart to a separate rule, part 7850.2700.

~~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.

This subpart is relocated to part 7850.2650.

~~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 draft rule strikes this subpart to avoid confusion about the requirements governing the permitting process.

7850.2570 PUBLIC HEARING.

Subpart. 1. Hearing.

The draft rule requires that a public hearing be held after the draft EIS becomes available.

No CapX 2020 and U-CAN recommended amending the rule to include detailed hearing procedures that an Administrative Law Judge must follow. But hearings are conducted by the ALJ under the procedures of the Office of Administrative Hearings, and the draft therefore does not set forth separate requirements.

Subp. 2. Public hearing notice.

The draft rule requires that the Commission coordinate with the ALJ to give notice of the hearing, and it requires the applicant to give newspaper notice of the hearing.

Subp. 3. Notice recipients.

The draft rule requires that the notice be sent to all the notice lists, except the general list.

Subp. 3 4. Newspaper notice.

The draft rule requires the applicant to give newspaper notice of the hearing in counties where the public hearings will be held.

7850.2600 CONTESTED CASE HEARING.

The draft rule repeals this part because there is a separate draft rule (part 7850.2120) governing the Commission's referral of cases for contested case proceedings. In addition, Minn. Stat. §216E.03, subd. 6, requires the ALJ to "hold a portion of the hearing in the area where the power plant or transmission line is proposed to be located." In practice, the ALJ assigned to a case coordinates with Commission staff and the parties to determine where the hearings should be held, considering the statutory requirement to hold hearings in areas where a proposed project might be located.

The draft rule strikes subparts 2 and 3, which state that questions of need are not to be addressed in the routing process, unless the Commission decides to hold joint hearings. Similar statements are included in separate rule parts, and it is no longer necessary to repeat it in this part.

7850.2650. FINAL EIS.

Subp. 2. Filing and public access.

The draft rule requires that the final EIS be filed consistent with the process schedule.

Just Change Law Office recommended that the Commission require the final EIS to be available prior to public hearings or contested case hearings. The draft rule does not incorporate this change and instead requires the final EIS to be made available consistent with the process schedule. If the Commission is certain that the final EIS should be made available in every case prior to public hearings, the draft rule can be modified to do so.

Subp. 3. Public comment.

The draft rule sets a 25-day public comment period on the final EIS, consistent with the recommendation of some advisory committee members that the public be given time to comment on the final EIS.

7850.2675 PROCEDURE AFTER ADMINISTRATIVE LAW JUDGE REPORT.

This is a new rule part that addresses a recommendation of the Department of Natural Resources (DNR) to allow state agencies to file comments after the report of the ALJ is filed in a case. The DNR stated that agencies may notice corrections that would clarify the record and be useful to the Commission's decision but that would not be part of the record, unless there is a rule provision giving participating agencies, not only parties, the opportunity to provide input on the ALJ's report.

Subpart 1. Parties.

The draft rule requires parties to file exceptions, as set forth in Chapter 7829.

Subp. 2. Participating agencies.

The draft rule gives participating agencies the opportunity to comment after the ALJ's report is filed without becoming parties to the proceeding.

ALTERNATIVE REVIEW PROCESS

7850.2800 ELIGIBLE PROJECTS.

Subpart 1. Eligible projects.

The draft rule incorporates a recent statutory change that includes solar powered projects to the list of projects eligible for alternative review. Great River Energy recommended clarifying that projects eligible for alternative review include high voltage transmission lines that are between 100 and 200 kilovolts *and that are greater than 1,500 feet in length*. But the draft rule does not incorporate this modification because a shorter line that is between 100 and 200 kV is not a high-voltage transmission and therefore does not require a permit from the Commission.

Subp. 2. Notice to PUC commission.

The draft rule requires the applicant to notify the Commission of its intent to follow the alternative review process at the time the applicant files a draft site or route permit application

under part 7850.1640

Repeal – Parts 7850.2900 to 7850.3600

To remove unnecessary redundancy in the rules and avoid potential confusion between the full permitting process and the alternative review process, the draft rule repeals parts 7850.2900 to 7850.3600.

Minn. Stat. Ch. 216E sets forth two review processes. The procedures applicable to larger projects is referred to in the Commission's rules as the full permitting process, and the procedures applicable to eligible (usually smaller) projects, listed under Minn. Stat. § 216E.04, subd. 2, is referred to as the alternative review process. There are three primary differences between the two.

Under the full permitting review process, an applicant is required to propose at least two sites or routes, the record is developed using contested case proceedings held by an administrative law judge, and the Department is required to prepare an EIS.

Under the alternative review process, an applicant is required to propose only one site or route (and identify any sites or routes the applicant considered and rejected), the record is developed using informal proceedings rather than contested case proceedings, and the Department is required to prepare an Environmental Assessment, not an EIS.

Parts 7850.2900 to 7850.3600 provide mostly the same information set forth in separate rule parts that govern the full permitting process. For example, rule part 7850.3300 addresses project notice as follows:

Part 7850.2100, regarding obligations to give notice of the project, applies to projects being considered under the alternative permitting process.

To avoid this unnecessary redundancy, the draft rule repeals parts 7850.2900 to 7850.3600 and amends separate rule parts as necessary to distinguish between the full and alternative review processes.

7850.3700 ENVIRONMENTAL ASSESSMENT PREPARATION.

The draft rule is intended to make the process easier to follow by separating this rule into separate rule parts. The existing rule has 9 subparts that govern a variety of steps, such as the scoping process, content requirements for the EA, the timeframe for completing the EA, and notice of the EA. These steps are likely to be clearer if they are described in separate rule parts with updated language. The draft rule above therefore governs only the public information and scoping meeting, with subsequent rule parts governing the scoping decision, content of the EA, and notice of the EA.

No CapX 2020 and U-CAN stated that as a result of the Sandpiper case, in which the Minnesota Court of Appeals required that an EIS be prepared in the certificate of need proceeding, these

rules should be amended to remove the option to prepare an EA and instead require an EIS in every case. But Minn. Stat. §216E.04, subd. 5, directs the Department to prepare an EA for eligible projects, stating that an EA “shall be the only state environmental review document required to be prepared on the project.”

Subpart 1. Environmental assessment required.

The draft rule incorporates a technical correction to increase clarity.

Subp. 2. Scoping process.

The draft rule clarifies existing language explaining that the Department will conduct the scoping portion of the meeting. The draft rule also removes notice requirements to eliminate unnecessary redundancy of the same notice requirements that are also set forth in part 7850.2300.

Subp. 4. Public comment.

The draft rule requires the Department to provide a 10-day comment period following the close of the meeting.

7850.3720 NOTICE TO COMMISSION.

The draft rule requires the Department to notify the Commission of the alternatives it intends to include in the scope of the Environmental Assessment. This will give the Commission the opportunity to identify any other alternatives for consideration, consistent with Minn. Stat. §216E.04, subd. 5.

7850.3730 SCOPING DECISION.

Subpart. 3 1. Scoping decision.

The draft rule requires that the scoping decision be filed consistent with the process schedule.

Subp. 2. Notice of decision.

The draft rule requires the Department to give notice of the scoping decision to all the lists, except the general list.

Subp. 5 3. Alternatives to be included in EA.

The draft rule requires the Department to include in the scope of the EA any alternatives identified by the Commission and the applicant.

7850.3740. SUPPLEMENTAL FILING BY APPLICANT.

Subpart 1. Supplemental filing.

The draft rule requires an applicant to supplement its application on any alternative that will be considered as part of the scope of the EA that was not identified in the application. The supplemental filing must include environmental information for each additional alternative.

Subp. 2. Landowner list.

The draft rule requires the applicant to update the landowner list based on any additional

alternatives identified that might affect landowners not previously identified.

The EERA recommended striking this draft rule part, stating that the intent of the draft rule is unclear and that it could be read to mean that the applicant's filing replaces the EERA's analysis. The EERA stated that it gathers information from the applicant and other sources to conduct its analysis and that the draft rule is not necessary.

Minnesota Power recommended clarifying whether landowners who are added to the list should receive any previous notice sent. The understanding is that the list is kept up to date so that the notice is sent to any landowner who should be receiving notice.

7850.3750 ENVIRONMENTAL ASSESSMENT.

Subp. 5 2 . Time frame for completion of environmental assessment.

The draft rule requires that the EA be completed consistent with the process schedule.

Subp. 8 5. No additional environmental review.

The draft rule strikes unnecessary references to the certificate of need process.

7850.3800 PUBLIC HEARING.

The draft rule updates the existing requirements by clarifying that only an ALJ, and not a hearing examiner, will preside over the public hearing, and that the hearing will be held as required by Minn. Stat. § 216E.04.

Subpart 1. Public hearing.

The draft rule states that the public hearing must be conducted by an Administrative Law Judge, as required by Minn. Stat. §216E.04.

Subp. 2. Public hearing notice.

The draft rule requires the Commission to give at least ten days' notice of the hearing, as required by statute. The notice must include the hearing time and date, along with a statement that the applicant could use eminent domain to obtain land for the proposed project.

Subp. 3. Notice recipients.

The draft rule requires the Commission to give notice to all the notice lists, except the general list.

Subp. 2 4. Hearing examiner.

The draft rule eliminates unnecessary language describing the role of the hearing examiner. The Commission will hold a hearing conducted by an ALJ.

Subp. 3 5. Hearing procedure.

The draft rule requires the Department to provide information for developing the record and offer the EA into the record.

Subp. 8. Public comment.

The draft rule gives the public 10 days to file comments after the close of the hearing.

Great River Energy recommended clarifying the applicant's role at the hearing and whether applicants will be expected to present information or answer questions.

FACTORS FOR COMMISSION CONSIDERATION

~~7850.4000 STANDARDS AND CRITERIA~~

The draft rule strikes this part because part 7850.4100 sets forth the criteria, including statutory criteria, that the Commission must consider when deciding whether to issue a site or route permit.

Furthermore, the existing rule's references to Chapters 116D and 116B (governing environmental policies) do not clarify what provisions of those Chapters are applicable. And there is no specific reference within Chapter 216E to Chapters 116B or 116D. To avoid confusion over what provisions of 116D and 116B might be applicable, the draft rule strikes this part.

7850.4100 FACTORS CONSIDERED.

The draft rule cites the statutory provision containing a list of applicable criteria the Commission must consider in deciding whether to issue a site or route permit.

~~7850.4200 FACTORS EXCLUDED.~~

The draft rule strikes this part because it is stated elsewhere that once a certificate of need has been granted by the Commission, issues regarding need for the project will not be developed in the permitting process.

USE OF PRIME FARMLAND

7850.4400 PROHIBITED SITES.

The draft rule includes an exemption for solar projects, as long as the Commission approves a farmland mitigation plan and there is no existing local regulation prohibiting use of prime farmland for solar-powered energy facilities.

PERMIT ADMINISTRATION AND LOCAL REVIEW

7850.4600 PERMIT CONDITIONS

The draft rule does not propose any changes to this rule part. But Great River Energy recommended amending the rule to address a standard permit condition that requires an applicant to submit an as-built within 60 days of construction completion, stating that the deadline should be closer to 6 months, which is consistent with existing practice. Minnesota Power recommended amending the rule to describe the draft route permit. Although the draft rule does not incorporate these recommendations, changes to permit language can be made on a case-by-case basis to

address issues that are project-specific.

7850.4650 COMPLIANCE FILING.

The draft rule adds this part to codify existing practice in which applicants file, for Commission approval, a preliminary design plan for the project.

Subpart. 1. Plan and profile.

The draft rule sets forth the issues that must be addressed in the plan and profile. Xcel stated, however, that the plan is segment specific, rather than applicable to the entire project. But detailed information on the plan and profile will vary by project, and the draft rule does not prohibit an applicant from filing information that is segment-specific.

Subp. 2. Commission decision.

The draft rule delegates to the Executive Secretary the authority to make a decision on the plan and profile and notify the permittee of the decision.

7850.4700 DELAY IN ROUTE OR SITE CONSTRUCTION.

The draft rule requires the Commission to give notice of its meeting to all the lists, except the general list and the landowner list; the applicant is required to give notice of its request to the landowner list.

7850.4800 MINOR ALTERATION IN CHANGES TO GENERATING PLANT OR TRANSMISSION LINE.

This rule governs changes to a project after a permit has been issued and requires an applicant, or permittee, to request Commission authorization for minor alterations.

Subpart 1. Applicability.

The draft rule requires the applicant to obtain Commission approval of a change to a facility or to a *permit condition*.

Subp. 2. Application for minor alternation of a site or route.

The draft rule requires an applicant to send notice of its request for a minor alteration to the project contact list, the public agency contact list, affected landowners, and local units of government.

Subp. 3. ~~Commission decision~~

The draft rule strikes subpart 3 of this rule, which requires the Commission to make a decision within ten days after the close of the comment period. The deadline does not provide sufficient time for the Commission to consider comments and make a decision. The Commission gives ten days' notice of its agenda meetings to comply with the Open Meeting Law under Minn. Stat. 13D, making the ten-day deadline in this rule impracticable.

7850.4900 AMENDMENT OF PERMIT CONDITIONS.

Subpart 1. Authority.

The draft rule modifies current rule language to clarify that the Commission, on its own motion,

may amend the conditions of a permit before construction begins.

Subp. 2. Process.

The draft rule requires notice to affected landowners.

Subp. 3. Decision.

The draft rule strikes subpart 3, which requires the Commission to make a decision on a permit amendment request within 10 days of the close of the public comment period and to notify the applicant in writing of the Commission's decision. A ten-day time period for making a Commission decision after the close of the public comment period is impracticable, considering the requirement that the Commission notify the public at least 10 days prior to holding a meeting. Further, the Commission notifies persons on the service lists of its decisions under Chapter 7829, which sets forth the Commission's rules of practice and procedure.

7850.4925 COMPLAINT PROCEDURES.

This is a new rule part that governs disputes between permittees and those affected by permit conditions. Under the rule, anyone complaining to either the permittee or to the Commission has the right to file a complaint. Complaints filed with permittees must be reported to the Commission, and complaints filed with the Commission must be investigated by Commission staff.

Subp. 1. Filing.

The draft rule requires the complainant to provide information on the alleged permit violation and authorizes local units of government to file complaints on behalf of residents.

Subp. 2. Permittee complaint handling.

The draft rule requires permittees who receive complaints to notify the Commission within one business day of receiving a complaint to ensure that the Commission is promptly notified.

Subp. 3. Commission complaint handling.

If the Commission receives a complaint, the draft rule requires the Commission staff to send a copy to the permittee and to facilitate resolution of the complaint.

7850.4950 REPORTS.

This is a new rule part that codifies existing practice in which permittees file monthly reports with the Commission on complaints received and the resolution of those complaints.

7850.5000 PERMIT TRANSFER.

Subp. 2. Approval of transfer.

The draft rule strikes language giving the Commission the option of holding a public meeting because the Commission always holds public meetings to decide matters in front of it. The draft rule also requires the permittee to notify the Commission of the transfer once the transfer takes place.

7850.5100 PERMIT REVOCATION OR SUSPENSION.

Subp. 2. Hearing.

The draft rule strikes the requirement that the Commission offer a permittee the option of using contested case proceedings to assist the Commission's decision on whether to suspend or revoke a permit. The Commission will instead take comments on the issue and then decide whether to develop the record further or make a decision on the merits of the suspension or revocation.

7850.5300 LOCAL REVIEW OF PROPOSED FACILITIES.

Subp. 2. Eligible projects.

Xcel, GRE, and Minnesota Power all supported striking subpart 2, item D, governing substations. They stated that substations are associated facilities not separately subject to permitting requirements under Minn. Stat. Ch. 216E. The draft incorporates the recommended change because associated facilities, such as substations, are included in the definition of a high voltage transmission line.

RULEMAKING PROCESS

I. NEXT STEPS

The next steps in this rulemaking are as follows:

- (1) Send Commission-approved draft rules to the Revisor for final editing.
- (2) Prepare a *Statement of Need and Reasonableness* (SONAR) explaining and justifying each rule provision.
- (3) Send Commission-approved draft rules and the SONAR to the Office of the Governor for authorization to publish.
- (4) Draft a Dual Notice, both setting a hearing date and stating that the Commission will adopt these rules without a hearing if it does not receive the 25 requests triggering a hearing under the Administrative Procedure Act (APA).
- (5) Submit the approved draft rules, the dual notice, the SONAR and an additional notice plan to the Office of Administrative Hearings for approval and authorization to publish.
- (6) Publish proposed rules and dual notice in *State Register*.
- (7) Serve dual notice on all persons on the Commission's electric service lists and general rulemaking lists.
- (8) Mail required notice to legislators specified in the APA and to the Legislative Reference Librarian.
- (9) Issue a press release and put rulemaking materials on the website.
- (10) Analyze comments in response to the Dual Notice and any requests for a hearing, and schedule subsequent Commission meeting to adopt proposed rules with any further changes.

II. Alternatives for Commission Action

A. Approve the attached rules draft, as recommended by staff, and authorize staff to take the necessary steps to continue the rulemaking process.

B. Revise the attached draft rules and authorize staff to take the necessary steps to continue the rulemaking process.

C. Delegate to the Executive Secretary the authority to execute documents necessary to proceed with rulemaking under the Administrative Procedure Act up to, but not including, rule

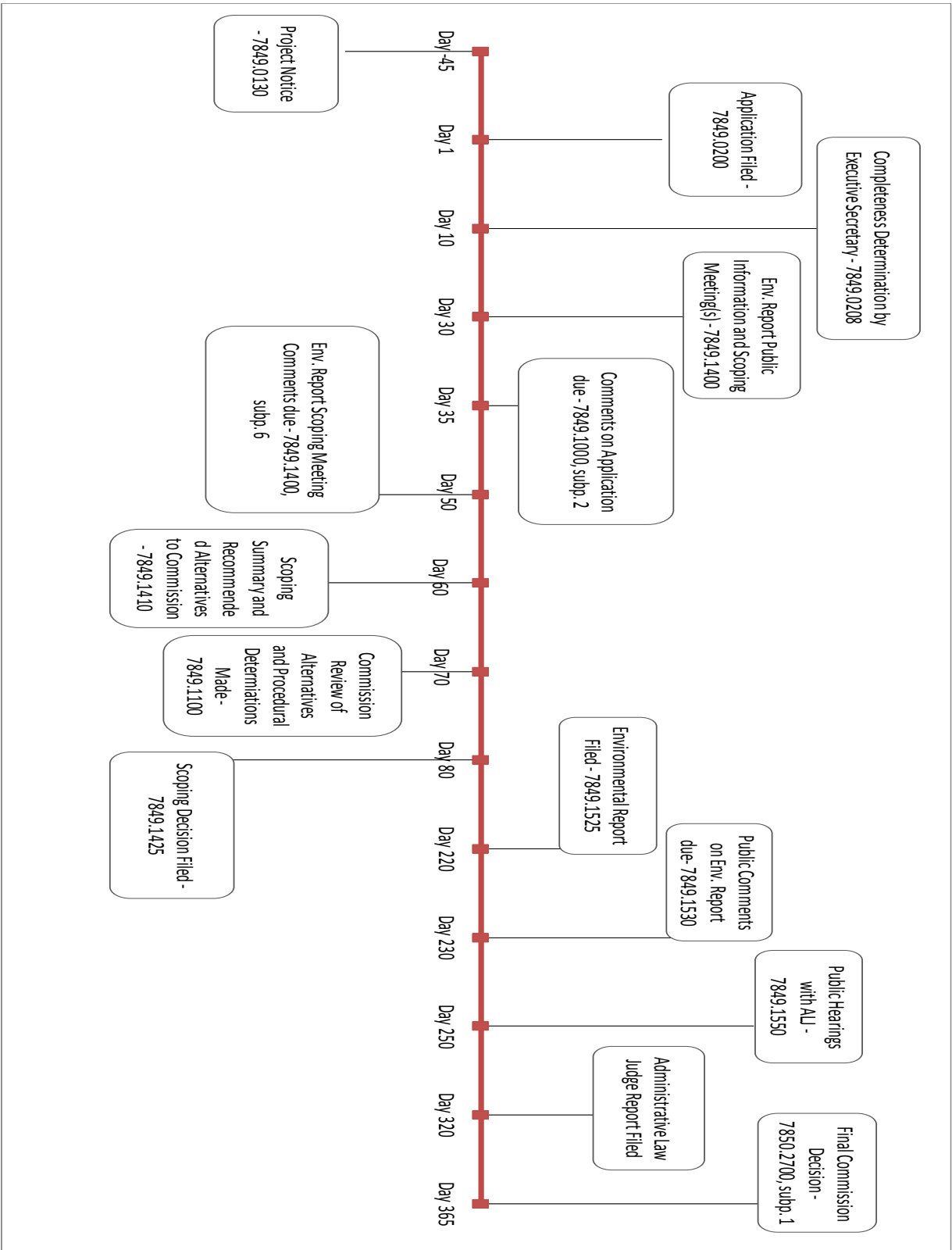
adoption.

D. Delegate to Commissioner Tuma the authority to approve any necessary, non-substantive edits to the draft prior to publication in the *State Register*.

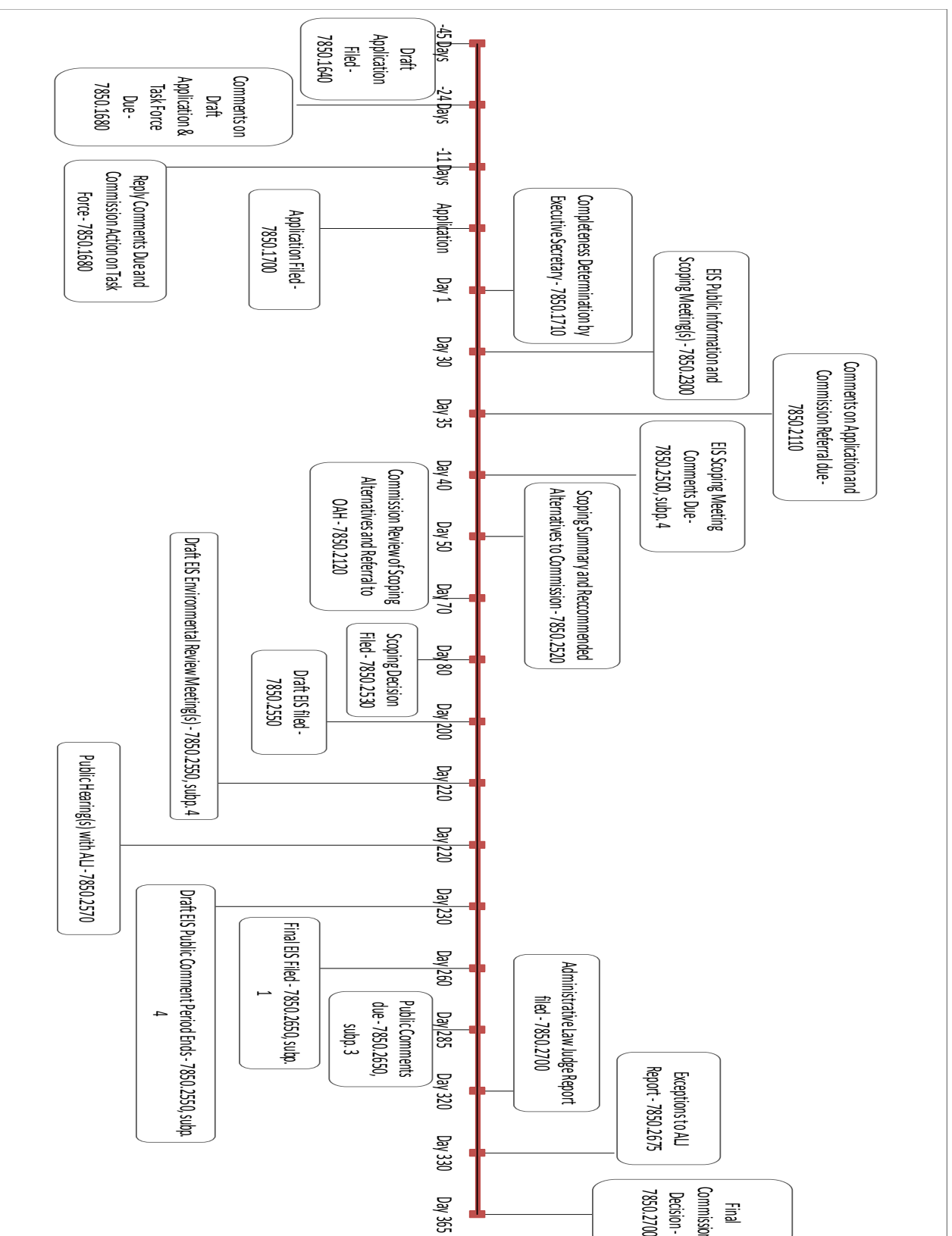
E. Request comments on the drafts before authorizing publication of the rules in the *State Register*.

F. Take other action as the Commission deems appropriate.

PROCESS SCHEDULE – CERTIFICATE OF NEED (7849)



SITING AND ROUTING – FULL PERMITTING PROCESS SCHEDULE (7850)



SITING AND ROUTING – ALTERNATIVE REVIEW PROCESS SCHEDULE (7850)

