

WORKING DRAFT – Chapter 7849

PUBLIC UTILITIES COMMISSION

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7849.0010 DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 7849.0010 to 7849.0400, the following definitions shall apply.

The terms used in this chapter have the meanings given them in this part.

~~Subp. 2. **Adjusted net capability.** "Adjusted net capability" means net generating capacity, minus participation sales, plus participation purchases.~~

~~Subp. 3. **Adjusted net demand.** "Adjusted net demand" means system demand, minus firm purchases, plus firm sales.~~

~~Subp. 4. **Annual adjusted net demand.** "Annual adjusted net demand" means annual system demand, minus firm purchases, plus firm sales.~~

Subp. 5. **Annual electrical consumption.** "Annual electrical consumption" means sales of kilowatt hours of electricity to ultimate consumers over a 12-month period beginning January 1 and ending December 31 of the forecast year.

~~Subp. 6. **Annual system demand.** "Annual system demand" means the highest system demand of a utility occurring during the 12-month period ending with a given month.~~

Subp. 6a. **Associated facilities.** "Associated Facilities" means buildings, equipment, and other physical structures that are necessary to the operation of a large electric generating facility or large high voltage transmission line, including other transmission lines directly associated with a large electric generating facility that are necessary to interconnect the plant to the transmission system.

Subp. 7. **Capacity factor.** "Capacity factor" means the ratio of the actual amount of electrical energy generated during a designated period by a particular generating facility to the maximum amount of electrical energy that could have been generated during the period by the facility had it been operated continuously at its rated capacity.

Subp. 8. **Commission.** "Commission" means the Minnesota Public Utilities Commission.

Subp. 9. **Construction.** "Construction" means significant physical alteration of ~~a site~~ an area to install or enlarge a large energy facility, but not including an activity incident to

preliminary engineering or environmental studies.

Subp. 9a. **Department.** “Department” means the Department of Commerce.

Subp. 9b. **Environmental report.** “Environmental report” means a written document that describes the human and environmental impacts of a proposed large electric generating facility or large high voltage transmission line and alternatives to the project and methods to mitigate anticipated adverse impacts.

~~Subp. 10. **Firm purchases; firm sales.** “Firm purchases” and “firm sales” mean the amount of power to be purchased or sold which is intended to have assured availability.~~

~~Subp. 11. **Forecast years.** “Forecast years” means the 26 calendar years consisting of the calendar year the application is filed with the commission, the ten previous calendar years, and the 15 subsequent calendar years.~~

Subp. 12. **Heat rate.** “Heat rate” means a measure of average thermal efficiency of an electric generating facility expressed as the ratio of input energy per net kilowatt hour produced, computed by dividing the total energy content of fuel burned for electricity generation by the resulting net kilowatt hour generation.

Subp. 12a. **Independent Power Producer.** “Independent power producer” means any person engaged in the business of owning, operating, maintaining, or controlling equipment or facilities for furnishing electric generation but does not include a public utility, municipal electric utility, municipal power agency, cooperative electric association, generation and transmission cooperative power association, or any other entity providing retail electric service to end user customers.

Subp. 13. **Large electric generating facility; LEGF.** “Large electric generating facility” or “LEGF” means an electric power generating unit or combination of units as defined by Minnesota Statutes, section 216B.2421, subdivision 2, clause (1).

Subp. 14. ~~**Large hHigh voltage transmission line; LHVTL.** “Large hHigh voltage transmission line” or “LHVTL” means a conductor of electrical energy as defined by Minnesota Statutes, section 216B.2421, subdivision 2, clause (2) and (3), and associated facilities necessary for normal operation of the conductor, such as insulators, towers, substations, and terminals.~~

Subp. 15. **Load center.** “Load center” means that portion or those portions of a utility's system where electrical energy demand is concentrated.

~~Subp. 16. **Load factor.** “Load factor” means the ratio of the average load in kilowatts supplied during a designated period to §§the maximum load in kilowatts that was supplied during that designated period.~~

Subp. 16a. **Mail.** “Mail” means either the United States mail or electronic mail by e-mail.

Subp. 17. **Minnesota service area.** “Minnesota service area” means that portion of a utility's system lying within Minnesota.

~~Subp. 18. **Net generating capacity.** "Net generating capacity" means the total number of kilowatts, less station use, that all the generating facilities of a system could supply at the time of its maximum system demand. The capability of the generating units that are temporarily out of service for maintenance or repair shall be included in the net generating capacity.~~

~~Subp. 19. **Net reserve capacity obligation.** "Net reserve capacity obligation" means the annual adjusted net demand multiplied by the percent reserve capacity requirement.~~

Subp. 20. **Nominal generating capability.** "Nominal generating capability" means the average output power level, net of in-plant use, that a proposed LEGF is expected to be capable of maintaining over a period of four continuous hours of operation.

~~Subp. 21. **Participation power.** "Participation power" means power and energy that are sold from a specific generating unit or units for a period of six or more months on a continuously available basis (except when such unit or units are temporarily out of service for maintenance, during which time the delivery of energy from other generating units is at the seller's option).~~

~~Subp. 22. **Participation purchases; participation sales.** "Participation purchases" and "participation sales" mean purchases and sales under a participation power agreement or a seasonal participation power agreement.~~

Subp. 23. **Peak demand.** "Peak demand" means the highest system demand occurring within any designated period of time.

Subp. 24. **Promotional practices.** "Promotional practices" means any action or policies by an applicant, except those actions or policies that are permitted or mandated by statute or rule, which directly or indirectly give rise to the demand for the facility, including but not limited to advertising, billing practices, promotion of increased use of electrical energy, and other marketing activities.

Subp. 24a. **Region.** "Region" means the state of Minnesota, neighboring states, and states or Canadian provinces with utilities that are members of the same regional transmission organization as Minnesota's utilities.

Subp. 25. ~~**Seasonal adjusted net demand.** "Seasonal adjusted net demand" means seasonal system demand, minus firm purchases, plus firm sales.~~ **Regional Transmission Organization; RTO.** "Regional Transmission Organization" or "RTO" means a regional transmission organization regulated by the Federal Energy Regulatory Commission that includes Minnesota utilities and that has sufficient regional scope to exercise operational or functional control of facilities used for the transmission of electric energy in interstate commerce and to ensure nondiscriminatory access to the facilities.

~~Subp. 26. **Seasonal participation power.** "Seasonal participation power" means participation power sold and bought on a seasonal (summer or winter) basis.~~

~~Subp. 27. **Seasonal system demand.** "Seasonal system demand" means the maximum system demand on the applicant's system that occurs or is expected to occur in any summer season or winter season.~~

Subp. 28. **Summer season.** "Summer season" means the period from May 1

through October 31.

Subp. 29. **System.** "System" means the service area where the utility's ultimate consumers are located and that combination of generating, transmission, and distribution facilities that makes up the operating physical plant of the utility, whether owned or nonowned, for the delivery of electrical energy to ultimate consumers.

Subp. 30. **System demand.** ~~"System demand" means the number of kilowatts that is equal to the kilowatt hours required in any clock hour, attributable to energy required by the system during such hour for supply of firm energy to ultimate consumers, including system losses, and also including any transmission losses occurring on other systems and supplied by the system for transmission of firm energy, but excluding generating station uses and excluding transmission losses charged to another system.~~ **Transmission company.** "Transmission company" means any person engaged in the business of owning or operating, maintaining, or controlling in this state facilities for the purpose of furnishing electric transmission service in Minnesota other than a public utility, municipal electric utility, municipal power agency, cooperative electric association, generation and transmission cooperative power association, or any other entity serving end user customers.

Subp. 31. **Ultimate consumers.** "Ultimate consumers" means consumers purchasing electricity for their own use and not for resale.

Subp. 32. **Utility.** "Utility" means any entity engaged in the generation, transmission, or distribution of electrical energy, including ~~but not limited to a private investor-owned utility or a public or municipally-owned utility~~ public utility, municipal electric utility, municipal power agency, cooperative electric association, generation and transmission cooperative power association, transmission company, or independent power producer.

Subp. 33. **Winter season.** ~~"Winter season" means the period from November 1 through April 30.~~

Statutory Authority: *MS s 216B.08; 216B.243; 216C.10*

History: *L 1983 c 289 s 115; 12 SR 2624; 26 SR 1438*

Posted: *October 13, 2009*

CERTIFICATES OF NEED

7849.0020 PURPOSE.

The purpose of parts 7849.0010 to 7849.0400 is to specify the content of applications for certificates of need and to specify criteria for the assessment of need for large electric generating facilities and large high voltage transmission lines.

Statutory Authority: *MS s 216A.05; 216B.08; 216B.2421; 216B.243; 216C.10*

History: *L 1983 c 289 s 115; 12 SR 2624*

Posted: *October 13, 2009*

7849.0030 SCOPE.

Subpart 1. **Facilities covered.** ~~A person applying for a certificate of need for an LEGF or an LHVTL shall provide the information required by parts 7849.0010 to 7849.0400.~~ A certificate of need is required for a new LEGF, a new LHVTL, and for expansion of either facility when the expansion is itself of sufficient size to come within the definition of "large electric generating facility" or "large high voltage transmission line" in part 7849.0010. The nominal generating capability of an LEGF is considered its size. If the nominal generating capability of an LEGF varies by season, the higher of the two seasonal figures is considered its size.

Subp. 2. **Exemption.** Notwithstanding subpart 1, a certificate of need is not required under this chapter for a facility exempted by Minnesota Statutes, section 216B.243, subdivisions 8 and 9, section 216B.2422, subd. 6, and section 216B.2425, subd. 3.

Statutory Authority: *MS s 216A.05; 216B.08; 216B.2421; 216B.243; 216C.10*

History: *L 1983 c 289 s 115; 12 SR 2624*

Posted: *October 13, 2009*

7849.0100 PURPOSE OF CRITERIA.

The criteria for assessment of need must be used by the commission to determine the need for a proposed large energy facility under Minnesota Statutes, sections 216B.2421, subdivision 2, and 216B.243. ~~The factors listed under each of the criteria set forth in part 7849.0120 must be evaluated to the extent that the commission considers them applicable and pertinent to a facility proposed under parts 7849.0010 to 7849.0400. The commission shall make a specific written finding with respect to each of the criteria~~ this chapter.

Statutory Authority: *MS s 216A.05; 216B.08; 216B.2421; 216B.243; 216C.10*

History: *L 1983 c 289 s 115; 12 SR 2624*

Posted: *October 13, 2009*

7849.0110 ALTERNATIVES CONSIDERATION.

The commission ~~shall~~ must consider ~~only~~ those alternatives proposed before the close of the public hearing ~~and~~ for which there exists substantial evidence on the record with respect to ~~each~~ of the criteria listed in part 7849.0120.

Statutory Authority: *MS s 216A.05; 216B.08; 216B.2421; 216B.243; 216C.10*

History: *L 1983 c 289 s 115; 12 SR 2624*

Posted: *October 13, 2009*

7849.0115 CERTIFICATE OF NEED REQUIREMENTS.

Subpart 1. **Need Demonstration.** An applicant for a certificate of need must demonstrate that the projected demand for electricity cannot be met using existing resources, or more cost effectively through energy conservation and load-management measures, unless the applicant

otherwise justifies its need, considering the criteria in part 7849.0120 below.

Subp. 2. **Renewable Resource Preferred.** An applicant proposing a large energy facility that generates electric power by means of a nonrenewable energy source or that transmits electric power generated by means of a nonrenewable energy source must demonstrate that it has considered the use of renewable energy sources, as required under Minnesota Statutes section 216B.243, subd. 3a.

7849.0120 CERTIFICATE OF NEED CRITERIA.

A certificate of need must be granted to the applicant on determining that: In evaluating a certificate of need application, the commission must consider the criteria contained in Minnesota Statutes, section 216B.243, subd. 3, as well as the following:

A. whether the probable result of denial would be an adverse effect upon the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and ~~neighboring states, considering: the region;~~

~~(1) the accuracy of the applicant's forecast of demand for the type of energy that would be supplied by the proposed facility;~~

~~(2) the effects of the applicant's existing or expected conservation programs and state and federal conservation programs;~~

~~(3) the effects of promotional practices of the applicant that may have given rise to the increase in the energy demand, particularly promotional practices which have occurred since 1974;~~

~~B. (4) the ability of current facilities and planned facilities not requiring certificates of need to meet the future demand; and~~

~~(5) the effect of the proposed facility, or a suitable modification thereof, in making efficient use of resources;~~

~~C. B whether the proposed project is a more reasonable and prudent than any proposed alternative to the proposed facility has not been, as demonstrated by a preponderance of the evidence on the record, considering;~~

~~D. (4) the appropriateness of the size, the type, and the timing of the proposed facility compared to those of reasonable alternatives;~~

~~E. (2) the cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;~~

~~F. (3) the effects of the proposed facility upon the natural and socioeconomic environments, including human health, compared to the effects of reasonable alternatives; and~~

G. ~~(4)~~ the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives;

C. ~~by a preponderance of the evidence on the record, the proposed facility, or a suitable modification of the facility, will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health, considering:~~

~~(1) the relationship of the proposed facility, or a suitable modification thereof, to overall state energy needs;~~

~~(2) the effects of the proposed facility, or a suitable modification thereof, upon the natural and socioeconomic environments compared to the effects of not building the facility;~~

~~(3) the effects of the proposed facility, or a suitable modification thereof, in inducing future development; and~~

~~(4) the socially beneficial uses of the output of the proposed facility, or a suitable modification thereof, including its uses to protect or enhance environmental quality; and.~~

D. ~~the record does not demonstrate that the design, construction, or operation of the proposed facility, or a suitable modification of the facility, will fail to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments.~~

Statutory Authority: *MS s 216A.05; 216B.08; 216B.2421; 216B.243; 216C.10*

History: *L 1983 c 289 s 115; 12 SR 2624*

Posted: *October 13, 2009*

NOTICE REQUIREMENTS

7849.0125 NOTICE LISTS. The following notice lists must be established and maintained as described in this part.

Subpart 1. **General list.** This list is the same list the commission maintains under part 7850.1610, subpart 1, of persons who want to be notified of an application for a proposed site or route permit. The commission must make the list available to the applicant at the time the certificate of need application is filed and upon request.

Subp. 2. **Project contact list.** The commission must maintain a project contact list for each proposed project. The project contact list must include the names of persons who have requested to receive notice of a proposed project. The commission must add a person's name to the list if the commission has reason to believe that the person would like to receive notices of a particular project. The commission must make the project contact list available to the applicant upon request.

Subp. 3. **Public agency contact list.** The commission must maintain a public agency contact list that includes public agencies likely to be interested in the proposed project. The list must include the following:

A. the Department;

- B. the Office of the Attorney General;
- C. the United States Army Corps of Engineers;
- D. the United States Fish and Wildlife Service; and
- E. other state agencies, including:

- (1) the Department of Natural Resources;
- (2) the Pollution Control Agency;
- (3) the Department of Transportation;
- (4) the Department of Agriculture;
- (5) the Department of Health;
- (6) the Office of Pipeline Safety;
- (7) the Board of Water and Soil Resources;
- (8) the State Historic Preservation Office of the Minnesota Historical Society;
- (9) the Department of Employment and Economic Development; and
- (10) the Department of Labor and Industry.

Subp. 4. **Landowner list.** An applicant must maintain, and make available to the commission, the department, or the public upon request, a landowner list for its proposed project. For purposes of the landowner list, a landowner is the person whose name is listed on the property record of the county auditor. In a county where tax statements are mailed by the county treasurer, the landowner is the person whose name is listed on the property record of the county treasurer. The list must conform to the following:

- A. The list must include:
 - (1) for an HVTL, landowners whose property is along a transmission line;
 - (2) for an LEGF, landowners whose property is within the proposed project footprint, or within one-half mile of the project footprint, as shown in the applicant's certificate of need application; and
 - (3) for all projects, landowners who are reasonably likely to be affected by the proposed project.
- B. the list must be updated to include each landowner whose property is on or adjacent to the proposed footprint of a project alternative that will be considered in the scope of the

environmental report under part 7849.1425.

Subp. 5. **Local and tribal government contact list.** An applicant must maintain and make available to the commission and department, upon request, a list of local units of government, and their chief executives, located in the proposed project area. The list must include the following:

- A. each regional development commission;
- B. each county;
- C. each incorporated municipality;
- D. each town;
- E. each township;
- F. each statutory city;
- G. each home rule charter city;
- H. each tribal government;
- I. each watershed district; and
- J. each soil and water conservation district.

Subp. 6. **List maintenance.** Names must not be removed from a list, unless:

- A. an individual requests to be removed from the list; or
- B. the commission or applicant sends written notice to an individual on the list asking whether that person's name should remain on the list and no response is received within 30 days of the request.

[PART 7829.2550 IS UNDER CONSIDERATION IN THIS RULEMAKING PROCEEDING]

~~7829.2550 NOTICE PLANS WHEN SEEKING CERTIFICATION OF HIGH-VOLTAGE TRANSMISSION LINES.~~

~~Subpart 1. **Filings required, service requirements.** Three months before filing a certificate of need application for a high-voltage transmission line as defined by Minnesota Statutes, section ~~216B.2421~~, the applicant shall file a proposed plan for providing notice to all persons reasonably likely to be affected by the proposed line. Applicants shall serve their proposed plans on the following persons:~~

- ~~A. the department;~~

~~B. the Residential and Small Business Utilities Division of the Office of the Attorney General; and~~

~~C. all persons on the "General List of Persons Interested in Power Plants and Transmission Lines" maintained under part 7850.2100, subpart 1, item A.~~

~~Subp. 2. **Procedural schedule, notice of procedural schedule.** Initial comments on proposed notice plans must be filed within 20 days of the date of filing. Reply comments must be filed within 20 days of the expiration of the initial comment period. Applicants shall include with the proposed notice plan a clear and conspicuous notice of these comment periods.~~

~~Subp. 3. **Types of notice.** Proposed notice plans must include notice to the following persons by the method specified:~~

~~A. direct mail notice, based on county tax assessment rolls, to landowners reasonably likely to be affected by the proposed transmission line;~~

~~B. direct mail notice to all mailing addresses within the area reasonably likely to be affected by the proposed transmission line;~~

~~C. direct mail notice to tribal governments and to the governments of towns, statutory cities, home rule charter cities, and counties whose jurisdictions are reasonably likely to be affected by the proposed transmission line; and~~

~~D. newspaper notice to members of the public in areas reasonably likely to be affected by the proposed transmission line.~~

~~Subp. 4. **Notice content.** Proposed notice plans must provide notice recipients with the following information:~~

~~A. a map showing the end points of the line and existing transmission facilities in the area;~~

~~B. a description of general right-of-way requirements for a line of the size and voltage proposed and a statement that the applicant intends to acquire property rights for the right-of-way that the proposed line will require;~~

~~C. a notice that the line cannot be constructed unless the commission certifies that it is needed;~~

~~D. the commission's mailing address, telephone number, and Web site;~~

~~E. if the applicant is a utility subject to chapter 7848, the address of the Web site on which the utility applicant will post or has posted its biennial transmission projects report required under that chapter;~~

~~F. a statement that the Environmental Quality Board will be preparing an environmental report on each high-voltage transmission line for which certification is requested;~~

~~G. a brief explanation of how to get on the mailing list for the Environmental Quality Board's proceeding; and~~

~~H. a statement that requests for certification of high voltage transmission lines are governed by Minnesota law, including specifically chapter 4410, parts 7849.0010 to 7849.0400, and 7849.1000 to 7849.2100, and Minnesota Statutes, section 216B.243.~~

~~Subp. 5. **Supplementary notice.** The commission shall require supplementary notice to persons reasonably likely to be affected by system alternatives developed in the course of certification proceedings if it appears that those system alternatives are as likely to be certified as the proposed high voltage transmission line.~~

~~Subp. 6. **Notice time frames.** The applicant shall implement the proposed notice plan within 30 days of its approval by the commission.~~

~~Subp. 7. **Good faith sufficient.** The commission shall not deny a request for certification of a high voltage transmission line on grounds of defective notice if the applicant acted in good faith, in substantial compliance with the notice requirements of this part, and in substantial compliance with any commission orders issued under this part.~~

7849.0130 PROJECT NOTICE.

Subpart 1. **Notice required.** At least 45 days but not more than 60 days before filing a certificate of need application for a HVTL or an LEGF under this Chapter, an applicant must provide notice of its proposed project in the form and manner described in subparts 2 through 7.

Subp. 2. **Notice recipients. All projects.** An applicant must file notice of its proposed project with the Commission and mail notice of its proposed project to the following:

- A. the general list;
- B. the public agency contact list;
- C. the landowner list; and
- D. the local and tribal government contact list.

Subp. 3. **Notice content.** The notice must include the following information:

A. for an HVTL:

- (1) a map showing:
 - (i) the end points of the line and existing transmission facilities in the area, including transmission facilities 69 kilovolts or greater; and
 - (ii) shaded-in areas showing possible routes.
- (2) a description of general right-of-way requirements for a line of the size

and voltage proposed and a statement that the applicant intends to acquire property rights for the right-of-way that the proposed line will require;

B. for an LEGF:

(1) a map showing the location of the proposed facility and;

(2) a description of the proposed project that identifies the proposed fuel source and includes the approximate size of the proposed facility.

C. for all projects:

(1) a description of the proposed project;

(2) a notice that the line or facility cannot be constructed unless the commission certifies that it is needed;

(3) the commission's mailing address, telephone number, and website and a brief explanation of how to get on the mailing list for the commission's proceeding;

(4) if the applicant is a utility subject to ~~chapter 7848~~ Minnesota Statutes section 216B.2425, the address of the Web site on which the utility applicant ~~will post or~~ has posted its most recent biennial transmission projects report required under that ~~chapter~~ statute;

(5) a statement that the ~~Environmental Quality Board~~ department will be preparing an environmental report on each high voltage transmission line or large electric generating energy facility for which certification is requested;

(6) a statement that requests for certification of high-voltage transmission lines and large electric generating facilities are governed by Minnesota law, including specifically chapter 4410, ~~parts 7849.0010 to 7849.0400 and 7849.1000 to 7849.2100~~ 7849 and Minnesota Statutes, section 216B.243;

(7) whether the applicant is retaining the option to exercise eminent domain to acquire property rights for the project, and if so, contact information for the applicant's land agents;

(8) a statement that public meetings will be held by the department and the commission, and that the public will have an opportunity to ask questions about the project, to suggest alternatives, and to identify impacts for evaluation in the environmental report;

(9) a statement informing the public of where copies of filings in the case are available for review and how copies can be obtained; and

(10) a statement that the proposed project could affect landowners and residents in the area and that the applicant could use eminent domain proceedings to obtain land for the project.

Subp. 4. **Newspaper notice.** An applicant must publish, in newspapers of general circulation, notice to members of the public in each county where a project is proposed. The notice must include a description of the location of the proposed project and its infrastructure and where to obtain additional project information.

Subp. 5. **Press release.** An applicant must mail notice of the proposed project in the form of a press release to at least one radio station in each county where the proposed project will be located.

The press release must include:

- A. the intended application filing date;
- B. a description of the location of the proposed project and its infrastructure;
- C. for an LEGF, the proposed fuel source type for the project;
- D. a statement that the proposed project could affect landowners and residents in the project area and that the applicant could use eminent domain proceedings to obtain land for the project;
- E. a description of where to obtain the application, including an electronic link to the application; and
- F. information on how to contact the Commission for information on public participation in the Commission's proceeding.

Subp. 6. **Compliance filing.** Within 30 days of the date the notice was mailed, the applicant must file a compliance filing that includes the following:

- A. a copy of the notice sent under subparts 2 through 5 and an affidavit of service that includes the names and addresses of those persons to whom the notice was sent;
- B. each affidavit of publication by newspaper;
- C. a copy of the press release sent and a list of the stations to which it was sent; and
- D. a map or other graphical representation of the area in which the applicant mailed notice of the proposed project under subparts 2 through 5.

Subp. 7. **Good faith sufficient.** The commission ~~shall~~ must not deny a request for certification of ~~a high voltage transmission line HVTL or LEGF~~ on grounds of defective notice if the applicant acted in good faith, in substantial compliance with the notice requirements of this part, and in substantial compliance with any commission orders issued under this part. Where notice was defective, the Commission must consider whether to reject an application as incomplete, suspend or extend the certificate of need proceedings, or direct the applicant to provide proper notice. The Commission must modify the process schedule with notice to affected parties to allow reasonable time and opportunity to participate.

FILING REQUIREMENTS

7849.0200 APPLICATION PROCEDURES AND TIMING FORM AND MANNER OF FILING.

Subpart 1. ~~Form and manner.~~ An applicant for a certificate of need shall apply in a form and manner prescribed by parts 7849.0010 to 7849.0400. **Electronic filing.** An applicant subject to the electronic filing requirements under Minn. Stat. § 216.17, subd. 3, must follow those filing

procedures when filing a certificate of need application.

Subp. 2. ~~Copies, title, table of contents~~ **Non-electronic filing.** An applicant who does not file an application electronically must file The the original and 43 three copies of the application must be filed with the commission. The applicant shall and provide copies of the application to other state agencies with regulatory responsibilities in connection with the proposed facility and to other interested persons who request copies. The applicant shall maintain a distribution list of the copies. Documents, forms, and schedules filed with the application must be typed printed on 8-1/2 inch by 11 inch paper except for drawings, maps, and similar materials.

Subp. 3. **Form.** An application must contain a title page and a complete table of contents that includes the applicable rule by the titles and numbers given in parts 7849.0010 to 7849.0400. The date of preparation and the applicant's name must appear on the title page, as well as on each document filed with the application.

Subp. 4. **Cover letter and summary.** An application for a certificate of need must be accompanied by a cover letter signed by an authorized officer or agent of the application. The cover letter must specify the type of facility for which a certificate of need is requested. The application must also include, on a separate page, a brief summary of the filing, sufficient to apprise potentially interested parties of the nature of the application and its general content.

Subp. 3 5. **Changes to application.** After an application is filed, supplemental filings, changes, or corrections to the application must comply with subpart 2 as to the number of copies and size of documents this rule part. In addition, eEach page of containing a change or correction to a previously filed page must be marked with the word "REVISED" and with the date the revision was made. The original copy of the changes or corrections must be filed with the administrative law judge, and the remaining copies must be submitted to with the commission. If there is no proceeding pending before an administrative law judge, the filing must be made with the commission. The applicant shall must send to persons receiving copies of the application a like number of copies of changed or corrected pages.

Subp. 5. **Complete applications.** ~~The commission must notify the applicant within 30 days of the receipt of an application if the application is not substantially complete. On notification, the applicant may correct any deficiency and may resubmit the application. If the revised application is substantially complete, the date of its submission is considered the application date.~~

Subp. 6. **Exemptions.** Before submitting an application, a person is exempted from any data requirement of parts ~~7849.0010 .0020~~ to 7849.0400 if the person (1) requests an exemption from specified rules, in writing to the commission, and (2) shows that the data requirement is unnecessary to determine the need for the proposed facility or may be satisfied by submitting another document. A request for exemption must be filed at least 45 days before submitting an application. ~~The commission shall respond in writing to a request for exemption within 30 days of receipt and include the reasons for the decision.~~ The commission shall file a statement of exemptions granted and reasons for granting them before beginning the hearing.

Subp. 7. **Service.** The applicant must serve a copy of the application on the department and the Office of the Attorney General and mail notice of the application to the following:

- A. the general list;
- B. the public agency contact list;
- C. the landowner list; and
- D. the local and tribal government contact list.

Subp. 8. **Docket Number.** The applicant must obtain a docket number for the case prior to filing its application. The applicant must display the docket number on the title page of the application and in a prominent location on other documents filed as part of the application.

Subp. 9. **Joint applications.** If an applicant intends to file a certificate of need application, along with a permit application under Chapter 7850, the applicant must first file a draft permit application as required under part 7850.1640. The certificate of need application must be filed at the time the applicant files a permit application under part 7850.1700. After determining that all applications are complete, the commission must determine, under part 7850.2140, whether to hold joint proceedings on both applications. Joint environmental review by the department on multiple applications is governed by part 7849.1900.

7849.0208 COMPLETENESS DETERMINATION.

Within ten days of receipt of an application for a certificate of need, the commission's executive secretary will determine whether the application is complete and notify the applicant in writing of the decision. If the application is not complete, the executive secretary must set the matter for the earliest possible commission agenda meeting for review by the commission, considering the applicant's availability and request for additional time. If, prior to the commission meeting, the applicant files the missing information, the executive secretary will pull the item from the agenda and notify the applicant in writing that the application is complete.

7849.0210 FILING FEES AND PAYMENT SCHEDULE.

Subpart 1. **Fees.** The fee for processing an application shall be: \$10,000 plus \$50 for each megawatt of plant capacity for LEGF's; or \$10,000 plus \$40 per kilovolt of design voltage for LHVTL's; plus such additional fees as are reasonably necessary for completion of the evaluation of need for the proposed facility.

Subp. 2. **Payment schedule.** Twenty-five percent of the fee set according to subpart 1 must accompany the application, and the balance must be paid in three equal installments within 45, 90, and 135 days after submission of the application. The applicant must be notified of and billed for costs not covered by the fee described in subpart 1. The additional fees must be paid within 30 days of notification. The billing of additional fees must be accompanied by an itemized document showing the necessity for the additional assessment.

Subp. 3. **Payment required.** The commission shall not issue its decision on the application until the outstanding set fee payments and additional billings under subparts 1 and 2 are paid by the applicant.

Statutory Authority: *MS s 216A.05; 216B.08; 216B.2421; 216B.243; 216C.10*

History: *L 1983 c 289 s 115; 12 SR 2624*

Posted: *October 13, 2009*

APPLICATION CONTENT REQUIREMENTS

7849.0220 APPLICATION CONTENTS.

Subpart 1. ~~Large electric generating facilities (LEGF).~~ **All Applicants.** Each application for a certificate of need for an LEGF shall include all of the information required by parts 7849.0240, 7849.0250, and 7849.0270 to 7849.0340 Each application must contain the following:

A. a statement that the applicant has complied with the notice requirements contained in part 7849.0130;

B. a summary of the major factors that justify the need for the proposed project;

C. a description of how the proposed project meets the requirements under part 7849.0115; and

D. an analysis of the proposed project using the criteria in part 7849.0120, including how the proposed project compares to reasonable alternatives.

Subp. 2. ~~Large high voltage transmission lines (LHVTL).~~ **Regional Transmission Planning.** Each application for a certificate of need for an LHVTL shall include all of the information required by parts 7849.0240 and 7849.0260 to 7849.0340. If, however, a proposed LHVTL is designed to deliver electric power to a particular load center within the applicant's system, the application shall contain the information required by part 7849.0270 for that load center rather than for the system as a whole. Each application must contain a description of applicable regional planning information, including:

A. regional planning processes that identified the need for the proposed project;

B. a statement on whether the facility is part of an approved RTO regional or interregional plan, and if so, a copy of, or electronic link to, the plan; and

C. data from the RTO on planned additions or retirements that are relevant to the need for the proposed project.

Subp. 3. **Joint Proceedings.** The application must include a statement on whether the applicant intends to file a site or a route permit application for the proposed project, and if so, when the applicant intends to make the filing and whether the applicant intends to request that joint proceedings be held under part 7850.2140.

Subp. 3.4. **Joint ownership and multiparty use.** If the proposed LEGF or LHVTL is to be owned jointly by two or more utilities or by a pool, the information required by parts 7849.0010 to

7849.0400 must be provided by each joint owner for its system. If the facility is designed to meet the long term needs, in excess of 80 megawatts, of a particular utility that is not to be an owner, that utility must also provide the information required by parts 7849.0010 to 7849.0400. Joint applicants may use a common submission to satisfy the requirements of any part for which the appropriate response does not vary by utility.

Statutory Authority: *MS s 216A.05; 216B.08; 216B.2421; 216B.243; 216C.10*

History: *L 1983 c 289 s 115; 12 SR 2624*

Posted: *October 13, 2009*

~~7849.0230 ENVIRONMENTAL REPORT.~~

~~Subpart 1. **Draft report.** If the application is for an LHVTL, the information submitted under parts 7849.0240, 7849.0260, and 7849.0290 to 7849.0340 must be designated by the applicant as its "draft environmental report" and distributed in accordance with part 4410.7100, subpart 5.~~

~~Subp. 2. **Written responses.** The applicant shall submit written responses to the substantive comments entered into the record of the proceeding before the close of the public hearing on the application. The written responses must be entered into the record and be available to the administrative law judge in preparing the recommendation on the application.~~

~~Subp. 3. **Final report.** The draft environmental report, written comments, and the applicant's written responses to comments comprise the "final environmental report," which must be distributed in accordance with part 4410.7100, subpart 5.~~

~~Subp. 4. **Notice of final report.** On completing the final environmental report, the commission shall have published in the EQB Monitor, published by the Minnesota Environmental Quality Board, a notice indicating completion.~~

~~Subp. 5. **Supplements.** The applicant must prepare a supplement to the final environmental report if the tests described in part 4410.3000, subparts 1 and 2, are met and a certificate of need proceeding on the proposed facility is pending.~~

Statutory Authority: *MS s 216A.05; 216B.08; 216B.2421; 216B.243; 216C.10*

History: *L 1983 c 289 s 115; 12 SR 2624*

Posted: *October 13, 2009*

~~7849.0240 NEED SUMMARY AND ADDITIONAL CONSIDERATIONS.~~

~~Subpart 1. **Need summary.** An application must contain a summary of the major factors that justify the need for the proposed facility. This summary must not exceed, without the approval of the commission, 15 pages in length, including text, tables, graphs, and figures.~~

~~Subp. 2. **Additional considerations.** Each application shall contain an explanation of the~~

relationship of the proposed facility to each of the following socioeconomic considerations:

~~A. socially beneficial uses of the output of the facility, including its uses to protect or enhance environmental quality;~~

~~B. promotional activities that may have given rise to the demand for the facility; and~~

~~C. the effects of the facility in inducing future development.~~

Statutory Authority: *MS s 216A.05; 216B.08; 216B.2421; 216B.243; 216C.10*

History: *L 1983 c 289 s 115; 12 SR 2624*

Posted: *October 13, 2009*

7849.0250 PROPOSED LEGF AND ALTERNATIVES APPLICATION.

An application for a proposed LEGF must include:

A. a description of the facility, including:

(1) the nominal generating capability of the facility, as well as a discussion of the effect of the economies of scale on the facility size and timing;

(2) a description of the anticipated operating cycle, including the expected annual capacity factor;

(3) the type of fuel used, including the reason for the choice of fuel, projection of the availability of this fuel type over the projected life of the facility, and alternate fuels, if any;

(4) ~~for fossil fuel facilities,~~ the anticipated heat rate of the facility; ~~and~~

(5) to the fullest extent known to the applicant, the anticipated areas where the proposed facility could be located;

(6) a map scale showing the applicant's system, or when providing a group of maps, one set of maps in scale to the others and labeled "combination scale map"; if the applicant does not own or operate an electric system, the applicant must provide a map of the area including the proposed facility; and

(7) a list of any state or federal energy mandate the facility is designed to satisfy and an explanation of how the proposed project satisfies the mandate.

B. a discussion of the availability of alternatives to the facility, including ~~but not limited to:~~

(1) purchased power;

(2) increased efficiency of existing facilities, including transmission lines;

(3) new transmission lines;

(4) new generating facilities of a different size or using a different energy source (fuel oil, natural gas, coal, nuclear fission, ~~and the emergent technologies,~~ and renewable resources); ~~and~~

(5) demand-response programs;

(6) distributed generation;

(7) energy storage;

(8) a no-build alternative; and

~~(9)~~ (9) any reasonable combinations of the alternatives listed above in subitems (1)

to (4-7);

C. for a renewable LEGF designed to meet state or federal renewable energy standards, the applicant is only required to discuss alternatives under item B that are eligible to meet state or federal renewable energy standards; and

€ D. for the proposed facility and for each of the alternatives provided in response to item B that could provide electric power at the asserted level of need, a discussion of:

- (1) its capacity cost in current dollars per kilowatt;
- (2) its service life;
- (3) its estimated average annual availability and capacity factor;
- (4) its fuel costs in current dollars per kilowatt hour;
- (5) its variable operating and maintenance costs in current dollars per kilowatt hour;
- (6) the total cost in current dollars of a kilowatt hour provided by it;
- (7) ~~an estimate of its effect on rates systemwide and in Minnesota, assuming a test year beginning with the proposed in-service date;~~ the estimate of the present value of the revenue requirement of the proposed facility;
- (8) for a fossil-fuel facility or a transmission facility, its efficiency, expressed for a generating facility as the estimated heat rate, or expressed for a transmission facility as the estimated losses under projected maximum loading and under projected average loading in the length of the transmission line and at the terminals or substations; ~~and~~
- (9) the major assumptions made in providing the information in subitems (1) to (8), including projected escalation rates for fuel costs and operating and maintenance costs, as well as projected capacity factors; and
- (10) the expected effects on the natural and socioeconomic environments, including human health.

~~D.—a map (of appropriate scale) showing the applicant's system; and~~

~~E.—such other information about the proposed facility and each alternative as may be relevant to determination of need.~~

Statutory Authority: *MS s 216A.05; 216B.08; 216B.2421; 216B.243; 216C.10*

History: *L 1983 c 289 s 115; 12 SR 2624*

Posted: *October 13, 2009*

7849.0255 INDEPENDENT POWER PRODUCER LEGF APPLICATION. An independent power producer proposing an LEGF must provide relevant data in the following manner.

Subp. 1. **Utility data.** If the applicant has entered into a power purchase agreement with a utility serving end user customers, the applicant must provide the data required under part 7849.0250 and parts 7849.0270 to 7849.0300 from the utility for the proposed facility. The application must also include the docket number for the commission proceeding in which the power purchase agreement was approved.

Subp. 2. **Ownership Information.** An independent power producer must provide information about the applicant, including the following:

A. the legal name of the applicant;

B. the state of organization or incorporation;

C. the principal place of business; and

D. the name of the person, or entity, that owns and controls, either directly or indirectly, a majority of the outstanding voting securities of the applicant. If no one individual or entity owns and controls such a majority of voting securities of the applicant, the name of each individual and each entity that owns and controls collectively, whether directly or indirectly, a majority of the outstanding voting securities of the applicant.

E. the applicant must notify the commission of any changes in items A through D above that occur after certification of the facility and prior to the in-service date of the facility. The applicant must notify the commission no later than 30 days following the change.

Subp. 3. **Relevant available data.** If the applicant has not entered into a power purchase agreement with a utility serving end user customers and does not have access to the data required under part 7849.0250 and parts 7849.0270 through .0300, the applicant must provide the following:

A. data on regional capacity with a description of the data source relied upon and the time period covered by the data;

B. the regional availability of renewable resources and the source relied upon for the data;

C. for a proposed renewable LEGF intended to satisfy renewable energy standards, planning studies relied upon by the applicant to demonstrate the need for renewable generation to meet those standards;

D. alternative approaches for supplying the energy;

E. the expected costs of the proposed project to Minnesota ratepayers; and

F. evidence of the facility's ability to maintain electric system reliability.

Subp. 4. **Subsequent Power Purchase Agreement.** If an applicant enters into a power purchase agreement after filing a certificate of need application, the applicant must notify the commission. The notice must be filed within three business days of entering into the agreement.

7849.0260 PROPOSED LHVTL AND ALTERNATIVES APPLICATION.

Each application for a proposed LHVTL must include:

A. a description of the type and general location of the proposed line, including:

(1) the design voltage;

(2) the number, the sizes, and the types of conductors;

(3) the expected system losses under projected maximum loading and under

projected average loading and a description of the system or portion of the system affected; in the length of the transmission line and at the terminals or substations;

(4) the approximate length of the proposed transmission line and the portion of that length in Minnesota;

(5) the approximate location of DC terminals or AC substations, which information shall be on a map of appropriate scale; and

(6) a list of all counties reasonably likely to be affected by construction and operation of the proposed line;

B. a discussion of reliability risks the proposed line is intended to address, including:

(1) a link to the website address of the most recent reliability report from the North American Electric Reliability Corporation;

(2) the most recent electric stability study approved by the RTO;

B C. a discussion of the availability of alternatives to the facility, including ~~but not~~ limited to:

(1) new generation of various technologies, sizes, and fuel types;

(2) upgrading of existing transmission lines or existing generating facilities;

(3) transmission lines with different design voltages or with different numbers, sizes, and types of conductors, and capacity expressed in megavolt amps;

(4) transmission lines with different terminals or substations;

(5) double circuiting of existing transmission lines;

(6) if the proposed facility is for DC (AC) transmission, an AC (DC) transmission line;

(7) if the proposed facility is for overhead (underground) transmission, an underground(overhead) transmission line;

(8) lower voltage options under 100 kV;

(9) energy storage;

(10) a no-build alternative; and

(8-11) any reasonable combinations of the alternatives listed in subitems (1) to (7);

E. for the proposed facility and for each of the alternatives provided in response to item B C that could provide electric power at the asserted level of need, a discussion of:

(1) its total cost in current dollars;

(2) its service life;

(3) its estimated average annual availability;

(4) its estimated annual operating and maintenance costs in current dollars;

(5) the estimate of the present value of the revenue requirement of the proposed project and an estimate of its effect on rates systemwide and in Minnesota, assuming a test year beginning with the proposed in-service date;

~~(6) its efficiency, expressed for a transmission facility as the estimated losses under projected maximum loading and under projected average loading in the length of the transmission line and at the terminals or substations, or expressed for a generating facility as the estimated heat rate; and the expected effects on the natural and socioeconomic environments, including human health; and~~

(7) the major assumptions made in providing the information in subitems (1) to (6);

and

~~D. a map (of appropriate scale) showing the applicant's system or load center to be served by the proposed LHVTL; and .~~

~~E. such other information about the proposed facility and each alternative as may be relevant to determination of need.~~

Statutory Authority: *MS s 216A.05; 216B.08; 216B.2421; 216B.243; 216C.10*

History: *L 1983 c 289 s 115; 12 SR 2624*

Posted: *October 13, 2009*

7849.0270 PEAK DEMAND AND ANNUAL CONSUMPTION FORECAST ENGINEERING DATA.

~~Subpart 1. **Scope.** Each application shall contain pertinent data concerning peak demand and annual electrical consumption within the applicant's service area and system, as provided in part 7849.0220, including but not limited to the data requested in subpart 2, item B. When recorded data is not available, or when the applicant does not use the required data in preparing its own forecast, the applicant shall use an estimate and indicate in the forecast justification section in subparts 3 to 6 the procedures used in deriving the estimate. The application shall clearly indicate which data are historical and which are projected. It is expected that data provided by the applicant should be reasonable and internally consistent.~~

Each application must include pertinent data necessary to demonstrate the need for the project, including the methodology, data, and assumptions as detailed below.

~~Subp. 2. **Content of forecast.** For each forecast year, the following data must be provided:~~

~~A. when the applicant's service area includes areas other than Minnesota, annual electrical consumption by ultimate consumers within the applicant's Minnesota service area;~~

~~B. for each of the following categories, estimates of the number of ultimate consumers within the applicant's system and annual electrical consumption by those consumers:~~

~~(1) farm, excluding irrigation and drainage pumping (for reporting purposes, any tract of land used primarily for agricultural purposes shall be considered farm land);~~

~~(2) irrigation and drainage pumping;~~

~~(3) nonfarm residential (when electricity is supplied through a single meter for both residential and commercial uses, it shall be reported according to its principal use, and apartment buildings shall be reported as residential even if not separately metered);~~

~~(4) commercial (this category shall include wholesale and retail trade; communication industries; public and private office buildings, banks, and dormitories; insurance, real estate and rental agencies; hotels and motels; personal business and auto repair services; medical and educational facilities; recreational, social, religious, and amusement facilities; governmental units, excluding military bases; warehouses other than manufacturer owned; electric, gas, water and water pumping, excluding water pumping for irrigation, and other utilities);~~

~~(5) mining;~~

~~(6) industrial (this category shall include all manufacturing industries, construction~~

operations and petroleum refineries);

~~(7) street and highway lighting;~~

~~(8) electrified transportation (this category shall include energy supplied for the propulsion of vehicles, but shall not include energy supplied for office buildings, depots, signal lights or other associated facilities that shall be reported as commercial or industrial);~~

~~(9) other (this category shall include municipal water pumping facilities, oil and gas pipeline pumping facilities, military camps and bases, and all other consumers not reported in subitems (1) to (8)); and~~

~~(10) the sum of subitems (1) to (9);~~

~~C. an estimate of the demand for power in the applicant's system at the time of annual system peak demand, including an estimated breakdown of the demand into the consumer categories listed in item B; and~~

~~D. the applicant's system peak demand by month;~~

~~E. the estimated annual revenue requirement per kilowatt hour for the system in current dollars;~~

~~F. the applicant's estimated average system weekday load factor by month; in other words, for each month, the estimated average of the individual load factors for each weekday in the month. the applicant's hourly consumption data of its load profile;~~

Subp. 2. **Engineering analysis required.** An application must contain an engineering analysis supporting the identified need. The engineering analysis must describe the overall methodological framework used and must include the following:

A. the base case model, such as a power-flow study in the case of a proposed HVTL, or a capacity expansion model in the case of an LEGF;

B. the name of the model used, the source, and the year or years modeled;

C. a list of all modifications made to the base case models, such as lines added, generators removed, or load changed;

D. a list of performance criteria and planning standards used;

E. a list of contingencies modeled and facilities monitored relevant to the projected need;

F. the method of power transfer simulated, if applicable, such as generation to generation;

G. the conditions modeled, such as summer peak, shoulder peak, winter peak;

H. data for an HVTL in the form of an electronic spreadsheet that shows:

(1) the software input data, such as load bus data and generator bus data; and

(2) the software output data, such as voltage magnitude and angle.

I. data for an LEGF in the form of an electronic spreadsheet that shows the software input and output data.

J. the study report for each type of analysis performed, including results, as well as key findings and conclusions.

Subp. 3. **Extended forecast filing.** An applicant must also explain the correlation between the proposed project and the applicant's extended forecast filing required under Minn. R. Chapter 7610. An applicant not required to file an extended forecast is not subject to this requirement.

Statutory Authority: *MS s 216A.05; 216B.08; 216B.2421; 216B.243; 216C.10*

History: *L 1983 c 289 s 115; L 1987 c 312 art 1; 12 SR 2624; 17 SR 1279*

Posted: *October 13, 2009*

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

Subp. 1. Forecast methodology. An applicant may use a forecast methodology of its own choosing, with due consideration given to cost, staffing requirements, and data availability. However, forecast data provided by the applicant is subject to tests of accuracy, reasonableness, and consistency. The applicant ~~shall~~ must detail the forecast methodology employed to obtain the forecasts and output as described in the subparts 2 and 3 below. ~~provided under subpart 2, including:~~

- ~~A. the overall methodological framework that is used;~~
- ~~B. the specific analytical techniques which are used, their purpose, and the components of the forecast to which they have been applied;~~
- ~~C. the manner in which these specific techniques are related in producing the forecast;~~
- ~~D. where statistical techniques have been used:
 - ~~(1) the purpose of the technique;~~
 - ~~(2) typical computations (e.g., computer printouts, formulas used), specifying variables and data; and~~
 - ~~(3) the results of appropriate statistical tests;~~~~
- ~~E. forecast confidence levels or ranges of accuracy for annual peak demand and annual electrical consumption, as well as a description of their derivation;~~
- ~~F. a brief analysis of the methodology used, including:
 - ~~(1) its strengths and weaknesses;~~
 - ~~(2) its suitability to the system;~~
 - ~~(3) cost considerations;~~
 - ~~(4) data requirements;~~~~

- ~~(5) past accuracy; and~~
- ~~(6) other factors considered significant by the applicant; and~~

~~G. an explanation of discrepancies that appear between the forecasts presented in the application and the forecasts submitted under chapter 7610 or in the applicant's previous certificate of need proceedings.~~

Subpart 4 2. Data base for forecasts. The applicant must file in the form of an electronic spreadsheet that can be used to replicate the results of the forecast, copies of the data sets used in making the forecast, including both raw and adjusted data, as well as input and output data. The applicant shall must discuss the data base used in arriving at the forecast presented in its application, including:

A. a complete list of all data sets used in making the forecast, including a brief description of each data set and an explanation of how each was obtained, (e.g., monthly observations, billing data, consumer survey, etc.) or a citation to the source (e.g., population projection from the state demographer's office);

B. a clear identification of any adjustments made to raw data in order to adapt them for use in forecasts, including:

- (1) the nature of the adjustment;
- (2) the reason for the adjustment; and
- (3) the magnitude of the adjustment. ;

~~The applicant shall provide to the commission or the administrative law judge on demand copies of the data sets used in making the forecasts, including both raw and adjusted data, input and output data.~~

C. the specific analytical techniques used in producing the forecast, their purpose, and the components of the forecast to which they have been applied;

D. the relationship between the specific analytical techniques used in producing the forecast; and

E. for statistical techniques that were used:

- (1) the software used in forecasting;
- (2) the statistical model used; and
- (3) the results of statistical tests.

Subp. 5 3. **Assumptions and special information.** The applicant shall must discuss each essential assumption made in preparing the forecast, including the need for the assumption, the nature of the assumption, and the sensitivity of forecast results to variations in the essential assumptions.

The applicant shall must discuss the assumptions made regarding:

- A. the availability of alternate sources of energy;
- B. ~~the expected conversion from other fuels to electricity or vice versa~~ the sources, sinks, and dispatch assumptions (e.g., economic dispatch assumptions);
- C. ~~future prices of electricity for customers in the applicant's system and the effect that such price changes will likely have on the applicant's system demand;~~
- D. the data ~~requested in subpart 2~~ relied upon by the applicant that is not available historically or not generated by the applicant in preparing its own internal forecast; and
- E. ~~the effect of energy conservation programs on long term electrical demand; and~~
- F. any other factor considered by the applicant in preparing the forecast.

Subp. 6. ~~Coordination of forecasts with other systems.~~ The applicant shall provide:

A. ~~a description of the extent to which the applicant coordinates its load forecasts with those of other systems, such as neighboring systems and associate systems in a power pool or coordinating organization; and~~

B. ~~a description of the manner in which such forecasts are coordinated, and any problems experienced in efforts to coordinate load forecasts.~~

Statutory Authority: *MS s 216A.05; 216B.08; 216B.2421; 216B.243; 216C.10*

History: *L 1983 c 289 s 115; L 1987 c 312 art 1; 12 SR 2624; 17 SR 1279*

Posted: *October 13, 2009*

7849.0280 SYSTEM CAPACITY.

The applicant shall must describe the ability of its existing system to meet the demand for electrical energy forecast in response to part 7849.0270 and the extent to which the proposed facility will increase this capability. In preparing this description, the applicant shall present the following information:

A. ~~a brief discussion of power planning programs, including criteria, applied to the applicant's system and to the power pool or area within which the applicant's planning studies are based;~~ the applicant's reserve margins and the method of determining the reserve margins; and

B. ~~the applicant's seasonal firm purchases and seasonal firm sales for each utility involved in each transaction for each of the forecast years;~~ the applicant's total system capacity, including:

- (1) generation owned by the applicant;
- (2) generation purchased by the applicant; and
- (3) the applicant's existing exchange agreements.

~~C. the applicant's seasonal participation purchases and seasonal participation sales for each utility involved in each transaction for each of the forecast years;~~

~~D. for the summer season and for the winter season corresponding to each forecast year, the load and generation capacity data requested in subitems (1) to (13), including the anticipated purchases, sales, capacity retirements, and capacity additions, except those that depend on certificates of need not yet issued by the commission:~~

- ~~(1) seasonal system demand;~~
- ~~(2) annual system demand;~~
- ~~(3) total seasonal firm purchases;~~
- ~~(4) total seasonal firm sales;~~
- ~~(5) seasonal adjusted net demand (subitem (1) minus subitem (3) plus subitem (4));~~
- ~~(6) annual adjusted net demand (subitem (2) minus subitem (3) plus subitem (4));~~
- ~~(7) net generating capacity;~~
- ~~(8) total participation purchases;~~
- ~~(9) total participation sales;~~
- ~~(10) adjusted net capability (subitem (7) plus subitem (8) minus subitem (9));~~
- ~~(11) net reserve capacity obligation;~~
- ~~(12) total firm capacity obligation (subitem (5) plus subitem (11)); and~~
- ~~(13) surplus or deficit (—) capacity (subitem (10) minus subitem (12));~~

~~E. for the summer season and for the winter season corresponding to each forecast year subsequent to the year of application, the load and generation capacity data requested in item D, subitems (1) to (13), including purchases, sales, and generating capacity contingent on the proposed facility;~~

~~F. for the summer season and for the winter season corresponding to each forecast year subsequent to the year of application, the load and generation capacity data requested in item D, subitems (1) to (13), including all projected purchases, sales, and generating capability;~~

~~G. for each of the forecast years subsequent to the year of application, a list of proposed additions and retirements in net generating capability, including the probable date of application for any addition that is expected to require a certificate of need;~~

~~H. for the previous calendar year, the current year, the first full calendar year before the proposed facility is expected to be in operation and the first full calendar year of operation of the proposed facility, a graph of monthly adjusted net demand and monthly adjusted net capability, as well as a plot on the same graph of the difference between the adjusted net capability and actual, planned, or estimated maintenance outages of generation and transmission facilities; and~~

~~I. a discussion of the appropriateness of and the method of determining system reserve margins, considering the probability of forced outages of generating units, deviation from load forecasts, scheduled maintenance outages of generation and transmission facilities, power exchange arrangements as they affect reserve requirements, and transfer capabilities.~~

Statutory Authority: *MS s 216A.05; 216B.08; 216B.2421; 216B.243; 216C.10*

History: *L 1983 c 289 s 115; 12 SR 2624*

Posted: *October 13, 2009*

7849.0290 CONSERVATION PROGRAMS, APPLICATION.

An application must include:

~~A. the name of the committee, department, or individual responsible for the applicant's energy conservation and efficiency programs, including load management;~~

~~B. a list of the applicant's energy conservation and efficiency goals and objectives;~~

~~€ A. a description of the specific energy conservation and efficiency programs the applicant has considered as a feasible alternative to the project, a list of those that have been implemented, and the reasons why the other programs have not been implemented;~~

~~D. a description of the major accomplishments that have been made by the applicant with respect to energy conservation and efficiency;~~

~~E. a description of the applicant's future plans through the forecast years with respect to energy conservation and efficiency; and~~

~~F B. a quantification of the manner by which these programs affect or help determine the forecast provided in response to part 7849.0270, subpart 2, a list of their total costs by program, and a discussion of their expected effects in reducing the need for new generation and transmission facilities;:~~

C. a description of the correlation between the proposed project and the following:

i. the applicant's integrated resource plan filing under Minn. R. Chapter 7843, and

ii. the applicant's conservation improvement plan filing under Minn. Stat. § 216B.241, subd. 1b(g).

Statutory Authority: *MS s 216A.05; 216B.08; 216B.2421; 216B.243; 216C.10*

History: *L 1983 c 289 s 115; 12 SR 2624*

Posted: *October 13, 2009*

7849.0300 CONSEQUENCES OF DELAY.

The applicant shall present a discussion of anticipated consequences to its system, neighboring systems, and the power pool should the proposed facility be delayed one, two, and three years, or postponed indefinitely. ~~This information must be provided for the following three levels of demand: the expected demand provided in response to part 7849.0270, subpart 2, and the upper and lower confidence levels provided in response to part 7849.0270, subpart 3, item E.~~

Statutory Authority: *MS s 216A.05; 216B.08; 216B.2421; 216B.243; 216C.10*

History: *L 1983 c 289 s 115; 12 SR 2624*

Posted: *October 13, 2009*

7849.0310 ENVIRONMENTAL INFORMATION REQUIRED.

Each applicant ~~shall~~ must provide environmental data for the proposed facility and for each alternative considered in detail in response to part 7849.0250, ~~item C~~, part 7849.0255, subpart 3, item D, or 7849.0260, ~~item C~~. Information relating to construction and operation of each of these alternatives ~~shall~~ must be provided as indicated in parts 7849.0320 to 7849.0340, to the extent that such information is reasonably available to the applicant and applicable to the particular alternative. Where appropriate, the applicant ~~shall~~ must submit data for a range of possible facility designs. Major assumptions should be stated, and references should be cited where appropriate.

Statutory Authority: *MS s 216B.08; 216B.2421; 216B.243; 216C.10*

History: *L 1983 c 289 s 115*

Posted: *October 13, 2009*

7849.0320 GENERATING FACILITIES.

The applicant ~~shall~~ must provide the following information for each alternative that would involve construction of an LEGF:

A. the estimated range of land requirements for the facility with a discussion of assumptions on land requirements for water storage, cooling systems, and solid waste storage;

B. the estimated amount of vehicular, rail, and barge traffic generated by construction and operation of the facility;

C. for fossil-fueled and other combustion facilities:

(1) the expected regional sources of fuel for the facility;

(2) the typical fuel requirement (in tons per hour, gallons per hour, or thousands of cubic feet per hour) during operation at rated capacity and the expected annual fuel requirement at the expected capacity factor;

(3) the expected rate of heat input for the facility in Btu per hour during operation at rated capacity;

(4) the typical range of the heat value of the fuel (in Btu per pound, Btu per gallon, or Btu per 1,000 cubic feet) and the typical average heat value of the fuel; and

(5) the typical ranges of sulfur, mercury, lead, ash, and moisture content of the fuel;

(6) the estimated greenhouse gas air emissions;

(7) the estimated maximum and range of criteria pollutants, hazardous air pollutants, volatile organic compounds, and any other air emissions regulated under state or federal law, including information on operation at rated capacity and assuming worse-case meteorological conditions;

~~D. for fossil-fueled facilities:~~

~~(1) the estimated range of trace element emissions and the maximum emissions of sulfur dioxide, nitrogen oxides, and particulates in pounds per hour during operation at rated capacity; and~~

~~(2) the estimated range of maximum contributions to 24-hour average ground level concentrations at specified distances from the stack of sulfur dioxide, nitrogen oxides, and particulates in micrograms per cubic meter during operation at rated capacity and assuming generalized worst-case meteorological conditions;~~

~~E D.~~ water use by the facility for alternate cooling systems and expected evaporative losses, including:

- ~~(1)~~ the type of water, and water source, that will be used for cooling;
- ~~(2)~~ the withdrawal intensity (the gallons of water withdrawn per kilowatt hour);
- ~~(3)~~ the consumption intensity (the gallons of water consumed per kilowatt hour);
- ~~(4)~~ the method used to determine withdrawal and consumption intensity levels;
- ~~(5)~~ maximum and average monthly temperatures of water discharged;
- ~~(6)~~ planned modifications to reduce the temperatures of water discharged;
- ~~(4 7)~~ the estimated maximum use, including the groundwater pumping rate in gallons per minute and surface water appropriation in cubic feet per second;
- ~~(2 8)~~ the estimated groundwater appropriation in million gallons per year; and
- ~~(3 9)~~ the annual consumption in acre-feet;

~~F E.~~ the potential water sources, water quantities, and types of use and discharges attributable to construction and types of discharges to water attributable to operation of the facility, including storm water discharges and discharges to surface and groundwater;

~~G F.~~ radioactive releases, including:

- ~~(1)~~ for nuclear facilities, the typical types and amounts of radionuclides released by the facility in curies per year for alternate facility designs and levels of waste treatment; and
- ~~(2)~~ for fossil-fueled facilities, the estimated range of radioactivity released by the facility in curies per year;

~~H G.~~ the potential types and quantities of solid wastes produced by the facility in tons per year at the expected capacity factor;

~~I H.~~ the potential sources and types of audible noise attributable to operation of the facility;

~~J I.~~ the estimated work force required for construction and operation of the facility;
~~and~~

~~K J.~~ the minimum number and size of transmission facilities required to provide a reliable outlet for the generating facility;

K. the potential impacts of the proposed facility on the natural and socioeconomic environment, including:

- (1) effects on human health and safety;
- (2) effects on hydrological resources, including lakes, rivers, streams, wetlands, floodplains, watersheds, aquifers, and drinking water;
- (3) effect on ecological resources, including endangered and protected species, species of special concern, wildlife, natural vegetation, biological diversity, and protected areas;
- (4) effects on land use, including human settlement, historical, and cultural resources, recreation, conventional and organic agricultural production, and forestry; and

L. a list of other agency permits required for the project.

Statutory Authority: *MS s 216B.08; 216B.2421; 216B.243; 216C.10*

History: *L 1983 c 289 s 115*

Posted: *October 13, 2009*

7849.0330 TRANSMISSION FACILITIES.

The applicant ~~shall~~ **must** provide data for each alternative that would involve construction of an LHVTL. The following information must be included:

A. for overhead transmission facilities:

- (1) schematic diagrams that show the dimensions of the support structures and conductor configurations for each type of support structure that may be used;
 - (2) a discussion of the strength and distribution of the electric and magnetic fields attributable to the transmission facility, ~~including the contribution of air ions if appropriate;~~
 - (3) a discussion of ozone and nitrogen oxide emissions attributable to the transmission facility;
 - (4) a discussion of radio and television interference attributable to the transmission;
- and
- (5) a discussion of the characteristics and estimated maximum and typical levels of audible noise attributable to the transmission facilities;

B. for underground transmission facilities:

- (1) the types and dimensions of the cable systems and associated facilities that would be used;
- (2) the types and quantities of materials required for the cable system, including materials required for insulation and cooling of the cable; and
- (3) the amount of heat released by the cable system in kilowatts per foot of cable length;

C. the estimated width of the right-of-way required for the transmission facility;

D. a description of construction practices for the transmission facility;

E. a description of operation and maintenance practices for the transmission facility;

F. the estimated work force required for construction and for operation and maintenance of the transmission facility; and

G. a narrative description of the major features of the region between the endpoints of the transmission facility. The region ~~shall~~ must encompass the likely area for routes between the endpoints. The description should emphasize the area within three miles of the endpoints. The following information ~~shall~~ must also be described provided where applicable:

(1) ~~hydrologic features including lakes, rivers, streams, and wetlands;~~ effects on human health and safety;

(2) ~~natural vegetation and associated wildlife;~~ effects on hydrological resources, such as lakes, rivers, streams, wetlands, floodplains, watersheds, aquifers, and drinking water;

(3) ~~physiographic regions;~~ and effects on ecological resources, including endangered and protected species, species of special concern, wildlife, natural vegetation, biological diversity and protected areas;

(4) land-use types, including human settlement, recreation, agricultural production, forestry production, and mineral extraction; and-

H. a list of other agency permits required for the project.

Statutory Authority: *MS s 216A.05; 216B.08; 216B.2421; 216B.243; 216C.10*

History: *L 1983 c 289 s 115; 12 SR 2624*

Posted: *October 13, 2009*

7849.0340 NO-FACILITY ALTERNATIVE.

~~For each of the three levels of demand specified in part 7849.0300, t~~The applicant shall must provide the following information for the alternative of no facility:

A. a description of the expected operation of existing and committed generating and transmission facilities;

B. a description of the changes in resource requirements and wastes produced by facilities discussed in response to item A, including:

- (1) the amount of land required;
- (2) induced traffic;
- (3) fuel requirements;
- (4) airborne emissions;
- (5) water appropriation and consumption;
- (6) discharges to water;
- (7) reject heat;
- (8) radioactive releases;
- (9) solid waste production;
- (10) audible noise; and
- (11) labor requirements; and

C. a description of equipment and measures that may be used to reduce the environmental impact of the alternative of no facility.

Statutory Authority: *MS s 216A.05; 216B.08; 216B.2421; 216B.243; 216C.10*

History: *L 1983 c 289 s 115; 12 SR 2624*

Posted: *October 13, 2009*

NOTICE OF PROJECT CHANGES

7849.0400 CERTIFICATE OF NEED CONDITIONS AND CHANGES.

Subpart 1. **Authority of commission.** Issuance of a certificate of need may be made contingent upon modifications required by the commission. When an application is denied, the commission shall state the reasons for the denial.

Subp. 2. **Proposed changes in size, type, and timing, and ownership.** ~~Changes proposed by~~ The changes described in items A to E below, to a proposed facility not yet placed into service, are not subject to recertification by the commission. ~~a~~An applicant must, however, promptly report any one of the following changes to the commission: to the certified size, type, or timing of a proposed facility before the facility is placed in service must conform to the following provisions:

A. A delay of one year or less in the in-service date of a large generation or transmission facility previously certified by the commission ~~is not subject to review by the commission.~~

B. A power plant capacity addition or subtraction smaller than the lesser of 80 megawatts or 20 percent of the capacity approved in a certificate of need issued by the commission ~~does not require recertification.~~

C. A change in power plant ownership smaller than the lesser of 80 megawatts or 20 percent of the capacity approved in a certificate of need issued by the commission ~~does not require recertification.~~

~~D. The applicant shall notify the commission as soon as it determines that a change described in item A, B, or C is imminent, detailing the reasons for the change.~~

~~E~~D. A large transmission line length addition or subtraction made as a result of the route length approved by the ~~Minnesota Environmental Quality Board~~ commission ~~for projects previously certified does not require recertification.~~

~~F~~E. A design change required by another state agency in its permitting process for certified facilities ~~is not subject to review by the commission,~~ unless the change contradicts the basic type determination specified by the certificate of need.

~~G~~ Subp. 3. **Change Requiring Application.** If a utility applies to the ~~Minnesota Environmental Quality Board~~ commission for a transmission line route that is not expected to meet the definition of LHVTL in part 7849.0010, but at some time in the routing process it becomes

apparent that the ~~board~~ commission may approve a route that meets the definition, the utility may apply for a certificate of need as soon as possible after that time. The length of a route is determined by measuring the length of its center line.

H Subp. 4. **Commission decision.** If an applicant determines that a change in size, type, timing, or ownership other than specified in ~~this~~ subpart 2 is necessary for a large generation or transmission facility previously certified by the commission, the applicant must inform the commission of the desired change and detail the reasons for the change. A copy of the applicant's submission to the commission must be sent to each ~~intervenor~~ person on the official service list in the certificate of need hearing proceeding on the facility. ~~Intervenors~~ Persons may comment on the proposed change within 15 days of being notified of the change. The commission ~~shall~~ must evaluate the reasons for and against the proposed change and, ~~within 45 days of receipt of the request,~~ promptly notify the applicant whether the change is acceptable without recertification. The commission ~~shall~~ must order further hearings if and only if it determines that the change, if known at the time of the need decision on the facility, could reasonably have resulted in a different decision under the criteria specified in part 7849.0120.

Statutory Authority: *MS s 216A.05; 216B.08; 216B.2421; 216B.243; 216C.10*

History: *L 1983 c 289 s 115; 12 SR 2624*

Posted: *October 13, 2009*

COMMENTS AND RECORD DEVELOPMENT

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

~~Subpart 1. **Applicability.** Parts 7849.1000 to 7849.2100 apply to any high voltage transmission line project or large electric power generating plant project for which a certificate of need or other need determination is required by the Public Utilities Commission under Minnesota Statutes, section 216B.243 or 216B.2425, and applicable rules.~~

~~Subp. 2. **Scope.** Parts 7849.1000 to 7849.2100 establish the requirements for the conduct of environmental review of proposed projects before the Public Utilities Commission for consideration of need pursuant to Minnesota Statutes, section 216B.243 or 216B.2425, and applicable rules. Additional review at the permitting stage is required under parts 7850.1000 to 7850.5600.~~

Statutory Authority: *MS s 116D.04*

History: *28 SR 951; L 2005 c 97 art 3 s 19*

Posted: *October 13, 2009*

Subpart 1. **Publication in State Register.** The commission shall publish notice of the certificate of need filing in the State Register.

Subp. 2. **Comment period.** The commission must request comments on the procedural treatment of the filing. Initial comments must be filed within 21 days of the notice and reply comments must be filed within 14 days of the expiration of the initial comment period. Notice of the comment period must be sent to the following:

- A. the project contact list;
- B. the public agency contact list; and
- C. the local and tribal government contact list.

Subp. 3. **Petition to intervene.** A petition to intervene is governed by part 7829.2500, subp. 8.

Subp. 4. **Process Schedule.** Upon receipt of a certificate of need application, commission staff must consult with the department and the applicant to set a proposed schedule for completing the certificate of need process within applicable statutory deadlines and must make the schedule available in the commission's electronic filing system. If an application includes a request by the applicant that joint proceedings on be held on multiple applications filed under chapters 7849 and 7850, the commission must set a process schedule at the time the commission determines whether to hold joint proceedings under rule part 7850.2140.

7849.1100 DEFINITIONS RECORD DEVELOPMENT.

Subpart 1. **Scope.** For the purposes of parts 7849.1000 to 7849.2100, the following terms and abbreviations have the meanings given them:

Subp. 2. **Associated facilities.** "Associated facilities" means buildings, equipment, and other physical structures that are necessary to the operation of a large electric power generating plant or a high voltage transmission line.

Subp. 3. **Commissioner.** "Commissioner" means the person who is the commissioner of the Department of Commerce.

Subp. 4. **Environmental report.** "Environmental report" 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 alternatives to the project and methods to mitigate anticipated adverse impacts.

Subp. 5. **High voltage transmission line or HVTL.** "High voltage transmission line" or "HVTL" means any high voltage transmission line with a capacity of 200 kilovolts or more and any high voltage transmission line with a capacity of 100 kilovolts or more with more than ten miles of its length in Minnesota or that crosses a state line.

Subp. 6. **Large electric power generating plant or LEPGP.** "Large electric power generating plant" or "LEPGP" means any electric power generating plant or combination of plants at a single site with a combined capacity of 50,000 kilowatts or more and transmission lines directly associated with the plant that are necessary to interconnect the plant to the transmission system.

Subp. 7. **Mail.** "Mail" means either the United States mail or electronic mail by e-mail.

~~Subp. 8. **Public Utilities Commission or PUC.** "Public Utilities Commission" or "PUC" means the Minnesota Public Utilities Commission.~~

After the close of reply comments under part 7849.1000, subpart 1, the commission must determine whether to refer the case to the office of administrative hearings for contested case proceedings under rule part 7829.1000 or whether to develop the record using the Commission's informal comment and reply process under rule part 7829.1200.

Statutory Authority: *MS s 116D.04*

History: *28 SR 951; L 2005 c 97 art 3 s 19*

Posted: *October 13, 2009*

ENVIRONMENTAL REPORT PROCESS

7849.1200 ENVIRONMENTAL REPORT.

The ~~commissioner of the Department of Commerce~~ shall prepare an environmental report on a proposed high voltage transmission line or a proposed large electric power generating plant at the need stage. The environmental report must contain information on the human and environmental impacts of the proposed project associated with the size, type, and timing of the project, system configurations, and voltage. The environmental report must also contain information on alternatives to the proposed project and shall address mitigating measures for anticipated adverse impacts. The ~~commissioner department~~ shall must be responsible for the completeness and accuracy of all information in the environmental report.

Statutory Authority: *MS s 116D.04*

History: *28 SR 951; L 2005 c 97 art 3 s 19*

Posted: *October 13, 2009*

~~**7849.1300 INFORMATION REQUIRED FOR ENVIRONMENTAL REVIEW.**~~

~~Subpart 1. **Certificate of need application.** A person who submits an application to the Public Utilities Commission for a certificate of need for a LEPGP or a HVTL pursuant to Minnesota Statutes, section 216B.243, shall at the same time submit a copy of the application and all accompanying materials required by the PUC to the commissioner of the Department of Commerce. The person shall provide the commissioner with an electronic version of the application suitable for posting on the commissioner's Web page.~~

~~Subp. 2. **Transmission projects report.** A person who submits a transmission projects report to the Public Utilities Commission with a request for certification of a high voltage transmission line pursuant to Minnesota Statutes, section 216B.2425, shall at the same time submit a copy of the report and all accompanying materials required by the PUC Commission to the commissioner of the Department of Commerce. The person shall provide the commissioner with an electronic version of the report suitable for posting on the commissioner's Web page.~~

Statutory Authority: *MS s 116D.04*

History: 28 SR 951; L 2005 c 97 art 3 s 19

Posted: October 13, 2009

7849.1400 PROCESS FOR ENVIRONMENTAL REPORT PREPARATION.

~~Subpart 1. **Notice to interested persons.** Upon receipt of an application for a certificate of need or receipt of a transmission projects report seeking certification of a high voltage transmission line, the commissioner of the Department of Commerce shall provide notice to interested persons of the pending project. Notice must be mailed to the following persons:~~

~~A. those persons on the commissioner's list maintained pursuant to part 7850.2100;~~

~~B. those persons on the general service list maintained by the applicant pursuant to part 7829.0600;~~

~~C. those persons on any service list maintained by the Public Utilities Commission for the proceeding;~~

~~D. those persons who are required to be given notice of the certificate of need application or the transmission projects report under rules of the Public Utilities Commission;~~

~~E. local governmental officials in the area of the proposed project; and~~

~~F. those persons who own property adjacent to any site or within any route identified by the applicant as a preferred location for the project or as a site or route under serious consideration by the applicant if such sites or routes are known to the applicant.~~

~~Subp. 2. **Content of notice.** The notice required by subpart 1 must contain the following information:~~

~~A. a description of the proposed project, including possible sites or routes if known;~~

~~B. a statement that authorization from the Public Utilities Commission to construct the facility has been applied for and a description of the PUC process, including a statement that the PUC proceeding is the only proceeding in which the no-build alternative and the size, type, timing, system configuration, and voltage will be considered;~~

~~C. a statement that the commissioner of the Department of Commerce will prepare an environmental report on the project and a description of the process for preparation of the report;~~

~~D. a statement that a public meeting will be held by the commissioner and the date and place of the meeting, a statement that the public will have an opportunity to ask questions about the project and to suggest alternatives and impacts to address in the environmental report, and a statement explaining the purpose of the public meeting;~~

~~E. a statement informing the public of where copies of the pertinent information may~~

be reviewed and copies obtained;

F. ~~a statement indicating whether the project proposer may exercise the power of eminent domain to acquire the land necessary for the project and the basis for such authority; and~~

G. ~~a statement describing the manner in which an interested person can add the person's name to the mailing list for future notices.~~

Subpart. 3 1. **Public meeting.** ~~The commissioner of the Department of Commerce commission and the department shall~~ must hold a public information and scoping meeting ~~within 40 days after receipt of on~~ an application for a certificate of need ~~or receipt of a transmission projects report~~ seeking certification of a high voltage transmission line consistent with the process schedule.

Subp. 2. **Meeting notice.** Notice of the public information and scoping meeting must be given as follows:

A. At least 15 days prior to the meeting, the ~~commissioner~~ commission must mail notice of the public information and scoping meeting to the following:

(1) the project contact list;

(2) the public agency contact list;

(3) the landowner list; and

(4) the local and tribal government contact list, who is reasonably likely to be affected by the proposed project.

B. ~~The commissioner applicant shall also~~ must publish notice of the meeting in a newspaper of local circulation, or in a newspaper used to publish legal notices in an affected township in the area at least ten days before the meeting 30 days prior to the meeting and again 14 days prior to the meeting. ~~The commissioner department shall~~ must also publish notice of the meeting in the EQB Monitor and ~~shall~~ must post the notice on the ~~commissioner department's~~ Web page. The commission must post the notice of the meeting on the commission's Web site.

Subpart. 4 3. **Conduct of public information and scoping meeting.** The public meeting must be held in a location that is convenient for persons who live near a proposed project. ~~The commissioner shall~~ must make available at the public meeting a copy of the certificate of need application ~~or transmission projects report.~~ ~~The commissioner department's staff shall~~ must explain the process for preparation of the environmental report. At the public meeting, the public must be afforded an opportunity to ask questions and present comments and to suggest alternatives and possible impacts to be evaluated in the environmental report. ~~The commissioner commission shall~~ must keep an audio recording of the meeting. ~~The commissioner shall provide at least 20 days from the day of the public meeting for the public to submit written comments regarding the proposed project.~~

Subp. 5 4. **Applicant role.** The applicant ~~shall~~ must provide representatives at the public

meeting who can respond to questions about the proposed project.

Subp. 6 ~~5. Alternatives and impacts.~~ **Scoping process.** The department must provide the public with an opportunity to participate in the development of the scope of the environmental report. A person desiring that a particular alternative to the proposed project or a possible adverse impact of the project be considered in the environmental report shall must identify the alternative or impact to be included, provide an explanation of why the alternative or impact should be included in the environmental report, and submit all supporting information the person wants the commissioner department to consider. The commissioner department shall must provide the applicant with an opportunity to respond to each request that is filed.

Subp. 6. Comment period. The department must provide at least 20 days from the day of the public meeting for the public to submit written comments regarding the proposed project. The commissioner shall include in the environmental report any alternative or impact identified by the PUC for inclusion.

Subp. 7. Department analysis. The commissioner department may exclude from analysis any alternative that does not meet the underlying need for or purpose of the project or that is not likely to have any significant environmental benefit compared to the project as proposed, or if another alternative that will be analyzed is likely to have similar environmental benefits with substantially less adverse economic, employment, or sociological impacts than the suggested alternative. The department's analysis must state the reasons for excluding an alternative.

7849.1410 NOTICE TO COMMISSION.

The department must notify the commission, prior to filing its scoping decision under part 7849.1425 below, of the alternatives the department intends to include in the scope of the environmental report. Commission consideration of the department's proposed alternatives must be completed by the time of the commission's decision on record development under part 7849.1100. The department must include in the scope of the EIS any alternative identified by the commission.

7849.1425 SCOPING DECISION

Subp. 7 ~~1. Commissioner~~ **Scoping decision.** Within ten twenty days after close of the public comment period, the commissioner department shall must issue an order the scoping decision determining the following:

- A. the alternatives to be addressed in the environmental report, including the alternatives required by part 7849.1500, subpart 1, item B;
- B. the specific potential impacts to be addressed;
- C. the schedule for completion of the environmental report; and
- D. other ~~matters~~ issues to be ~~included~~ addressed in the environmental report.

Once the ~~commissioner~~ department has issued an ~~order~~ a scoping decision establishing the matters to be evaluated in the environmental report, the ~~order~~ decision must not be changed ~~except upon a decision by~~ unless the commissioner department determines that substantial changes have been made in the project or substantial new information has arisen significantly affecting the potential environmental effects of the project or the availability of reasonable alternatives. ~~The commissioner may elect to bring any decisions regarding what should be included in the environmental report to the next regularly scheduled meeting or a special meeting.~~

Subp. 8 ~~2~~. **Notice of decision.** ~~At the time of the commissioner's decision, the commissioner shall mail the order to those persons who have requested to be notified. Any person may request to bring the matter of what alternatives or impacts to include in the environmental report to the commissioner in accordance with part 4405.0600, subpart 5. Such request shall be filed in writing with the commissioner within ten days of the commissioner's decision. A request to bring the matter to the commissioner shall not preclude the commissioner from beginning preparation of the environmental report in accordance with the commissioner's decision.~~
The department must file a copy of its scoping decision with the commission, and mail a copy to the project contact list and the public agency contact list.

7849.1500 ENVIRONMENTAL REPORT CONTENT.

Subpart 1. **Content of environmental report.** The environmental report must include the items described in items A to H.

- A. A ~~general~~ description of the proposed project and associated facilities.
- B. A ~~general~~ description of the alternatives to the proposed project that are addressed. Alternatives ~~shall~~ must include any one or combination of the following: the no-build alternative, demand side management, purchased power, facilities of a different size, type, or configuration, or using a different energy source than the source proposed by the applicant, upgrading of existing facilities, generation rather than transmission if a high voltage transmission line is proposed, transmission rather than generation if a large electric power generating plant is proposed, use of renewable energy sources, distributed generation, and those alternatives identified in the scoping process or by the ~~commissioner of the Department of Commerce~~.
- C. An analysis of the human and environmental impacts of a project of the type proposed and of the alternatives identified.
- D. An analysis of the potential impacts that are project specific.
- E. An analysis of mitigative measures that could reasonably be implemented to eliminate or minimize any adverse impacts identified for the proposed project and each alternative analyzed.
- F. An analysis of the feasibility and availability of each alternative considered.
- G. A list of permits required for the project.
- H. A discussion of other matters identified by the ~~commissioner~~ department.

Subp. 2. **Impacts of power plants.** At a minimum, the ~~commissioner~~ department shall must address in the environmental report the following impacts for any large electric power generating plant and associated facilities:

A. the anticipated emissions of the following pollutants expressed as an annual amount at the maximum rated capacity of the project and as an amount produced per kilowatt hour and the calculations performed to determine the emissions: ~~sulfur dioxide, nitrogen oxides, carbon dioxide, mercury, and particulate matter, including particulate matter under 2.5 microns in diameter~~ all criteria pollutants, hazardous air pollutants, volatile organic compounds, and other air emissions regulated under state or federal law;

B. the anticipated ~~emissions of any hazardous air pollutants and volatile organic compounds~~ greenhouse gas emissions;

C. the anticipated contribution of the project to impairment of visibility, ~~within a 50-mile radius of the plant~~ including regional haze, as governed by state and federal law;

D. the anticipated contribution of the project to the formation of ozone expressed as reactive organic gases. Reactive organic gases are chemicals that are precursors necessary to the formation of ground-level ozone;

E. the availability of the source of fuel for the project, the amount required annually, and the method of transportation to get the fuel to the plant;

F. associated facilities required to transmit the electricity to customers;

G. the anticipated amount of water that will be appropriated to operate the plant, ~~and the source of the water, if known~~ and measurements or estimates of evaporative losses;

H. the potential wastewater streams and the types of discharges associated with such a project including stormwater discharges, discharges to surface and groundwater and, potential impacts of a thermal discharge;

I. the types and amounts of solid and hazardous wastes generated by such a project, including an analysis of what contaminants may be found in the ash and where the ash might be sent for disposal or reuse; and

J. the anticipated noise impacts of a project, including the distance to the closest receptor where state noise standards can still be met.

K. the potential impacts of the proposed facility on the natural and socioeconomic environment, including:

(1) effects on human health and safety;

(2) effects on hydrological resources, including lakes, rivers, streams, wetlands, floodplains, watersheds, aquifers, and drinking water;

(3) effect on ecological resources, including endangered and protected species,

species of special concern, wildlife, natural vegetation, biological diversity, and protected areas;

(4) effects on land use, including human settlement, historical, and cultural resources, recreation, conventional and organic agricultural production, and forestry.

Subp. 3. **Impacts of high voltage transmission lines.** At a minimum, the ~~commissioner~~ department shall address in the environmental report the following impacts for any high voltage transmission line and associated facilities:

- A. the typical right-of-way required for construction of a transmission line;
- B. the anticipated size and type of structures required for a line;
- C. the electric and magnetic fields usually associated with a line;
- D. the anticipated noise impacts of the transmission line; ~~and~~
- E. the anticipated visual impacts of the transmission line; and-

F. the potential impacts of the proposed facility on the natural and socioeconomic environment, including:

(1) on human health and safety;

(2) on hydrological resources, including lakes, rivers, streams, wetlands, floodplains, watersheds, aquifers, and drinking water;

(3) on ecological resources, including endangered and protected species, species of special concern, wildlife, natural vegetation, biological diversity, and protected areas;

(4) on land use, including human settlement, historical, and cultural resources, recreation, conventional and organic agricultural production, and forestry.

Subp. 4. **Incorporation of information.** In preparing an environmental report, the commissioner may incorporate information and data from other documents in accordance with part 4410.2400.

Statutory Authority: *MS s 116D.04*

History: *28 SR 951; L 2005 c 97 art 3 s 19*

Posted: *October 13, 2009*

7849.1525. ENVIRONMENTAL REPORT; FILING.

Subpart. 9 1. **Time frame for completion of environmental report.** The ~~commissioner~~ department shall must complete the environmental report in accordance with the process schedule ~~determined by the commissioner.~~ In establishing the schedule for completion of the environmental report, the ~~commissioner~~ department shall must take into account any applicable statutory

deadlines, the number and complexity of the alternatives and impacts to be addressed, and the interests of the public, the applicant, the ~~PUC commission, the commissioner department~~, and other state agencies. ~~The commissioner department shall must complete the environmental report within four months of submission of the information required by part 7849.1300. If the PUC should determine that an initial certificate of need application or transmission projects report is incomplete, the commissioner's schedule shall be extended accordingly.~~

Subp. ~~40~~ 2. **Notification of availability of environmental report.** Upon completion of the environmental report, the ~~commissioner department shall must~~ publish notice in the EQB Monitor, file of the availability of the environmental report with the commission, and mail notice of the availability of the document to ~~those persons who have requested to be notified~~ the project contact list, the public agency contact list, the landowner list, and the local and tribal government list. The ~~commissioner department shall must~~ provide a copy of the document to ~~the PUC and to any other public agency with authority to permit or approve the proposed project~~. The ~~commissioner department shall must~~ post the environmental report on the agency's Web page.

7849.1530. PUBLIC COMMENTS.

The department's notice of availability of the environmental report must include a statement inviting interested persons to comment on the report within 10 days.

7849.1550 PUBLIC HEARING.

Subpart 1. **Public hearing.** After the department files the environmental report, the commission must hold a public hearing designed to encourage members of the public to express their views and comment on the application, as required under Minnesota Statutes, section 216B.243, subdivision 4.

Subp. 2. **Public hearing notice.** Notice of the hearing must be coordinated with the administrative law judge. The notice must include the time, date, and location of each hearing.

Subp. 3. **Notice recipients.** The notice must 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 applicant must publish notice of the public hearing in a legal newspaper of general circulation in the county in which the public hearing is to be held. The notice must be published at least 10 days before the date of the public hearing. The applicant must file a copy of the affidavit of publication with the commission within five days of receiving the affidavit.

7849.1600 AGENCY ASSISTANCE AND FILING OF AGENCY COMMENTS.

The ~~commissioner of the Department of Commerce~~ may request another state agency to assist in the preparation of an environmental report. Upon request, another state agency ~~shall must~~ provide in a timely manner any unprivileged data or information to which it has reasonable access concerning the matters to be addressed in the environmental report and ~~shall must~~ assist in the preparation of the environmental report when the agency has special expertise or access to

information. Comments filed into the commission's electronic filing system by the department or the commission on behalf of another state or a federal agency must appear as "on behalf of" the agency that authored the comments.

Statutory Authority: *MS s 116D.04*

History: *28 SR 951; L 2005 c 97 art 3 s 19*

Posted: *October 13, 2009*

7849.1700 APPLICANT ASSISTANCE.

The ~~commissioner of the Department of Commerce~~ may request the applicant for a certificate of need or for certification of a HVTL to assist in the preparation of an environmental report. Upon request, the applicant ~~shall~~ must provide in a timely manner any unprivileged data or information to which it has reasonable access and which will aid in the expeditious completion of the environmental report.

Statutory Authority: *MS s 116D.04*

History: *28 SR 951; L 2005 c 97 art 3 s 19*

Posted: *October 13, 2009*

7849.1800 ENVIRONMENTAL REPORT TO ACCOMPANY PROJECT.

Subpart 1. **PUC Commission decision.** The environmental report, or environmental assessment or EIS prepared pursuant to part 7849.1900, must be completed and copies provided to the ~~Public Utilities~~ Commission before the PUC Commission can hold any public hearing or render a final decision on an application for a certificate of need or for certification of a HVTL. However, the PUC Commission can commence the public hearing process by conducting prehearing matters. The ~~commissioner department's~~ staff ~~shall~~ must participate in the PUC Commission proceeding, or contested case proceeding, and be available to answer questions about the environmental report or environmental assessment or EIS and to respond to comments about the document. The environmental report or environmental assessment or EIS must be considered by the PUC Commission in making a final decision on a certificate of need or HVTL certification request.

Subp. 2. **Completeness of environmental report.** At the time the PUC commission makes a final decision on a certificate of need application or a request for certification of a HVTL, the PUC commission ~~shall~~ must determine whether the environmental report and the record created in the matter address the issues identified by the ~~commissioner department~~ in the decision made pursuant to part 7849.1400, subpart 7. The PUC Commission may direct the ~~commissioner department~~ to prepare a supplement to the environmental report, or the environmental assessment or EIS one is prepared pursuant to part 7849.1900, if the PUC commission determines that an additional alternative or impact should be addressed or supplemental information should be provided.

Statutory Authority: *MS s 116D.04*

History: *28 SR 951; L 2005 c 97 art 3 s 19*

Posted: October 13, 2009

7849.1900 JOINT PROCEEDING.

Subpart 1. **Environmental assessment.** In the event an applicant for a certificate of need for a ~~LEPGP~~ LEGF or a HVTL applies to the ~~commissioner of the Department of Commerce~~ commission for a site permit or route permit prior to the time the ~~commissioner~~ department completes the environmental report, and the project qualifies for alternative review by the commissioner under part 7850.2800, the ~~commissioner~~ department may elect to prepare an environmental assessment in accordance with part 7850.3700 in lieu of the environmental report required under part 7849.1200. If combining the processes would delay completion of environmental review under parts 7849.1000 to 7849.2100, the ~~commissioner~~ department can combine the processes only if the applicant and the ~~Public Utilities~~ Commission agree to the combination. If the processes are combined, the ~~commissioner~~ department ~~shall~~ must include in the environmental assessment the analysis ~~of alternatives~~ required by part 7849.1500, but is not required to prepare an environmental report under parts 7849.1000 to 7849.2100.

Subp. 2. **Environmental impact statement.** In the event an applicant for a certificate of need for a ~~LEPGP~~ LEGF or a HVTL applies to the ~~commissioner~~ commission for a site permit or route permit prior to the time the ~~commissioner~~ department completes the environmental report, and the project does not qualify for alternative review ~~by the commissioner~~ under part 7850.2800, the ~~commissioner~~ department may elect to prepare an environmental impact statement in lieu of the environmental report required under part 7849.1200 if the applicant and the ~~Public Utilities~~ Commission agree to the additional time that will be required to prepare the environmental impact statement. In this event, the ~~commissioner~~ department ~~shall~~ must include in the EIS the analysis ~~of alternatives~~ required by part 7849.1500, but is not required to prepare an environmental report under part 7849.1200.

Subp. 3. **Procedures.** In the event the ~~commissioner~~ department combines the two processes pursuant to subpart 1 or 2, the procedures of parts 7850.1000 to 7850.5600 ~~shall~~ must be followed in conducting the environmental review.

Subp. 4. **Joint hearing.** If the commissioner determines that a joint hearing with the Public Utilities Commission to consider both permitting and need issues is feasible, more efficient, and may further the public interest, the commissioner may decide to hold a joint hearing with the approval of the commission under part 7850.2140.

Statutory Authority: *MS s 116D.04*

History: *28 SR 951; L 2005 c 97 art 3 s 19*

Posted: October 13, 2009

7849.2000 ALTERNATIVE FORM OF REVIEW.

The requirements under parts 7849.1000 to 7849.2100 for preparation of an environmental report on a ~~LEPGP~~ LEGF or HVTL for which a determination of need by the ~~Public Utilities~~ Commission has

been requested is approved as an alternative form of review.

Statutory Authority: *MS s 116D.04*

History: *28 SR 951*

Posted: *October 13, 2009*

7849.2100 COSTS TO PREPARE ENVIRONMENTAL REPORT.

Subpart 1. **Applicant required to pay costs.** The applicant for a certificate of need for a large electric power generating plant or a high voltage transmission line ~~or for a certification of a high voltage transmission line as part of a transmission projects report shall~~ must pay the ~~commissioner~~ commissioner of the Department of ~~Commerce~~ Commerce the reasonable costs incurred by the ~~commissioner~~ department in preparing the environmental report.

Subp. 2. **Payment schedule.** The applicant ~~shall~~ must submit a minimum payment of \$5,000 to the ~~commissioner~~ department at the time the application or request is filed with the ~~Public Utilities~~ Public Utilities Commission. Additional payments ~~shall~~ must be made within 30 days of notification by the agency that additional fees are necessary for completion of the environmental review. After preparation of the environmental report, the ~~commissioner~~ department ~~shall~~ must provide the applicant with a final accounting. The applicant ~~shall~~ must make the final payment within 30 days of notification, or the agency ~~shall~~ must refund any excess payments within 30 days of the final accounting.

Statutory Authority: *MS s 116D.04*

History: *28 SR 951; L 2005 c 97 art 3 s 19*

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