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May 8, 2017

Daniel Wolf

Executive Secretary

Minnesota Public Utilities Commission 121 7th Place East, Suite 350

St. Paul, MN 55101-2147

RE: Possible Amendments to Rules Governing Certificates of Need and Site and Route Permits for Large Electric Power Generating Plants and High Voltage Transmission Lines, Chapters 7849 and 7850 Docket No. E, ET, IP-999/R-12-1246

Dear Mr. Wolf,

Thank you for the opportunity to provide these comments on the proposed February 2107 rule drafts of Chapters 7849 and 7850. Although my office has represented a number of clients in connection with certificate of need and routing proceedings, all of my work in connection with the proposed Chapters 7849 and 7850 has been *pro bono*. In these comments, I do not represent any specific current or former clients.

I have appreciated the opportunity to serve on the Advisory Committee regarding these proposed rules, and believe that all staff involved have been conscientious and professional.

Although I have some remaining concerns regarding siting and routing of facilities (Chapter 7850), our Advisory Committee spent quite a bit of time working through issues of concern to public stakeholders. Less time was spent on the certificate of need (“CON”) draft rules (Chapter 7849), and my comments reflect a fundamental concern that was not addressed. In summary, the draft rules remove content and standards for decision-making for “need,” rather than updating the criteria. From my perspective, the rule would result in a certificate of need process with little if any substantive content or bounds for discretion. Additional substantive work needs to be done to set appropriate standards and criteria for forecasting, disclosure and findings of need.

In the next few pages, my concerns are summarized. With this letter, I have attached annotated copies of Chapters 7849 and 7850. In these annotated drafts, I have highlighted areas of concern and then used footnotes to describe the issues, problems and potential solutions that should be developed before a new draft is circulated.

Comments and Concerns Chapter 7849:

- Draft rules are based on the perception that measures for capacity, demand and need in existing rules are out-of-date. However, rather than updating standards and criteria, the draft rule eliminates them. Without criteria for “need” based on demand and capacity, ratepayers may end up paying for a company’s growing asset base at a fixed rate of return that serves only the company’s interests. There are multiple highlighted deletions in the proposed rule reflecting this policy change. (7849.0010, and Parts 0120, 0270, 0275, 0280, 0300)
- Independent power producers and transmission companies should not be included in the definition of “utility.” (7849.0010)

- Existing rule text requiring specific written findings should be restored to maintain intelligibility of the decision to stakeholders and reviewers. (7849.0100)
- The draft rule should be revised to restore or update, not eliminate, criteria on which a determination of need is made. The rationale advanced in the committee for eliminating all criteria was that they duplicate an applicable statute, but this is not the case. (7849.0120)
- Notice to the public should include a specific contact person and explain that public has the right to comment on the application. (7849.0130)
- Since criteria in part 7849.0120 have been deleted, the draft rule has also removed content requirements for a CON application. Content requirements should be restored. (7849.0220)
- The rule says that an application must include “pertinent data necessary to demonstrate the need for the project” but replaces substantive requirements with what is effectively a requirement to file a model. The rule provides no demand information and no basis upon which regulators or stakeholders could challenge an applicant’s model. (7849.0270)
- The draft rule fails to require any specific forecast methodology, parameters or explanation of methodology, only the requirement to file a spreadsheet, which would be unintelligible to the public. The rule also removes requirements to show effects on prices and effects of energy conservation on long-term demand, often areas of great public concern. (7849.0275)
- The draft rule removes all substantive requirements related to system capacity, even the basic information on what are planned additions and retirements to the system. Where the existing rule required an applicant to justify the method of determining reserve margins, the proposed rule only asks the applicant to provide information on what method was used. (7849.0280)
- The draft rule should be revised to require consideration of conservation that may be an alternative to the project *in combination with* a change in project size or type. Current proposed language is highly limiting. (7849.0290)
- The draft rule should be revised to retain requirement to disclose upper and lower confidence levels of expected demand. (7849.0300 and Part 0340)
- The draft rule should be revised to restore language requiring notice to the commission *before* a change in size, type, timing or ownership is made. (7849.0400)
- The rule should include a standard for referral of a case to the office of administrative hearings, providing referral if there are disputed issues of fact, or if referral would facilitate public participation or more effective record development. (7849.1100)
- It would seem more consistent with recent case law to require an environmental impact statement, rather than an environmental report. (7849.1400)
- Draft language removes requirement to specifically consider the no-build alternative, which is inconsistent with Minnesota environmental review statutes and precedent. (7849.1500)

- The draft timing and process for citizen comments on the environmental report seems truncated and unreasonable. (7849.1550 and Part 1800).

Comments and Concerns Chapter 7850:

- The draft rule should be revised to retain reference to compliance with any applicable environmental review provisions of exempt projects. (7850.1400)
- Pre-application meeting notice should identify the public advisor and provide information on how to affect a route and request an advisory task force so that citizen participation is effective. The applicant's meeting summary should include all comments and alternatives proposed. (7850.1620)
- Electric and magnetic fields should be specifically referenced among environmental effects to be identified in an application and considered in a decision. (7850.1640 and Part 4100)
- The public should have notice and a chance to comment on an application's completeness, and the schedule should not start until completeness is determined. (7850.1680 and Parts 1710, 2100)
- Existing content requirements for notice should be preserved to allow citizens to understand upcoming process. (7850.2100)
- Citizen advisory task force provisions should be strengthened to encourage their appointment, include a broad spectrum of citizens, and provide a thorough and timely report on alternatives. (7850.2400)
- The draft rule should be revised to provide more reasonable notice of scoping meetings and time to comment on an EIS. Citizen participation would be burdened by the proposed limits. (7850.2300 and Part 2500)
- The draft rule should be revised to require public disclosure and the potential for public comment to the commission before scoping is final and to clarify that scoping is final only after it has been reviewed by the commission. (7850.2520 and Part 2530)
- The process should require that the Final EIS be completed and filed before public and evidentiary hearings are done to reflect the best practices in ALJ cases where the hearings and environmental review have been coordinated. (7850.2650)
- The draft rule should be revised to restore language requiring a recording of public hearings. A hearing with no record and no report is not meaningful public participation and creates a poor quality administrative record. (7850.3800)
- Existing language providing a standard for issuance of route permit should be restored, particularly policy requirements not duplicative of statutes. (7850.4000)
- The draft rule should be revised to limit amendments to permit conditions, allowing only those that do not increase human or environmental impact. (7850.4900)

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- The draft rules should be revised to restore existing language providing the commission with prior notice and the opportunity to hold a hearing before ownership is transferred. (7850.5100)

The above concerns and additional issues and suggestions are reflected in the attached annotated drafts of Chapter 7849 and 7850.

Thank you for your consideration and for your attempts to include the perspectives of citizens and members of the community who have represented them in the discussion of proposed certificate of need and routing rules.

Sincerely yours,

A handwritten signature in cursive script that reads "Paula Goodman Maccabee". The signature is written in black ink and is positioned above the printed name.

Paula Goodman Maccabee

WORKING DRAFT – Chapter 7849

PUBLIC UTILITIES COMMISSION

FEBRUARY 2017

CERTIFICATE OF NEED; POWER PLANT OR LINE¹

7849.0010 DEFINITIONS
7849.0020 PURPOSE.

CERTIFICATES OF NEED

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7849.0230 ~~ENVIRONMENTAL REPORT.~~
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7849.0275 FORECAST METHODOLOGY, DATA BASE, AND ASSUMPTIONS.
7849.0280 SYSTEM CAPACITY.
7849.0290 CONSERVATION PROGRAMS, APPLICATION.
7849.0300 CONSEQUENCES OF DELAY.
7849.0310 ENVIRONMENTAL INFORMATION REQUIRED.
7849.0320 GENERATING FACILITIES.
7849.0330 TRANSMISSION FACILITIES.
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7849.0400 CERTIFICATE OF NEED CONDITIONS AND CHANGES.

COMMENTS AND RECORD DEVELOPMENT

7849.1000 ~~APPLICABILITY AND SCOPE.~~ NOTICE AND COMMENTS; PETITION TO INTERVENE.
7849.1100 ~~DEFINITIONS~~ RECORD DEVELOPMENT.

¹ Notes prepared on highlighted text by Paula Maccabee, Just Change Law Offices, pmaccabee@justchangelaw.com 651-646-8890.

ENVIRONMENTAL REPORT PROCESS

- 7849.1200 ENVIRONMENTAL REPORT.
- ~~7849.1300 INFORMATION REQUIRED FOR ENVIRONMENTAL REVIEW.~~
- 7849.1400 PROCESS FOR ENVIRONMENTAL REPORT PREPARATION.
- ~~7849.1410 NOTICE TO COMMISSION.~~
- ~~7849.1425 SCOPING DECISION.~~
- 7849.1500 ENVIRONMENTAL REPORT CONTENT.
- ~~7849.1525 ENVIRONMENTAL REPORT; FILING.~~
- ~~7849.1530 PUBLIC COMMENTS.~~
- ~~7849.1550 PUBLIC HEARING.~~
- 7849.1600 AGENCY ASSISTANCE AND FILING OF AGENCY COMMENTS.
- 7849.1700 APPLICANT ASSISTANCE.
- 7849.1800 ENVIRONMENTAL REPORT TO ACCOMPANY PROJECT.
- 7849.1900 JOINT PROCEEDING.
- 7849.2000 ALTERNATIVE FORM OF REVIEW.
- 7849.2100 COSTS TO PREPARE ENVIRONMENTAL REPORT.

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.²~~

~~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

² Proposed rules have accepted position of utilities that all measures for capacity/demand/need in existing rules are obsolete. There are aspects of existing rules that are out-of-date, but providing requirements to demonstrate deficiency in capacity to meet forecasted need is what a CON is all about. The draft must be revised to explicitly consider what parameters are required so that public stakeholders and decision-makers can evaluate need. Otherwise, ratepayers are being forced to pay for a company's growing asset base at a fixed rate of return to serve only the company's/shareholders interests but not those of customers or citizens. In these rules, existing substantive requirements are all deleted. But, no other measures or guidance have been substituted in their place. This means that the interests of corporate entities seeking growth may be the only measure of "need" before ratepayers are obligated to pay costs for expansion. This concern applies to deletions of Subp. 2, 3, 4, 6, 10, 11, 16, 25, 26, 27, 30 definitions and to significant deletions in Parts 7849.0120, 7849.0270, 7849.0275, 7849.0280, and 7849.0300. Without criteria for capacity, forecasting and demand, under what circumstances could the commission find that there is no need for a proposed facility or even that the proposed facility should be modified or rescheduled?

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 h~~**High voltage transmission line; HVTL.** "Large hHigh voltage transmission line" or "HVTL" 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 terminals³.

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

³ It isn't clear that substations are part of "associated facilities" in 7849.0010, Subp. 6a.

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.**⁴

~~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

⁴ Non-utilities should be removed from this definition of "utility." They belong in Subp. 12a, Independent Power Producer. Definitions overlap and are unintelligible.

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~~⁵ 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 demand⁶ 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

⁵ Restore existing text requiring specific written findings, which are critical to frame the record and allow stakeholders to understand the basis for a determination. (Note: the phrase “this chapter” will need to precede restored text.)

⁶ Certificate of need requirements are based on projected demand for electricity, yet (search for the word “demand” in the document) criteria for determining demand are all deleted from the rule.

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;⁷

~~(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;~~⁸

~~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. (1) 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;~~

⁷ I object to the commission finding a need relying on the breadth of the region. I'd suggest that benefits to the region be "considered," not determinative.

⁸ Need to restore (or update) these highlighted existing criteria that allow judgment as to whether a project is needed. Otherwise there is no basis for the commission to determine if the probable result of denial would be an adverse effect on adequacy or reliability and no basis to test that conclusion.

(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.⁹

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;

⁹ Need to restore highlighted existing standards. These do not duplicate any section of statute and are the heart of the CON process, upon which the entire record is developed. The proposed rules provide no alternative criteria for deciding whether to approve, modify or reject a CON application. No coherent argument was advanced at any advisory committee meeting to remove criteria from proposed rule.

D. the Unites 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]¹⁰

~~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~~

¹⁰ Please clarify – is this 7829.2550 or 7849.2550?

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.¹¹

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

¹¹ Include the public advisor or other specific commission staff contact in this Item, so that the notice doesn't just give a (confusing, discouraging) switchboard number. Also, add after "public participation," "and opportunities to comment on the application."

~~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 13 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.~~¹² ~~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, e~~Each 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~~

¹² Restore the highlighted requirement in existing rules. Otherwise how do members of the public gain access to even a simple copy of an application, let alone participate effectively? Also, deletion burdens other agencies that may need to comment or regulate.

~~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.¹³

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,

¹³ Proposed completeness determination excludes public comment and public participation unless executive secretary objects to completeness. Are notices to applicant even filed to docket?

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.¹⁴

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;

¹⁴ Unless existing rule are restored, criteria in 7849.0120 are not specific enough to allow a substantive inquiry to be made. Applicant could provide unsupportable assertions. Should also add an Item E requiring an applicant to submit as part of application “ the studies used by applicant to determine project is needed.”

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

~~(5)~~ (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 9);

€ 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. E.~~ 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.¹⁵

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:

¹⁵ The proposed rules provide engineering modeling requirements relevant to the “projected need” (see Subp. 2, Item E) but no requirements for the content of the forecast that would be the basis for the “projected need,” such as existing capacity, historical demand, forecasted demand, assumptions used to derive forecasted demand, impacts of conservation, storage, distributed generation and load management on summer and winter peaks, etc. The existing rule text may need to be updated, but that doesn’t justify dispensing with any parameters for preparing and disclosing forecasts.

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.¹⁶

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 detail the forecast methodology employed to obtain the

¹⁶ This section does not require any specific forecast methodology or parameters for that methodology, only that the applicant must file a spreadsheet, presumably containing the data the applicant chooses. Requirements should be set. Provisions regarding prices and effects of conservation on long-term demand are highly salient to the public and should be retained.

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 ~~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 ~~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 ~~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 ~~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 capability 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.¹⁷~~

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,¹⁸ a list of those that have been~~

¹⁷ As with the prior section pertaining to forecast, the proposed rules do not provide a more up-to-date description of how applicant should explain system capacity available; the proposed rules completely eliminate this requirement. With no criteria for forecasting or capacity, there is no CON from an analytic point of view and citizens (and their experts) would be unable to analyze whether applicant's current net generating capacity exceeds demand at peak or non-peak, what proposed additions and retirements are planned, how they would affect generating capacity or any other aspect of need for the project.

¹⁸ This text is overly limiting. Conservation programs alone may not be a feasible alternative to the

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. 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.**¹⁹

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*

project, but they may be sufficient to reduce the scale or alter the timing of a proposed project. This text should be revised to address the potential that conservation, in conjunction with other alternatives, could replace or change the scope, size or timing of the project.

¹⁹ Text requiring forecasting at different levels should be required. Perhaps forecasting would require expected demand based on 1) historic trends, 2) compliance with conservation requirements, and 3) maximizing conservation and demand management along with the upper and lower confidence limits for each of these estimates. Without such information, neither decision-makers nor citizens can evaluate whether the proposal reflects need or reasonable assumptions.

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 EHVTL. 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**²⁰ 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;

²⁰ [Add information on the strength and distribution of electric and magnetic fields to underground transmission in Item B.](#)

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*

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7849.0340 NO-FACILITY ALTERNATIVE.

~~For each of the three levels of demand specified in part 7849.0300,~~²¹ ~~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;

²¹ Provide language requiring calculation of levels of demand (see note 19, *supra*).

- (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. An applicant must, however, promptly report any one of the following changes to the commission:²² ~~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. 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.~~

²² Any change in size, type, timing or ownership should require notice to the commission prior to the change, so that there is an opportunity for review before a change is finalized. Otherwise there is no opportunity to determine if there is conformity with the requirements or another reason, like the lack of financial capacity of the new owner, why certification should not be continued.

~~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 7829.1200.²³

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

²³ Should have the standard for referral to a contested case, e.g. "if there are disputed issues of fact, or that referral to a contested case would facilitate public participation in a controversial matter or result in a more effective development if the record."

~~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.²⁴

~~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;~~

²⁴ Why isn't this section being replaced with a requirement for an environmental impact statement?

~~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.²⁵ ~~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.

²⁵ Should require additional comment time to propose potential alternatives; 45 days.

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 decision²⁶ 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.²⁷ the no-build

²⁶ Should include commission review of the scoping decision before it becomes final and commission ability to find change in circumstances. As written, this could pose a due process problem, since there is no opportunity for judicial review of the department's decision.

²⁷ The language "any one or combination of the following" would allow a report to be prepared

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

without the no-build alternative. That can't be the intent. Suggested revision "must include the no-build alternative and every one of the following alternatives or combination thereof identified in the scoping process: [then list all of the alternatives below]."

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.²⁸

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.²⁹

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

²⁸ Is this a 10-day comment deadline for an environmental report? How does a hearing coordinate with a 10-day deadline? Should be hearing set with at least 10 working days public notice and at least 30 days of comment after hearing is completed.

²⁹ There need to be provisions requiring that members of the public can ask questions and place their comments on the record at this hearing, that hearing be recorded or transcribed.

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 7.³⁰ 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

³⁰ Text should provide that comments on the environmental report must be considered in making a final decision on the CON or certification request. This text is not clear how this process is coordinated with a contested case.

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*

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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 of the Department of 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~~ 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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WORKING DRAFT - Chapter 7850

PUBLIC UTILITIES COMMISSION

FEBRUARY 2017

SITE OR ROUTE PERMIT; POWER PLANT OR LINE¹

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¹ Comments on highlighted sections provided in footnotes by Paula Maccabee, Just Change Law, 651-646-8890, pmaccabee@justchangelaw.com.

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7850.1000 DEFINITIONS.

Subpart 1. **Scope.** As used in parts 7850.1000 to 7850.5600, the following terms have the meanings given them.

Subp. 2. **Act.** "Act" means the Power Plant Siting Act of 1973, as amended, Minnesota Statutes, chapter 216E.

Subp. 3. **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, including other transmission lines directly associated with a large electric generating facility that are necessary to interconnect the plant to the transmission system.

Subp. 4. **Commission.** "Commission" means the Public Utilities Commission.

Subp. 5. **Certified HVTL list.** "Certified HVTL list" means the transmission projects certified by the Public Utilities Commission as priority projects under Minnesota Statutes, section 216B.2425.

Subp. 5a. **Department.** "Department" means the department of commerce.

Subp. 6. **Developed portion of the plant site.** "Developed portion of the plant site" means the portion of the LEPGP site that is required for the physical plant and associated facilities.

Subp. 7. **Environmental assessment or EA.** "Environmental assessment" or EA means a written document that describes the human and environmental impacts of a proposed large electric power generating plant or high voltage transmission line and alternative routes or sites and methods to mitigate such impacts.

Subp. 8. **Environmental impact statement or EIS.** "Environmental impact statement" or "EIS" means a detailed written statement that describes proposed high voltage transmission lines and large electric power generating plants and satisfies the requirements of Minnesota Statutes, section 116D.04.

Subp. 9. **High voltage transmission line or HVTL.** "High voltage transmission line" or "HVTL" means a conductor of electric energy and associated facilities designed for and capable of operating at a nominal voltage of 100 kilovolts or more either immediately or without significant modification, and is greater than 1,500 feet in length. Associated facilities shall include, but not be limited to, insulators, towers, substations, and terminals.

Subp. 10. **Large electric power facilities.** "Large electric power facilities" means high voltage transmission lines and large electric power generating plants.

Subp. 11. **Large electric power generating plant or LEPGP.** "Large electric power generating plant" or "LEPGP" means electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more. Associated facilities include, but are not limited to, coal piles, cooling towers, ash containment, fuel tanks, water and wastewater treatment systems, and roads.

Subp. 12. **Mail.** "Mail" means either the United States mail or electronic mail by e-mail,

unless another law requires a specific form of mailing.

Subp. 13. **Person.** "Person" means any individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

~~Subp. 14. **PUC.** "PUC" means the entire Public Utilities Commission, including the commission and staff;~~

Subp. 15. **Right-of-way.** "Right-of-way" means the land interest required within a route for the construction, maintenance, and operation of a high voltage transmission line.

Subp. 16. **Route.** "Route" means the location of a high voltage transmission line between two end points. A route may have a variable width of up to 1.25 miles within which a right-of-way for a high voltage transmission line can be located.

Subp. 17. **Route segment.** "Route segment" means a portion of a route.

Subp. 18. **Site.** "Site" means an area of land required for the construction, maintenance, and operation of a large electric power generating plant.

Subp. 19. **Utility.** "Utility" means any entity engaged or intending to engage in this state in the generation, transmission, or distribution of electric energy including, but not limited to, a private investor owned utility, a cooperatively owned utility, a public or municipally owned utility, a limited liability company, or a private corporation.

Statutory Authority: *MS s 116C.66; 216E.16*

History: *15 SR 1598; 27 SR 1295; L 2005 c 97 art 3 s 19*

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7850.1100 PURPOSE AND AUTHORITY.

Parts 7850.1000 to 7850.5600 are prescribed by the Minnesota Public Utilities Commission pursuant to the authority granted to the commission in the Power Plant Siting Act, as amended, Minnesota Statutes, chapter 216E, to give effect to the purposes of the act.

It is the purpose of the act and the policy of the state to locate large electric power generating plants and high voltage transmission lines in an orderly manner compatible with environmental preservation and the efficient use of resources. In accordance with this policy, the commission ~~shall~~ must choose locations that minimize adverse human and environmental impact while ensuring continuing electric power system reliability and integrity and ensuring that electric energy needs are met and fulfilled in an orderly and timely fashion. The commission ~~shall~~ must provide for broad spectrum citizen participation as a principle of operation. To ensure effective citizen participation, the commission ~~shall~~ must maintain a public education program on, but not limited to, the considerations identified in Minnesota Statutes, section 216E.03, subdivision 7.

Statutory Authority: *MS s 116C.66; 216E.16*

History: *15 SR 1598; 27 SR 1295; L 2005 c 97 art 3 s 19*

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7850.1200 APPLICABILITY.

Parts 7850.1000 to 7850.5600 establish the requirements for the processing of permit applications by the ~~Public Utilities~~ Commission for large electric power generating plants and high voltage transmission lines, including environmental review of such projects. ~~Requirements for environmental review of such projects before the commission are established in the applicable requirements of chapter 4410 and parts 7849.1000 to 7849.2100.~~

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

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7850.1300 PERMIT REQUIREMENT.

Subpart 1. **Site permit.** No person may construct a large electric power generating plant without a site permit from the commission. A large electric power generating plant may be constructed only on a site approved by the commission.

Subp. 2. **Route permit.** No person may construct a high voltage transmission line without a route permit from the commission. A high voltage transmission line may be constructed only within a route approved by the commission.

Subp. 3. Expansion of existing facility.

A. No person ~~shall~~ may increase the voltage of a high voltage transmission line without a route permit or other approval from the ~~PUC~~ commission.

B. No person ~~shall~~ may increase the voltage of a transmission line under 100 kilovolts to over 100 kilovolts without a route permit from the ~~PUC~~ commission.

C. Except as provided in part 7850.1500 or 7850.4800, no person ~~shall~~ may increase the generating capacity or output of an existing large electric power generating plant without a permit from the commission.

D. No person ~~shall~~ may increase the generating capacity or output of an electric power plant from under 50 megawatts to more than 50 megawatts without a site permit from the ~~PUC~~ commission.

Subp. 4. **Local authority.** A site permit from the commission is not required for a large electric power generating plant that is permitted by local units of government under Minnesota Statutes, section 216E.05. A route permit from the commission is not required for a high voltage transmission line that is permitted by local ~~governmental authorities~~ units of government under Minnesota Statutes, section 216E.05.

Subp. 5. **Commence construction.** No person may commence construction of a large

electric power generating plant or a high voltage transmission line until a permit has been issued by the commission or by the appropriate local units of government if local review is sought. "Commence construction" means to begin or cause to begin as part of a continuous program the placement, assembly, or installation of facilities or equipment, or to conduct significant physical site preparation or right-of-way preparation work for installation of facilities or equipment. Conducting survey work or collecting geological data or contacting landowners to discuss possible construction of a power plant or transmission line is not commencement of construction.

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

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7850.1400 SMALL EXEMPT PROJECTS.

~~Subpart 1. **No PUC permit required.** A permit from the PUC commission is not required to construct a power plant of less than 50 megawatts or a transmission line of that is either less than 100 kilovolts or 1,500 feet in length or less. Proposers of such projects must obtain whatever approvals may be required by local, state, or federal units of government with jurisdiction over the project.~~

~~Subp. 2. **Environmental review.** Proposers of power plants of less than 50 megawatts or transmission lines of less than 100 kilovolts must comply with the environmental review requirements of chapter 4410, parts 7849.1000 to 7849.2100, and Minnesota Statutes, chapter 116D.²~~

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

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7850.1500 EXCEPTIONS TO PERMITTING REQUIREMENT FOR CERTAIN EXISTING FACILITIES.

Subpart 1. **No permit required.** The following projects are not considered construction of a large electric power generating plant or high voltage transmission line and may be constructed without a permit from the commission:

A. equipment additions at an existing substation that do not require expansion of the land needed for the substation and do not involve an increase in the voltage or changes in the location of existing transmission lines, except that up to the first five transmission line structures outside the substation may be moved to accommodate the equipment additions provided the structures are not moved more than 500 feet from the existing right-of-way;

² Add after "approvals" a phrase "and comply with whatever environmental review provisions that" so that the issue of environmental review is referenced.

B. high voltage transmission lines:

- (1) maintenance or repair of a high voltage transmission line within an existing right-of-way;
- (2) reconductoring or reconstruction of a high voltage transmission line with no change in voltage and no change in right-of-way, provided that any new structures that are installed are not designed for and capable of operation at higher voltage; or
- (3) relocation of a high voltage transmission line that is required by a local or state agency as part of road, street, or highway construction; or

C. large electric power generating plants:

- (1) maintenance or repair of a large electric power generating plant;
- (2) modification of a large electric power generating plant to increase efficiency as long as the capacity of the plant is not increased more than ten percent or more than 100 megawatts, whichever is greater, and the modification does not require expansion of the plant beyond the developed portion of the plant site. If a subsequent modification results in a total of more than 100 megawatts of additional capacity, this provision does not apply. An increase in efficiency is a reduction in the amount of Btu's (British Thermal Units) required to produce a kilowatt hour of electricity at the facility;
- (3) refurbishment of a large electric power generating plant that does not expand the capacity of the plant or expand the plant beyond the developed portion of the plant site and the refurbishment does not require a certificate of need from the public utilities commission;
- (4) modification of a LEPGP powered by solar energy that is exempt from a certificate of need under Minnesota Statutes, section 216B.243, subd. 8(7), as long as the plant is not expanded beyond the developed portion of the plant site;
- (45) conversion of the fuel source of a large electric power generating plant to natural gas, as long as the plant is not expanded beyond the developed portion of the plant site; or
- (5 6) start-up of an existing large electric power generating plant that has been closed for any period of time at no more than its previous capacity rating and in a manner that does not involve a change in the fuel or an expansion of the developed portion of the plant site.

Subp. 2. **Minor alteration.** In the event a modification or other change in an existing substation, high voltage transmission line, or large electric power generating plant does not qualify for an exception under this part, the modification or change may qualify for a ~~minor alteration~~ change under part 7850.4800.

Subp. 3. **Notice.** Any person proposing to move transmission line structures under subpart 1, item A, or to reductor or reconstruct a high voltage transmission line under subpart 1, item B, subitem (2), or to implement changes to a large electric power generating plant under subpart 1, item C, subitem (2), (3), (4), or (5), must notify the commission in writing at least 30 days before commencing construction on the modification or change.

Statutory Authority: *MS s 116C.66; 216E.16*

History: 27 SR 1295; L 2005 c 97 art 3 s 19

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7850.1600 JOINT PROCEEDING.

~~The proposer of a large electric power generating plant that will also require a high voltage transmission line may elect to apply for both a site permit for the large electric power generating plant and a route permit for the high voltage transmission line in one application and in one process. The PUC on its own volition may elect to combine two pending applications if it is appropriate to consider both projects as part of one proceeding. An applicant may also combine an application for a pipeline routing permit if a natural gas or petroleum pipeline to a new large electric power generating facility will be required.~~

Statutory Authority: MS s 116C.66; 216E.16

History: 27 SR 1295; L 2005 c 97 art 3 s 19

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7850.1610 NOTICE LISTS. The following notice lists must be established and maintained as described in this part.

Subpart 1. **General list.** The commission must maintain a list of persons who want to be notified of an application for a proposed site or route permit. Any person may request to have that person's name or an organization's name included on the list. The commission must make the list available to the applicant at the time the 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 Unites 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. For a route permit application, the list must include landowners whose property is along any route the applicant proposes in its route permit application, including a draft route permit application;

B. For a site permit application, the list must include landowners whose property is on or adjacent to any site the applicant proposes in its site permit application, including a draft site permit application;

C. For either a site or a route permit application, the list must be in a format that makes the list capable of being sorted both alphabetically by last name and by zip code; and

D. For either a site or route permit application, the list must be updated to include each landowner whose property is adjacent to a site or along a route that will be considered in either the scope of the environmental impact statement under part 7850.2530 or the scope of the environmental assessment under 7850.3730.

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.

PREAPPLICATION PROCEDURES

7850.1620 PREAPPLICATION MEETINGS; TRANSMISSION LINES.

Subpart 1. Meetings required. Prior to filing a draft route permit application under part 7850.1640, an applicant must hold a public outreach meeting concerning routes that are under active consideration by the applicant, including routes the applicant intends to propose in its route permit application. The applicant must hold at least one public outreach meeting in each county where a high voltage transmission line route would be located.³

Subp. 2. Notice. At least ten days prior to each meeting held, the applicant must notify the commission and the department of the date, time, and location of the meeting. The applicant must

³ Public meetings held only by applicant are insufficient. Public advisor or other commission staff should be at meetings. Public must be informed at these initial meeting how to affect route and site selection process, role of advisor, ability to request advisory task force, and need to propose alternatives with days of a scoping hearing.

also mail, at least ten days prior to each meeting, notice of the meeting to landowners whose property is along a route identified under subpart 1. Notice to landowners must include the date, time, and location of each meeting.

Subp 3. **Public input.** At each public outreach meeting held, an applicant must provide the following:

A. maps or other written materials that identify and describe each route;

B. contact information for the commission, including the mailing address, the email address, and how to contact the commission's public advisor; and

C. an opportunity for members of the public to offer oral or written comments on the proposed project.

Subp. 4. **Meeting summary.** An applicant must prepare a summary of each public outreach meeting held and comments received and must consider all comments received in deciding which routes to include in its draft application filed under part 7850.1640.⁴

7850.1630. NOTICE OF INTENT TO FILE.

At least 90 days before filing a site or route permit application with the commission, an applicant must notify local units of government of the intended project, as required under Minnesota Statutes, section 216E.03, subd. 3a. This requirement does not apply to projects eligible for alternative review under Minnesota Statutes, section 216E.04.

7850.1640. DRAFT PERMIT APPLICATION REQUIRED.

Subpart 1. **Draft permit application.** At least 45 days prior to filing a site or route permit application with the commission, an applicant must file a draft permit application with the commission. At the time of filing, the applicant must request a docket number for the proposed project.

Subp. 2. **Draft site permit for LEPGP.** A draft site permit application must contain the following information:

A. a statement of proposed ownership of the proposed LEPGP;

B. the name of any permittee and the name of any other person to whom the permit would be transferred if transfer of the permit is contemplated;

C. each proposed site for the proposed LEPGP;

D. a description of the proposed LEPGP, including the size and type of the facility, and all associated facilities;

⁴ Applicant summary must include any written comments received or alternatives proposed.

- E. the environmental information required under subpart 4;
- F. the name of each person who owns property within each proposed site;
- G. the engineering and operational design of the LEPPG at each of the proposed sites;
- H. a cost analysis of the LEPPG at each proposed site, including the costs of constructing and operating the facility, considering the facility's design;
- I. an engineering analysis of each of the proposed sites, including how each site could accommodate expansion of generating capacity in the future;
- J. identification of transportation, pipeline, and electrical transmission systems that will be required to construct, maintain, and operate the facility;
- K. a listing and brief description of federal, state, and local permits that may be required for the project at each proposed site;
- L. United States Geological Survey topographical maps or other maps showing the entire proposed project area;
- M. a proposed application notice that includes the notice content requirements under part 7850.2100, subp. 2;
- N. if the project is eligible for alternative review under part 7850.2800, a statement by the applicant confirming whether the applicant elects to follow the alternative review process, and if so, whether the applicant recommends that an administrative law judge be assigned to the case to prepare a report with findings, conclusions, and a recommendation;
- O. whether the applicant intends to file both a certificate of need application and a site permit application, or intends to file multiple applications, and if so, whether the applicant intends to request that joint proceedings be held on the applications under part 7850.2140;
- P. the name of each zoning authority with responsibility over each property within each proposed site and the present zoning classification of the property;
- Q. whether the applicant intends to waive its right to exercise eminent domain; and
- R. if the applicant is retaining the option to exercise eminent domain:
 - (1) the percentage of property within each proposed site that the applicant has obtained under contract; and
 - (2) the percentage of contiguous land within each proposed site that is subject to a fee interest by condemnation under Minnesota Statutes, section 216E.12, subd. 4.

Subp. 3. Draft route permit for HVTL. A draft route permit application must contain the following information:

A. a statement of proposed ownership of the facility as of the day of filing and after commercial operation;

B. the name of each permittee and the name of any other person to whom the permit would be transferred if transfer of the permit is contemplated;

C. each proposed route for the proposed HVTL;

D. a description of the proposed HVTL and all associated facilities including the size and type of the high voltage transmission line;

E. the environmental information required under subpart 4;

F. identification of land uses and environmental conditions along each proposed route;

G. the name of each person who owns property within any of the proposed routes;

H. United States Geological Survey topographical maps or other maps showing the entire length of the HVTL on all proposed routes;

I. identification of existing utility and public rights-of-way along or parallel to the proposed routes that have the potential to share the right-of-way with the proposed line;

J. the engineering and operational design concepts for the proposed HVTL, including information on the electric and magnetic fields of the transmission line;

K. cost analysis of each route, including the costs of constructing, operating, and maintaining the high voltage transmission line, considering the line's design;

L. a description of possible design options to accommodate expansion of the HVTL in the future;

M. the procedures and practices proposed for the acquisition and restoration of the right-of-way, construction, and maintenance of the HVTL;

N. a listing and brief description of federal, state, and local permits that may be required for the proposed HVTL;

O. a summary of transmission planning that concluded that the project is necessary, including its history of presentation in Minnesota Biennial Transmission Plans and Midcontinent Independent System Operator Transmission Expansion Plans;

P. a list of the date, time, and location of each public pre-application meeting schedule to held by the applicant, or for each public pre-application meeting held, a summary of comments received;

Q. a proposed application notice that includes the notice content requirements under part

7850.2100, subp. 2;

R. any differences between the list of landowners who received notice of the applicant's certificate of need application under part 7849.0130 and the list of landowners to whom the applicant will mail notice of its draft route permit application under part 7850.1640;

S. if the project is eligible for alternative review under part 7850.2800, a statement by the applicant confirming whether the applicant elects to follow the alternative review process, and if so, whether the applicant recommends that an administrative law judge be assigned to the case to prepare a report with findings, conclusions, and a recommendation;

T. whether the applicant intends to file both a certificate of need and a route permit application, or multiple permit applications, and if so, whether the applicant intends to request that joint proceedings be held on the applications under part 7850.2140;

U. whether the applicant intends to waive its right to exercise eminent domain; and

V. if the applicant is retaining the option to exercise eminent domain:

(1) the percentage of property within each proposed route that the applicant has obtained under contract; and

(2) for a HVTL with capacity of 200 kilovolts or more, the percentage of contiguous land within each proposed route that is subject to a fee interest by condemnation under Minnesota Statutes, section 216E.12, subd. 4.

Subp. 4. **Environmental information.** Each draft site or draft route permit application must contain the following information:

A. a description of the environmental setting for each site or route;

B. a description of the effects of construction and operation of the facility on human settlement, including, but not limited to, public health and safety, displacement, noise, aesthetics, socioeconomic impacts, cultural values, recreation, and public services;⁵

C. a description of the effects of the facility on land-based economies, including agriculture, forestry, tourism, and mining;

D. a description of the effects of the facility on archaeological and historic resources;

E. a description of the effects of the facility on the natural environment, including effects on air and water quality resources and flora and fauna;

F. a description of the effects of the facility on rare and unique natural resources;

G. identification of human and natural environmental effects that cannot be avoided if a specific site or route is approved; and

⁵ Item B must include "electric and magnetic fields."

H. a description of measures that might be implemented to mitigate the potential human and environmental impacts identified in items A to G and the estimated costs of such mitigative measures.

7850.1650. NOTICE OF DRAFT APPLICATION.

Subpart 1. **Notice recipients.** The applicant must mail written notice of the draft permit 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. 2. **Notice content.** The notice sent under subpart 1 must contain the following information:

- A. the name of the applicant;
- B. a statement that a draft permit application has been filed with the commission;
- C. a statement that the applicant is required by the commission to mail the notice and that the commission will solicit comments on the draft application from interested persons;
- D. a statement explaining how to obtain a copy of the draft permit application;
- E. the commission's contact information, including physical address, phone number, and e-mail address;
- F. a statement that the applicant could exercise the power of eminent domain under Minnesota Statutes, section 216E.12 to acquire land necessary for the project, along with the phrase, "your property could be in the final route selected"; and
- G. the date on which the applicant intends to file its completed application with the commission.

Subp. 3. **Filing with commission.** The applicant must file a copy of the notice with the commission at the time the applicant mails the notice.

7850.1680. COMMENTS AND PROCESS.

Subpart 1. **Comments.** The commission must request comments on the completeness of the draft application and on whether the commission should appoint an advisory task force for the proceeding under part 7850.2400.

Subp. 2. **Notice of comment period.** The commission must mail notice of the comment period to the general list, the project contact list, the public agency contact list, the landowner list, and the local and tribal government list. Initial comments must be filed within 21 days of the notice. Reply comments must be filed within 10 days of the expiration of the initial comment period. If the commission appoints an advisory task force, the commission must determine the charge of the task force under part 7850.2400.

Subp. 3. **Process Schedule.** Upon receipt of a draft permit application, commission staff must consult with the department and the applicant to set a proposed schedule for completing the permitting process within applicable statutory deadlines and must make the schedule available in the commission's electronic filing system.⁶ If an application includes a request by the applicant that joint proceedings be held on either multiple permit applications or on both a certificate of need and a permit application, the commission must set a schedule at the time the commission determines whether to hold joint proceedings under part 7850.2140.

Subp. 4. **Application Process.** After completing the draft application requirements, an applicant intending to proceed with the permitting process must follow the procedures for filing an application under rule parts 7850.1700 to 7850.1900.

FILING REQUIREMENTS

7850.1700 PERMIT APPLICATION UNDER FULL PERMITTING PROCESS AND MANNER OF FILING.⁷

Subpart 1. **Filing of application for permit.** A person seeking a site permit or route permit for a large electric power generating facility under this chapter must file three copies of the application for the permit with the PUC commission. Upon acceptance of the application, the commission will advise the applicant of how many copies of the application must be submitted to the PUC. The applicant must serve copies of the application on the department and the Office of the Attorney General. It must also provide copies of the application to the public agency contact list and the general list. An applicant subject to the electronic filing requirements contained in Minn. Stat. § 216.17, subd. 3, must follow those filing procedures.

Subp. 2. **Electronic copy.** A person filing an application for a site permit or route permit shall provide the PUC with an electronic version of the application suitable for posting on the PUC's Web page.

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

⁶ Schedule should be set after application is filed and determined to be complete. Until then, onus should only be on applicant to move schedule forward. There may be months between a draft application and the filing of an application.

⁷ There appears to be no notice and no request for comments before a decision is made on whether an application is complete.

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

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7850.1710 APPLICATION COMPLETENESS; SCHEDULE

Subpart. 1. Completeness determination. Within ten days of receipt of an application for a site or a route permit, the commission's executive secretary will determine whether the application is complete and notify the applicant in writing of the decision. ⁸

Subp. 2. Incomplete application. The executive secretary must not find that an application is incomplete if the missing information can be obtained from the applicant within 20 days from the date the application is found to be incomplete and the missing information will not interfere with the public's ability to review the proposed project. If the application is not complete, the executive secretary must set the matter for the earliest possible commission agenda meeting for further 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.

Subp. 3. Joint application. If the commission receives a request from an applicant that joint proceedings be held on multiple permit applications, or on applications filed under both chapters 7849 and 7850, joint proceedings will not begin until after the executive secretary determines that all applications are complete.

Subp. 4. Process schedule update. At the time the executive secretary makes a determination on completeness, staff must, after consulting the department and the applicant, update the process schedule with any changes, considering the applicable statutory deadlines for completing the permitting process. The updated schedule must be sent to the department and the applicant and be made available to the public upon request. ⁹

Subp. 5. Statutory deadline; extension. If, during the proceedings, the commission determines that the deadline for making a final decision on a permit application will not be met, the commission may extend the deadline under Minnesota statutes, section 216E.03, subd. 9, or section 216E.04, subd. 7.

7850.1800 PERMIT FEES.

Subpart 1. **Requirement.** An applicant for a site permit or route permit shall ~~must~~ pay a fee to the department in accordance with Minnesota Statutes, section 216E.18. The estimated fee for processing the permit application must be determined at the time an application is filed and in accordance with Minnesota Statutes, section 216E.18.

⁸ Proposed rules should provide opportunity for public comment that an application is incomplete or request for commission review of completeness. May require more than 10 days.

⁹ Schedule should be set and public notice provided at the time completeness is determined.

Subp. 2. **Initial payment.** The applicant ~~shall~~ must submit with the application 25 percent of the total estimated fee, or up to 50 percent of the total estimated fee if the commission determines that the additional percentage is reasonably necessary to complete the site evaluation and design process. The commission ~~shall~~ must not process a permit application until the first portion of the fee is submitted. The PUC department shall must deposit all money received from the applicant for permit fees in a special account and notify the commission at the time of receipt of the application if payment has not been made.

Subp. 3. **Additional payments.** The applicant ~~shall~~ must pay an additional 25 percent of the fee within 90 days after the application has been accepted by the commission. Additional payments must be made within 30 days of notification by the commission that additional fees are necessary for completion of the permitting process. The department must notify the commission at the time of the final decision on a permit if any assessed fees have not been paid. The commission ~~shall~~ must not make a final decision on a permit application if any assessed fees have not been paid.

Subp. 4. **Final accounting.** At the end of the permitting process, including any judicial review of the commission's final decision, the PUC department shall must provide a final accounting to the commission and the applicant of the total cost of processing the permit application. The applicant may review all actual costs associated with processing an application and present objections to the commission. The application fees paid by the applicant ~~shall~~ must include the necessary and reasonable expenses incurred in processing the application, including, but not limited to, staff time, expenses for public notice and meetings and hearings, environmental review, administrative overhead, and legal expenses. The applicant ~~shall~~ must make the final payment within 30 days of notification or the PUC department shall refund any excess payments with 30 days of the final accounting.

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

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7850.1900 APPLICATION CONTENTS.

Subpart 1. **Site permit for LEPGP.** ~~An application for a site permit for a large electric power generating plant must contain the following information:~~

- ~~A. a statement of proposed ownership of the facility as of the day of filing and after commercial operation;~~
- ~~B. the precise name of any person or organization to be initially named as permittee or permittees and the name of any other person to whom the permit may be transferred if transfer of the permit is contemplated;~~
- ~~C. at least two proposed sites for the proposed large electric power generating plant and identification of the applicant's preferred site and the reasons for preferring the site;~~
- ~~D. a description of the proposed large electric power generating plant and all associated facilities, including the size and type of the facility;~~
- ~~E. the environmental information required under subpart 3;~~
- ~~F. the names of the owners of the property for each proposed site;~~
- ~~G. the engineering and operational design for the large electric power generating plant at each of the proposed sites;~~

~~H. a cost analysis of the large electric power generating plant at each proposed site, including the costs of constructing and operating the facility that are dependent on design and site;~~

~~I. an engineering analysis of each of the proposed sites, including how each site could accommodate expansion of generating capacity in the future;~~

~~J. identification of transportation, pipeline, and electrical transmission systems that will be required to construct, maintain, and operate the facility;~~

~~K. a listing and brief description of federal, state, and local permits that may be required for the project at each proposed site; and~~

~~L. a copy of the Certificate of Need for the project from the Public Utilities Commission or documentation that an application for a Certificate of Need has been submitted or is not required.~~

An application for a site permit must include at least two proposed sites, unless the applicant intends to propose a project that is eligible for alternative review under Minnesota Statutes, section 216E.04, in which case the applicant is not required to propose more than one site. An application for a site permit must include the information required for a draft site permit application under part 7850.1640, as well as the following:

A. each proposed site, which must not overlap with any other proposed site;

B. whether a proposed site is intended to mitigate potential impacts of any other proposed site;

C. for all proposed projects, including those eligible for alternative review under part 7850.27800, each site the applicant has considered and rejected and the reasons for rejecting it;

D. any change to a project affecting whether the project is eligible for alternative review under part 7850.2800;

E. a description of any change made to the information filed in the draft application and the reason for the change;

F. the location of each public library where the application is available to the public; and

G. the location of each government center where the application is available to the public.

Subp. 2. Route permit for HVTL. ~~An application for a route permit for a high voltage transmission line shall contain the following information~~ An application for a route permit must include at least two proposed routes, unless the applicant intends to propose a project that is eligible for alternative review under Minnesota Statutes, section 216E.04, in which case the applicant is not required to proposed more than one route. A route permit application must include the information required for a draft route permit application under part 7850.1640, as well as the following:

~~A. a statement of proposed ownership of the facility at the time of filing the application and after commercial operation;~~

~~B. the precise name of any person or organization to be initially named as permittee or permittees and the name of any other person to whom the permit may be transferred if transfer of the permit is contemplated;~~

~~C. at least two proposed routes for the proposed high voltage transmission line and identification of the applicant's preferred route and the reasons for the preference;~~

~~D. a description of the proposed high voltage transmission line and all associated facilities including the size and type of the high voltage transmission line;~~

~~E. the environmental information required under subpart 3;~~

~~F. identification of land uses and environmental conditions along the proposed routes;~~

~~G. the names of each owner whose property is within any of the proposed routes for the high voltage transmission line;~~

~~H. United States Geological Survey topographical maps or other maps acceptable to the commission showing the entire length of the high voltage transmission line on all proposed routes;~~

~~I. identification of existing utility and public rights of way along or parallel to the proposed routes that have the potential to share the right of way with the proposed line;~~

~~J. the engineering and operational design concepts for the proposed high voltage transmission line, including information on the electric and magnetic fields of the transmission line;~~

~~K. cost analysis of each route, including the costs of constructing, operating, and maintaining the high voltage transmission line that are dependent on design and route;~~

~~L. a description of possible design options to accommodate expansion of the high voltage transmission line in the future;~~

~~M. the procedures and practices proposed for the acquisition and restoration of the right of way, construction, and maintenance of the high voltage transmission line;~~

~~N. a listing and brief description of federal, state, and local permits that may be required for the proposed high voltage transmission line; and~~

~~O. a copy of the Certificate of Need or the certified HVTL list containing the proposed high voltage transmission line or documentation that an application for a Certificate of Need has been submitted or is not required.~~

A. each proposed route;

B. a list of proposed routes labeled alphabetically in text and maps;

C. each route the applicant has considered and rejected and the reasons for rejecting it, whether or not the project is eligible for alternative review under part 7850.2800;

D. any change to a project affecting whether the project is eligible for alternative review under part 7850.2800;

E. a description of any change made to the information filed in the draft application and the reason for the change;

- F. the location of each library where the application is available to the public;
- and
- G. the location of each government center where the application is available to the public.

Subp. 3. **Environmental information.** ~~An applicant for a site permit or a route permit shall include in the application the following environmental information for each proposed site or route to aid in the preparation of an environmental impact statement: An application must include the information required for a draft site application under part 7850.1650 and must identify any change made to the information filed in the draft application.~~

- ~~A. a description of the environmental setting for each site or route;~~
- ~~B. a description of the effects of construction and operation of the facility on human settlement, including, but not limited to, public health and safety, displacement, noise, aesthetics, socioeconomic impacts, cultural values, recreation, and public services;~~
- ~~C. a description of the effects of the facility on land-based economies, including, but not limited to, agriculture, forestry, tourism, and mining;~~
- ~~D. a description of the effects of the facility on archaeological and historic resources;~~
- ~~E. a description of the effects of the facility on the natural environment, including effects on air and water quality resources and flora and fauna;~~
- ~~F. a description of the effects of the facility on rare and unique natural resources;~~
- ~~G. identification of human and natural environmental effects that cannot be avoided if the facility is approved at a specific site or route; and~~
- ~~H. a description of measures that might be implemented to mitigate the potential human and environmental impacts identified in items A to G and the estimated costs of such mitigative measures.~~

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

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7850.2000 APPLICATION REVIEW.

Subpart 1. **Review by commission.** ~~Within ten working days of receipt of an application for a site permit or a route permit, the commission shall determine whether the application is complete and notify the applicant in writing of the acceptance or rejection of the application. If the commission rejects an application, the commission shall advise the applicant of the deficiencies in the application.~~

Subp. 2. **Resubmission of rejected application.** ~~If the commission should reject an application, an applicant may decide to address the deficiencies identified by the commission and resubmit the application with additional information. In this event, the commission shall again review the application within ten days and determine whether the application is complete and advise the applicant of the commission's determination.~~

~~Subp. 3. **Reasons for rejection.** The commission shall not reject an application if the information that is missing can be obtained from the applicant within 60 days from the date of the application and the lack of the information will not interfere with the public's ability to review the proposed project.~~

~~Subp. 4. **Schedule.** The date of the commission's determination that an application is complete marks the start of the schedule for the commission to make a final decision on a permit application.~~

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

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7850.2100 PROJECT NOTICE OF APPLICATION.

~~Subpart 1. **Notification lists.** The PUC shall maintain the notification lists described in items A and B.~~

~~A. The PUC shall maintain a project contact list for each project for which an application for a permit has been accepted. The project contact list must contain the names of persons who want to receive notices regarding the project. Any person may request to have that person's name or an organization's name included on a project contact list. The PUC may add a person's name to the list if the PUC believes the person would like to receive notices about the particular project. The PUC shall provide an applicant with the project contact list upon request.~~

~~B. The PUC shall maintain a project contact list for each project for which an application for a permit has been accepted. The project contact list must contain the names of persons who want to receive notices regarding the project. Any person may request to have that person's name or an organization's name included on a project contact list. The PUC may add a person's name to the list if the PUC believes the person would like to receive notices about the particular project. The PUC shall provide an applicant with the project contact list upon request.~~

~~Subp. 2. Subpart 1. **Notification to persons on general list, to local officials, and to property owners.** Within 15 days after submission of an application, the applicant shall must mail written notice of the submission to the following people:¹⁰~~

~~A. those persons whose names are on the general list maintained by the PUC for this purpose;~~

~~B. each regional development commission, county, incorporated municipality, and township in which any part of the site or route or any~~

¹⁰ This proposes that an applicant need not provide notice that an application has been filed until *after a completeness decision is made* since notice is within 15 days and completeness decision made within 10 days. This completely forecloses public review.

~~alternative is proposed to be located; and~~

~~C. each owner whose property is adjacent to any of the proposed sites for a large electric power generating plant or within any of the proposed routes for a high voltage transmission line. For purposes of giving notice under this item, owners are those persons shown on the records of the county auditor or, in any county where tax statements are mailed by the county treasurer, on the records of the county treasurer, or any other list of owners approved by the commission.~~

A. the general list;

B. the project contact list;

C. the public agency contact list;

D. the landowner list;

E. the tribal and local government contact list by certified mail; and

F. for a utility, the general service list maintained under part 7829.0600;

Subp. 32. **Content of notice.** The notice mailed under subpart 2 ~~shall~~ must contain the following information:

A. a description of the proposed project, including a map showing the general area of the proposed site or proposed route and each alternative;

B. a statement that a permit application has been submitted to the PUC commission, the name of the permit applicant, and information regarding how a copy of the application may be obtained

C. a statement that the permit application will be considered by the PUC commission under the provisions of parts 7850.1000 to 7850.5600 and the Power Plant Siting Act and describing the time periods for the PUC commission to act;

~~D. a statement that the PUC will hold a public meeting within 60 days and the date of the meeting if it is known at the time of the mailing;~~

~~E. the manner in which the PUC will conduct environmental review of the proposed project, including the holding of a scoping meeting at which additional alternatives to the project may be proposed;~~

~~F. the name of the PUC staff member who has been appointed by the commission to serve as the public advisor, if known, or otherwise, a general contact at the PUC;~~

G. the manner in which persons may register their names with the PUC commission on the project contact list and how to subscribe to the case using the

commission's electronic filing system;

~~H. a statement that a public hearing will be conducted after the EIS is prepared;~~¹¹

I. a statement indicating whether a certificate of need or other authorization from the Public Utilities Commission is required for the project and the status of the matter if such authorization is required; and

J. a statement ~~indicating whether~~ that the applicant ~~may~~ could exercise the power of eminent domain under Minnesota Statutes, 216E.12, to acquire the land necessary for the project, along with the phrase, "your property could be in the final route selected". ~~and the basis for such authority; and.~~

~~K. any other information requested by the commission to be included in the notice.~~

Subp. 4-3. **Publication of Newspaper notice.** Within 15 days after submission of an application, the applicant ~~shall~~ must publish notice in a legal newspaper of general circulation in each county in which a site, route, or any alternative is proposed to be located that an application has been submitted and a description of the proposed project. The notice must also state where a copy of the application may be reviewed.

Subp. 5 4. **Confirmation of notice. Compliance filing.** Within 30 days after providing the requisite notice, the applicant ~~shall~~ must ~~submit to the PUC documentation that all notices required under this part have been given~~ make a filing with the commission demonstrating compliance with these notice requirements. The applicant ~~shall document the giving of the notice by providing the PUC with~~ filing must include affidavits of publication or mailing and copies of the notice provided.

Subp. 6 5. **Failure to give notice.** The failure of the applicant to give the requisite notice does not invalidate any ongoing permit proceedings provided the applicant has made a bona fide attempt to comply, although the commission may extend the time for the public to participate if the failure has interfered with the public's right to be informed about the project.

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

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7850.2110 COMMENTS ON APPLICATION.

¹¹ Existing notifications in rule (Items D, E, F, H) should be retained, except for the Item D time limit of "60 days," in order to give citizens a sense of when and how they can participate and who to contact at the commission to learn more about the process. Otherwise, under the proposed 7050.2300, citizens would only have 10 days to learn about an upcoming scoping meeting that would decide alternatives and the impacts and mitigation measures to be studied in environmental review.

Subpart 1. **Notice.** The commission must request comments on the application and whether there are any changes from the draft permit application relevant to record development. The notice must also request comment on whether the case should be referred to the office of administrative hearings for contested case proceedings or whether the case should be developed using the alternative review procedures part 7850.3800.¹² The notice must be sent to the project contact list. Initial comments must be filed within 20 days of the date of the notice. Reply comments must be filed within 14 days of the expiration of the initial comment period.

Subp. 2. **Agency participation.** Comments filed into the commission's electronic filing system by the department or the commission on behalf of another state or a federal agency participating in the process must appear as "on behalf of" the agency that authored the comments.

7850.2120 COMMISSION REFERRAL. After the close of reply comments, the commission must issue a notice of and order for hearing referring the case to the Office of Administrative Hearings for contested case proceedings, unless the project is an eligible project under part 7850.2800.

7850.2140 JOINT PROCEEDINGS. If the commission receives an application requesting that the commission conduct concurrent review of multiple permit applications, or on applications filed under both chapters 7849 and 7850, the commission must determine whether to hold joint proceedings, and set a process schedule, considering the following:

- A. whether to hold joint public information and scoping meetings;
- B. whether to hold joint public hearings; and
- C. whether to hold joint proceedings to develop the record.

PUBLIC PARTICIPATION

7850.2200 PUBLIC ADVISOR.

Upon acceptance of an application for a site or route permit, the commission ~~shall~~ must designate a staff person to act as the public advisor on the project. The public advisor must be available to answer questions from the public about the permitting process. The public advisor ~~shall~~ must not give legal advice or other advice that may affect the legal rights of the person being advised, and the public advisor ~~shall~~ must not act as an advocate on behalf of any person.

Statutory Authority: *MS s 116C.66; 216E.16*

¹² The commission notice on the application should repeat the request for comments on whether an advisory task force should be appointed, unless that decision has already been made. There is also a typo -- the alternative review process is in 7850.2800, not 7850.3800.

History: 27 SR 1295; L 2005 c 97 art 3 s 19

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7850.2300 PUBLIC INFORMATION AND SCOPING MEETING.

Subpart 1. **Scheduling public information and scoping meeting.** ~~Upon acceptance of an~~ For each site or route permit application ~~for a site or route permit~~ filed under this chapter, the commission and the department shall ~~must~~ schedule a public information and scoping meeting to provide information to the public about the proposed project and to answer questions and to scope the environmental impact statement ~~or the environmental assessment~~. The ~~public~~ meeting must be held ~~no later than 60 days after acceptance of the application~~ consistent with the process schedule. The public meeting must be held in a location that is convenient for persons who live near the proposed project.

Subp. 2. **Notice of public meeting.** ~~The PUC shall give at least ten days' notice of the public meeting by mailing notice to persons whose names are on the project contact list maintained pursuant to part 7850.2100, subpart 1. The PUC~~ At least 14 days before the public information and scoping meeting, the applicant shall ~~also~~ ~~must~~ publish notice of the public meeting in a at least one legal newspaper of general circulation ~~in the area~~ that is nearest to where the project is proposed to be located. Within ten days after receiving all affidavits of publication, the applicant must file a copy of each affidavit with the commission. If appropriate, the PUC commission may request the applicant to include notice of the public meeting in the notice to be provided by the applicant pursuant to part 7850.2100. At least 10 days before the meeting, the commission must mail notice of the meeting to the following:¹³

- A. the project contact 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 sent under subpart 2 above must include the following:

- A. a statement that a permit application has been submitted to the commission, the name of the permit applicant, and information on how to access a copy of the application;
- B. a statement that the commission and the department intend to hold a public information and scoping meeting;
- C. the date, time, and location of each scheduled meeting;
- D. a description of the proposed project, including a map showing the general area of the proposed site or proposed route and each alternative;

¹³ Should require more notice (30 days) before this critical scoping meeting.

E. a statement that the permit application will be considered by the commission under the provisions of parts 7850.1000 to 7850.5600 and the Act and describing the time periods for the commission to act;

F. a statement that the department will direct the portion of the meeting that includes scoping;

G. the manner in which the department will conduct environmental review of the proposed project, including a statement that alternatives not identified in the scoping process could be excluded from later analysis;¹⁴

H. the name of and contact information for the commission's public advisor and a description of the public advisor's role;

I. the manner in which persons may register their names with the commission on the project contact list or how to register with the commission's electronic filing system;

J. a statement that a public hearing will be conducted after completion of either the draft EIS or the EA and that separate notice of the hearing will be sent to all persons receiving the notice;

K. a statement explaining whether a certificate of need or other authorization from the commission is required for the project and the status of the matter if such authorization is required;

L. the manner in which a person can access or receive a copy of the commission's referral of the case to the Office of Administrative Hearings; and

M. a statement notifying landowners and that the applicant could exercise the power of eminent domain under Minnesota Statutes, 216E.12, to acquire land necessary for the project, along with the phrase, "your property could be in the final route selected."

Subp. 3 4. **Conduct of public meeting.** ~~The commission shall appoint a person, who may be a PUC staff person, to conduct the public meeting.~~ The public meeting must be conducted in an informal manner designed to encourage public participation. The public must be afforded an opportunity to present comments and ask questions. ~~The PUC shall make available at the public meeting a copy of the application and other pertinent documents in the PUC files regarding the application.~~ The staff ~~shall~~ must explain the permitting process to the persons in attendance. A transcript of the meeting need not be maintained, although the ~~PUC commission~~ may elect to keep an audio recording of the meeting. The scoping portion of the meeting will be conducted by the department as described in parts 7850.2500 and 7850.3700.

Subp. 4 5. **Applicant role.** The applicant ~~shall~~ must provide representatives at the public meeting who are capable of answering general questions about the proposed project. The applicant must also make its application available at the meeting or provide in writing the electronic link to

¹⁴ Needs to be more clear – e.g. “alternatives not identified in the scoping meeting or within 10 days after that meeting are likely to be excluded.” “Process” sounds like there is additional time.

the application.

~~Subp. 5. EIS scoping. At the public meeting, the public must be provided an opportunity to comment on the scope of the environmental impact statement in accordance with part 7850.2500.~~

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

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7850.2400 CITIZEN ADVISORY TASK FORCE.

Subpart 1. **Authority.** The commission has the authority to appoint a citizen advisory task force.¹⁵ ~~The commission shall~~ must determine whether to appoint such a task force as early in the process as possible. ~~The commission shall~~ must establish the size of the task force and appoint its members in accordance with Minnesota Statutes, section 216E.08¹⁶. ~~The commission shall advise of the appointment of the task force at the next monthly commission meeting.~~¹⁷

Subp. 2. **Commission decision.** If the commission decides not to appoint a citizen advisory task force and a person would like such a task force appointed, the person may request that the commission create a citizen advisory task force and appoint its members. Upon receipt of such a request, the commission ~~shall~~ must place the matter on the agenda for the next regular ~~monthly~~ commission meeting.

Subp. 3. **Task force responsibilities.** Upon appointment of a citizen advisory task force, the commission ~~shall~~ must specify in writing the charge to the task force. The charge ~~shall~~ must include the identification of additional sites or routes or particular impacts ~~to be~~ that are recommended for either evaluated evaluation in the environmental impact statement. The commission may establish additional charges, including a request that the task force express a preference for a specific site or route if it has one. The department must file a report with the commission summarizing the work of the task force.¹⁸

Subp. 4. **Termination of task force.** The task force expires upon completion of its charge, designation by the commission of alternative sites or routes ~~to~~ that will be either included in the environmental impact statement or developed in any subsequent hearing held on the proposed

¹⁵ Should include a standard, such as “The commission has the authority to appoint a citizen advisory task force to develop the record on alternative sites or routes and assist with scoping for environmental review.”

¹⁶ Should specifically require citizens in compliance with Minn. Stat. §216E.08, Subp. 2, e.g. as follows, “The commission must establish the size of the task force and appoint its members, including a broad spectrum of citizen participants, in accordance with Minnesota Statutes, section 216E.08.”

¹⁷ Retain existing rule language or provide another method by which the decision will be communicated.

¹⁸ Provide a time for filing of report – it is not useful unless filed upon completion of task force meetings. Provide simple content requirement for the report – it should include “all routes, sites, and impacts identified and those recommended for evaluation.”

project, or upon the specific date identified by the commission in the charge, whichever occurs first.

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

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FULL PERMITTING PROCESS

7850.2450 FULL PERMITTING PROCESS.

Parts 7850.2500 to 7850.2700 apply to all proposed projects not eligible for alternative review under part 7850.2800.

7850.2500 EIS PREPARATION.

Subpart 1. **EIS required.** ~~The commissioner of the Department of Commerce shall~~ must prepare an environmental impact statement on each proposed large electric power generating plant and high voltage transmission line for which a permit application has been accepted ~~by the commissioner.~~

Subp. 2. **Scoping process.** ~~The commissioner of the Department of Commerce shall provide the public with an opportunity to participate in the development of the scope of the environmental impact statement by holding a public meeting and by soliciting public comments. The public meeting required under part 7850.2300 satisfies the requirement to hold a scoping meeting. The commissioner shall provide a period of at least seven days from the day of the public meeting for the public to submit comments on the scope of the EIS. The commissioner shall determine the scope of the environmental impact statement as soon after holding the public meeting as possible. Within five days after the decision, the commissioner shall mail notice of the scoping decision to those persons whose names are on either the general list or the project contact list. Once the commissioner has determined the scope of the environmental impact statement, the scope must not be changed except upon decision by the commissioner 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. At the public information and scoping meeting held under part 7850.2300, the department will conduct the scoping portion of the meeting. At the meeting, the department must provide the public with an opportunity to participate in the development of the scope of the environmental impact statement by soliciting public comments. Members of the public must be provided the opportunity to comment on the scope of the EIS, including environmental factors, and to submit supporting documentation.~~ The applicant must be provided an opportunity to respond to public input.

Subp. 3. **Alternative sites or routes.** During the public information and scoping process meeting, a person may suggest alternative sites or routes to evaluate in the environmental impact statement. A person desiring that a particular site or route be evaluated shall submit to must explain orally or in writing to the commissioner of the Department of Commerce, during the scoping process, an explanation of why the site or route should be included in the environmental impact

statement and provide any other 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 an alternative be included in the environmental impact statement and must ask the applicant to address the feasibility of each recommended alternative. The commissioner t shall include the suggested site or route in the scope of the environmental impact statement only if the commissioner determines that evaluation of the proposed site or route will assist in the commissioner's decision on the permit application.

Subp. 4. Comment period. The department must provide a ten-day comment period following the close of the meeting to allow interested persons an opportunity to submit written comments on the scope of the EIS.¹⁹

7850.2520 NOTICE TO COMMISSION.

The department must notify the commission, prior to filing its scoping decision under part 7850.2530 below, of the alternatives the department intends to include in the scope of the EIS. **Commission consideration of the department's proposed alternatives** must be completed by the time of the commission's decision on record development under part 7850.2120. The department must include in the scope of the EIS any alternative identified by the commission.

7850.2530. SCOPING DECISION.

Subpart. 4-1. **Scope of EIS.** The scoping process must be used to reduce the scope and bulk of an environmental impact statement by identifying the potentially significant issues and alternatives requiring analysis and establishing the detail into which the issues will be analyzed. The department must include the suggested site or route in the scope of the environmental impact statement only if the department determines that evaluation of the proposed site or route will assist in the commission's decision on the permit application.

The scoping decision by the commissioner of the Department of Commerce shall must at least address the following:

- (A) the issues to be addressed in the environmental impact statement;
 - (B) the alternative sites and routes to be addressed in the environmental impact statement;
- and
- (C) the schedule for completion of the environmental impact statement.

Subp. 2. Filing with commission. The department must complete and file with the commission its scoping decision consistent with the process schedule.

Subp. 3. Notice of decision. Within five days after filing the scoping decision with the

¹⁹ Increase notice to public of upcoming scoping meeting as noted previously. Also provide 20 days after meeting for comments on scope of EIS. Note that this anticipates that citizens will provide routes, sites and supporting information.

commission, the department must provide notice of the scoping decision to the project contact list, the public agency contact list, the landowner list, and the local and tribal government list.

Subp. 4. **Changes to scoping decision.** Once the department has determined the scope of the environmental impact statement, the scope must not be changed except upon decision by the department 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.²⁰

7850.2540 SUPPLEMENTAL FILING BY APPLICANT.

Subpart 1. **Supplemental filing.** If the commission determines that a route not proposed by the applicant will be examined in addition to the applicant's proposed routes, the applicant must file additional information on each alternative to support equivalent comparison of all routes under consideration. The filing must be made consistent with the process schedule.

Subp. 2. **Landowner list.** After the department issues the scoping decision under part 7850.2530, an applicant must update the landowner list to include any landowner, not previously on the list, whose property is adjacent to a site, or along a route, that will be considered in the scope of the EIS.

7850.2550 DRAFT EIS.

Subpart. ~~5~~ 1. **Matters excluded.** When the ~~Public Utilities Commission~~ commission has issued a Certificate of Need for a large electric power generating plant or high voltage transmission line or placed a high voltage transmission line on the certified HVTL list maintained by the commission, the environmental impact statement ~~shall~~ must not address questions of need, including size, type, and timing; questions of alternative system configurations; or questions of voltage.

Subp. ~~6~~ 2. **Draft EIS.** The draft environmental impact statement must be written in plain and objective language. The draft environmental impact statement ~~shall~~ must follow the standard format for an environmental impact statement prescribed in part 4410.2300 to the extent the requirements of that rule are appropriate. The draft EIS must be completed and filed with the commission consistent with the process schedule.

Subp. ~~7~~ 3. **Public review.** Upon completion of the draft environmental impact statement, the ~~commissioner of the Department of Commerce~~ shall must make the document available for public review by placing a copy of the document in a public library or other governmental office in each county where ~~the~~ each proposed site or route project may be located. The ~~commissioner~~ department ~~shall~~ must send mail notice of the availability of the draft environmental impact statement to each person on the landowner list and the project contact list ~~maintained under part~~

²⁰ Does the public have any access to the department's preliminary determination on scoping or opportunity to present information on alternatives to the commission in Part 2520? Subp. 4 should state "once the commission's review of the scope of the EIS are complete and the scoping decision has been filed, the scope must not be changed. . ." to clarify commission authority.

~~7850.2100, subpart 1.~~ The ~~commissioner~~ department ~~shall~~ must also place a notice in the EQB Monitor of the availability of the draft environmental impact statement. The ~~commissioner~~ department ~~shall~~ must post the environmental impact statement on the agency's Web page if possible.

Subp. 8 4. **Informational Environmental review meeting.** The ~~commissioner of the~~ Department of ~~Commerce~~ shall must schedule an ~~informational~~ environmental review meeting to provide an opportunity for the public to comment on the draft environmental impact statement. The meeting must not be held sooner than 20 days after the draft environmental impact statement becomes available. The meeting must be held in a location convenient to persons who live near the proposed project. The ~~commissioner~~ department ~~shall~~ must ~~send~~ mail notice of the ~~informational~~ environmental review meeting to each person on the project contact list maintained under part 7850.2100, subpart 1. The ~~commissioner~~ department ~~shall~~ must also place notice in the EQB Monitor. The ~~informational~~ environmental review meeting may be held just prior to the holding of a contested case hearing on the permit application. The ~~commissioner~~ department ~~shall~~ must hold the record on the environmental impact statement open for receipt of written comments for not less than ten days after the close of the ~~informational~~ environmental review meeting.

Subp. 9. **Final EIS.** The ~~commissioner of the~~ Department of Commerce ~~shall~~ respond to the timely substantive comments received on the draft environmental impact statement consistent with the scoping decision and prepare the final environmental impact statement. The ~~commissioner~~ may attach to the draft environmental impact statement the comments received and its response to comments without preparing a separate document. The ~~commissioner~~ shall publish notice of the availability of the final environmental impact statement in the EQB Monitor and shall supply a press release to at least one newspaper of general circulation in the areas where the proposed sites or routes are located.

Subp. 10. **Adequacy determination.** The Public Utilities Commission shall determine the adequacy of the final environmental impact statement. The ~~commission~~ shall not decide the adequacy for at least ten days after the availability of the final environmental impact statement is announced in the EQB Monitor. The final environmental impact statement is adequate if it:

A. ~~addresses the issues and alternatives raised in scoping to a reasonable extent considering the availability of information and the time limitations for considering the permit application;~~

B. ~~provides responses to the timely substantive comments received during the draft environmental impact statement review process; and~~

C. ~~was prepared in compliance with the procedures in parts 7850.1000 to 7850.5600.~~

If the commission finds that the environmental impact statement is not adequate, the commission shall direct the staff to respond to the deficiencies and resubmit the revised environmental impact statement to the commission as soon as possible.

Subp. 11. **Cost.** The applicant for a site permit or route permit shall pay the reasonable costs of preparing and distributing an environmental impact statement. The costs must not be assessed separately from the assessment under part 7850.1800 unless that assessment is inadequate to cover the commissioner's reasonable costs of considering the permit application.

~~Subp. 12. **Environmental review requirements.** The requirements of chapter 4410 and parts 7849.1000 to 7849.2100 do not apply to the preparation or consideration of an environmental impact statement for a large electric power generating plant or high voltage transmission line except as provided in parts 7850.1000 to 7850.5600.~~

~~**Statutory Authority:** *MS s 116C.66; 116D.04; 216E.16*~~

~~**History:** *27 SR 1295; 28 SR 951; L 2005 c 97 art 3 s 19*~~

~~**Published Electronically:** *October 13, 2009*~~

7850.2570 PUBLIC HEARING.

Subpart. 1. **Hearing.** After the department files a draft EIS, a public hearing must be held on a site or route permit application as required under Minnesota statutes, section 216E.03, subd. 6.

Subp. 2. **Public hearing notice.** Notice of the hearing must be coordinated with the administrative law judge. The commission must give notice of the hearing at least ten days, but not more than 45 days, before the hearing.²¹ The notice must include the following:

A. the time, date, and location of each hearing; and

B. a statement notifying landowners that the applicant could exercise the power of eminent domain under Minnesota Statutes, 216E.12, to acquire land necessary for the project, along with the phrase, “your property could be in the final route selected.”

Subp. 3. **Notice recipients.** The notice must be sent to the project contact list, the public agency contact list, the landowner list, and by certified mail to the local and tribal government 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.

7850.2600 CONTESTED CASE HEARING.

~~Subpart 1. **Hearing.** The PUC shall hold a contested case hearing after the draft environmental impact statement is prepared on all applications for a site permit or a route permit. The hearing must be conducted by an administrative law judge from the Office of Administrative Hearings pursuant to the contested case procedures of Minnesota Statutes, chapter 14. Notice of the hearing must be given in accordance with Minnesota Statutes, section 216E.03, subdivision 6. At least a portion of the hearing must be held in a county where the proposed large electric power generating plant or high voltage transmission line would be located.~~

~~Subp. 2. **Issues.** Once the commission has determined questions of need, including size,~~

²¹ Insufficient notice of hearing on draft EIS. Propose at least 20 days.

~~type, and timing; questions of system configuration; and questions of voltage, those issues must not be addressed in the contested case hearing.~~

~~Subp. 3. **Hearing.** If the commission determines that a hearing to consider both permitting and need issues is feasible, more efficient, and may further the public interest, the commission may decide to hold a hearing. The commission may also elect to hold a joint hearing with other states pursuant to Minnesota Statutes, section 216E.02, subdivision 3.~~

~~Statutory Authority: *MS s 116C.66; 216E.16*~~

~~History: *27 SR 1295; L 2005 c 97 art 3 s 19*~~

~~Published Electronically: *September 18, 2009*~~

7850.2650. FINAL EIS.

Subpart. 9 1. **Final EIS Contents.** ~~The commissioner of the Department of Commerce shall~~ must respond to the timely substantive comments received on the draft environmental impact statement consistent with the scoping decision and prepare the final environmental impact statement. ~~The commissioner~~ department may attach to the draft environmental impact statement the comments received and its response to comments without preparing a separate document.

Subp. 2. Filing and public access. The Final EIS must be completed and filed with the commission consistent with the process schedule.²² ~~The commissioner~~ department ~~shall~~ must publish notice of the availability of the final environmental impact statement in the EQB Monitor and ~~shall~~ must supply a press release, containing an electronic link to the final EIS, to at least one newspaper of general circulation in the areas where the proposed sites or routes are located. At the time the final EIS is filed with the commission, the department ~~shall~~ must certify to the commission the document's compliance with the adequacy factors in part 7850.2700, subp. 3 ~~below~~.

Subp. 3. Public comment. Comments on the final EIS must be filed with the administrative law judge and are due 25 days after the day the final EIS is filed.²³

Subp. 4 4. **Cost.** The applicant for a site permit or route permit ~~shall~~ must pay the reasonable costs of preparing and distributing an environmental impact statement. The costs must not be assessed separately from the assessment under part 7850.1800 unless that assessment is inadequate to cover the ~~commissioner's~~ department's reasonable costs of considering the permit application.

Subp. 4 5. **Environmental review requirements.** The requirements of chapter 4410 and parts 7849.1000 to 7849.2100 do not apply to the preparation or consideration of an environmental impact statement for a large electric power generating plant or high voltage transmission line except as provided in parts 7850.1000 to 7850.5600.

²² Final EIS must be completed and filed “before public and evidentiary hearings are completed and subject to review consistent with the process schedule.”

²³ The 25-day comment period is problematic, especially if the ALJ has set up a process where citizens can ask about the FEIS in the hearing process. Perhaps comments should be due “before the close of the administrative record or within 25 days after filing, whichever comes later.”

7850.2675 PROCEDURE AFTER ADMINISTRATIVE LAW JUDGE REPORT.

Subpart 1. **Parties.** Parties must file exceptions to an administrative law judge's report as required by part 7829.2700.

Subp. 2. **Participating agencies.** A state or federal agency participating in a route or site permit process under this chapter must file final comments in the case within the same time period that exceptions are due for parties under part 7829.2700.

7850.2700 FINAL DECISION.

Subpart 1. **Timing.** The commission ~~shall~~ must make a final decision on a site permit or a route permit application within 60 days after receipt of the report of the administrative law judge. A final decision must be made within one year after the commission's determination that an application is complete. The commission may extend this time limit for up to three months for just cause or upon agreement of the applicant.

Subp. 2. **EIS adequacy.** The commission ~~shall~~ must not make a final decision on a permit until the commission has found the environmental impact statement to be adequate.

Subp. ~~4~~ 3. **Adequacy determination.** The Public Utilities Commission ~~shall~~ must determine the adequacy of the final environmental impact statement. The commission ~~shall~~ must not decide the adequacy for at least ten days after the availability of the final environmental impact statement is announced in the EQB Monitor. The final environmental impact statement is adequate if it:

A. addresses the issues and alternatives raised in scoping to a reasonable extent considering the availability of information and the time limitations for considering the permit application;

B. provides responses to the timely substantive comments received during the draft environmental impact statement review process; and

C. was prepared in compliance with the procedures in parts 7850.1000 to 7850.5600.

If the commission finds that the environmental impact statement is not adequate, the commission ~~shall~~ must direct the ~~staff~~ department to respond to the deficiencies and resubmit the revised environmental impact statement to the commission as soon as possible.

Subp. ~~3~~ 4. **Certificate of need decision.** The ~~PUC commission~~ commission ~~shall~~ must not make a final decision on a permit for a project that requires a Certificate of Need from the ~~Public Utilities Commission~~ commission until the applicant has obtained the necessary approval.

Subp. ~~4~~ 5. **Notice.** The ~~PUC commission~~ commission ~~shall~~ must publish notice of its final permit decision in the State Register within 30 days of the date the commission makes the decision. The ~~PUC commission~~ commission ~~shall~~ must also publish notice in the EQB Monitor. The ~~PUC commission~~ commission ~~shall~~ must mail notice of its final permit decision to those persons whose names are on the project

contact list. The PUC commission ~~shall~~ must post notice of the final decision on the agency's Web page, ~~if possible~~.

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

Published Electronically: *September 18, 2009*

ALTERNATIVE REVIEW PROCESS

7850.2800 ELIGIBLE PROJECTS.

Subpart 1. **Eligible projects.** An applicant for a site permit or a route permit for one of the following projects may elect to follow the procedures of parts ~~7850.2800~~ 7850.3700 to 7850.3900 instead of the full permitting procedures in parts ~~7850.1700~~ 7850.2500 to 7850.2700:

- A. large electric power generating plants with a capacity of less than 80 megawatts;
- B. large electric power generating plants that are fueled by natural gas;
- C. high voltage transmission lines of between 100 and 200 kilovolts;
- D. high voltage transmission lines in excess of 200 kilovolts and less than five miles in length in Minnesota;
- E. high voltage transmission lines in excess of 200 kilovolts if at least 80 percent of the distance of the line in Minnesota will be located along existing high voltage transmission line rights-of-way;
- F. a high voltage transmission line service extension to a single customer between 200 and 300 kilovolts and less than ten miles in length; ~~and~~
- G. a high voltage transmission line rerouting to serve the demand of a single customer when the rerouted line will be located at least 80 percent on property owned or controlled by the customer or the owner of the transmission line; ~~and~~
- H. large electric power generating plants that are powered by solar energy.

Subp. 2. **Notice to PUC commission.** An applicant for a permit for one of the qualifying projects in subpart 1, who intends to follow the alternative review procedures, ~~of parts 7850.2800 to 7850.3700~~, ~~shall~~ must notify the PUC commission of such intent, in writing, ~~at least ten days before submitting an application for the project~~ the time the applicant files a draft permit application under part 7850.1640.

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

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~~7850.2900 PERMIT APPLICATION UNDER ALTERNATIVE PROCESS.~~

~~Part 7850.1700, regarding submission of a permit application, applies to projects being~~

~~considered under the alternative permitting process.~~

~~Statutory Authority: MS s 116C.66; 216E.16~~

~~History: 27 SR 1295~~

~~Published Electronically: September 18, 2009~~

~~7850.3000 PERMIT FEES.~~

~~Part 7850.1800, regarding permit fees, applies to projects being considered under the alternative permitting process.~~

~~Statutory Authority: MS s 116C.66; 216E.16~~

~~History: 27 SR 1295~~

~~Published Electronically: September 18, 2009~~

~~7850.3100 CONTENTS OF APPLICATION.~~

~~The applicant shall include in the application the same information required in part 7850.1900, except the applicant need not propose any alternative sites or routes to the preferred site or route. If the applicant has rejected alternative sites or routes, the applicant shall include in the application the identity of the rejected sites or routes and an explanation of the reasons for rejecting them.~~

~~Statutory Authority: MS s 116C.66; 216E.16~~

~~History: 27 SR 1295~~

~~Published Electronically: September 18, 2009~~

~~7850.3200 APPLICATION REVIEW.~~

~~Part 7850.2000 regarding the commission's review of the application, applies to projects being considered under the alternative permitting process.~~

~~Statutory Authority: MS s 116C.66; 216E.16~~

~~History: 27 SR 1295; L 2005 c 97 art 3 s 19~~

~~Published Electronically: September 18, 2009~~

~~7850.3300 PROJECT NOTICE.~~

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

~~Statutory Authority: MS s 116C.66; 216E.16~~

~~History: 27 SR 1295~~

~~Published Electronically: September 18, 2009~~

~~7850.3400 PUBLIC ADVISOR.~~

~~Part 7850.2200, regarding appointment of a public advisor, applies to projects being~~

~~considered under the alternative permitting process.~~

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295*

Published Electronically: *September 18, 2009*

~~7850.3500 PUBLIC MEETING.~~

~~Subpart 1. **Public meeting.** Part 7850.2300, subparts 1 to 4, apply to projects being considered under the alternative permitting process.~~

~~Subp. 2. **Environmental assessment.** At the public meeting, the public shall be provided an opportunity to comment on the scope of the environmental assessment in accordance with part 7850.3700.~~

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295*

Published Electronically: *September 18, 2009*

~~7850.3600 CITIZEN ADVISORY TASK FORCE.~~

~~Part 7850.2400, regarding the appointment of a citizen advisory task force, applies to projects being considered under the alternative permitting process.~~

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295*

Published Electronically: *September 18, 2009*

7850.3700 ENVIRONMENTAL ASSESSMENT PREPARATION.

Subpart 1. **Environmental assessment required.** ~~The commissioner of the Department of Commerce shall~~ must prepare an environmental assessment on each proposed large electric power generating plant and each proposed high voltage transmission line ~~being reviewed under the alternative permitting process in parts 7850.2800 to 7850.3900, subject to the alternative review process.~~ The environmental assessment must contain information on the human and environmental impacts of the proposed project and of alternative sites or routes identified by the commissioner ~~and the department and shall~~ must address mitigating measures for all sites or routes considered.

Subp. 2. Scoping process.

~~A. The commissioner of the Department of Commerce shall provide the public with an opportunity to participate in the development of the scope of the environmental assessment by holding a public meeting and by soliciting public comments. The public meeting required under part 7850.3500 satisfies the requirement to hold a scoping meeting. The commissioner shall mail notice of the meeting to those persons on either the general list or the project contact list at least ten days before the meeting. The commissioner shall provide at least seven days from the day of the public meeting for the public to submit comments regarding the scope of the environmental assessment.~~

At the public information and scoping meeting held under part 7850.2300, the department will conduct the scoping portion of the meeting. At the meeting, the department must provide the public

with an opportunity to participate in the development of the scope of the environmental impact statement by soliciting public comments. Members of the public must be provided the opportunity to comment on the scope of the EA, including environmental factors, and to submit supporting documentation. The applicant must be provided an opportunity to respond to public input.

Subp. 3. Alternative sites or routes.

~~B. The commissioner department shall~~ must include in the scope of the environmental assessment any alternative sites or routes proposed by the citizen advisory task force or by ~~any member agency of the Environmental Quality Board~~ the commission prior to the close of the scoping period. During the scoping process, any person may suggest an alternative site or route to evaluate in the environmental assessment. A person desiring that a particular site or route be evaluated ~~shall~~ must submit to the ~~commissioner department~~, during the scoping process, an explanation of why the site or route should be included in the environmental assessment and 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 an alternative be included in the environmental assessment. The ~~commissioner department shall~~ must include the suggested site or route in the scope of the environmental assessment only if the ~~commissioner department~~ determines that evaluation of the proposed site or route will assist in the commissioner's ultimate decision on the permit application. Any person may also suggest specific human or environmental impacts that should be included in the environmental assessment.

Subp. 4. Public comment. The department must provide a ten-day comment period following the close of the meeting to allow interested persons an opportunity to submit written comments.²⁴

7850.3720 NOTICE TO COMMISSION.

The department must notify the commission, prior to filing its scoping decision under part 7850.3730 below, of the alternatives the department intends to include in the scope of the EA. Commission consideration of the department's proposed alternatives must be completed by the time of the commission's decision on record development under part 7850.2120. The department must include in the scope of the EA any alternative identified by the commission.

7850.3730 SCOPING DECISION.

Subpart. 3 1. **Scoping decision.** The commissioner of the Department of Commerce ~~shall~~ must determine the scope of the environmental assessment ~~within ten days after close of the public comment period and shall mail notice of the scoping decision to those persons on the project contact list within five days after the decision~~ consistent with the process schedule. Once the commissioner has determined the scope of the environmental assessment, the scope ~~shall~~ must not be changed except upon a decision by the commissioner that substantial changes have been made in the project or substantial new information has arisen significantly affecting the potential

²⁴ Additional time needed (20 days) for substantive comment in alternative review as well.

environmental effects of the project or the availability of reasonable alternatives. The commissioner ~~shall~~ must also determine as part of the scoping process a reasonable schedule for completion of the environmental assessment. The scoping decision by the commissioner department must identify:

- A. the alternative sites or routes, if any, to be addressed in the environmental assessment;
- B. any specific potential impacts to be addressed;
- C. the schedule for completion of the environmental assessment; and
- D. other matters to be included in the environmental assessment.

Subp. 2. **Notice of decision.** Within five days after filing the scoping decision with the commission, the department must provide notice of the scoping decision to the project contact list, the public agency contact list, the landowner list, and the local and tribal government contact list.

Subp. 5 **3. Alternatives to be included in EA.** Any alternative identified by the commission and the applicant must be included and considered in the EA.

7850.3740 SUPPLEMENTAL FILING BY APPLICANT.

Subpart 1. **Supplemental filing.** If the commission determines that a route not proposed by the applicant will be examined in addition to the applicant's proposed routes, the applicant must file additional information on each alternative to support equivalent comparison of all routes under consideration. The filing must be made following consistent with the process schedule.

Subp. 2. **Landowner list.** After the department issues the scoping decision under part 7850.3730, an applicant must update the landowner list maintained under part 7850.1610 to include any landowner, not previously on the list, whose property is adjacent to a site, or along a route, that will be considered in the scope of the EA.

7850.3750 ENVIRONMENTAL ASSESSMENT.

Subpart. 4-1. **Content of environmental assessment.** The environmental assessment must include:

- A. a general description of the proposed facility;
- B. a list of any alternative sites or routes that are addressed;
- C. a discussion of the potential impacts of the proposed project and each alternative site or route on the human and natural environment;
- D. a discussion of mitigative measures that could reasonably be implemented to eliminate or minimize any adverse impacts identified for the proposed project and each alternative site or route analyzed;

E. an analysis of the feasibility of each alternative site or route considered; a list of permits required for the project; and

F. a discussion of other matters identified in the scoping process.

Subp. 5 2. **Time frame for completion of environmental assessment.** ~~The commissioner of the Department of Commerce shall complete the environmental assessment in accordance with the schedule established during the scoping process. In establishing the schedule for completion of the environmental assessment, the commissioner shall take into account any applicable statutory deadlines, the number and complexity of the alternatives and impacts to be addressed, the status of other proceedings affecting the project, and the interests of the public, the applicant, and the commissioner.~~ The environmental assessment must be filed with the commission consistent with the process schedule.

Subp. 6 3. **Notification of availability of environmental assessment.** Upon completion of the environmental assessment, the ~~commissioner shall~~ department must file the EA with the commission and publish notice in the EQB Monitor of the availability of the environmental assessment. ~~and~~ The department must also mail notice of the availability of the document to those persons on the landowner list and on the project contact list. The ~~commissioner~~ department shall provide a copy of the environmental assessment to any public agency with authority to permit or approve the proposed project. The ~~commissioner~~ department shall must post the environmental assessment on the agency's Web page, ~~if possible.~~

Subp. 7 4. **Matters excluded.** When the ~~Public Utilities~~ Commission has issued a Certificate of Need for a large electric power generating plant or high voltage transmission line or placed a high voltage transmission line on the certified HVTL list maintained by the commission, the environmental assessment ~~shall~~ must not address questions of need, including size, type, and timing; questions of alternative system configurations; or questions of voltage.

Subp. 8 5. **No additional environmental review.** An environmental assessment must be the only state environmental review document required to be prepared by the ~~commissioner of the Department of Commerce~~ on a project qualifying for review under the alternative review process.²⁵ ~~No environmental assessment worksheet or environmental impact statement shall be required. Environmental review at the certificate of need stage before the Public Utilities Commission must be performed in accordance with parts 7849.1000 to 7849.2100.~~

Subp. 9 6. **Cost.** The cost of the preparation of an environmental assessment must be assessed to the applicant as part of the application fee pursuant to part 7850.1800.

Statutory Authority: *MS s 116C.66; 116D.04; 216E.16*

History: *27 SR 1295; 28 SR 951; L 2005 c 97 art 3 s 19*

Published Electronically: *October 13, 2009*

²⁵ Subp. 5 should have a qualifier, with no additional environmental review “unless the record developed in the course of alternative review shows that there is a potential for significant environmental effects resulting from the project, in accordance with Minnesota Statutes section 116D.04, subd. 2a.

7850.3800 PUBLIC HEARING.

Subpart 1. **Public hearing.** ~~The PUC shall hold a public hearing once the environmental assessment has been completed. The commission must hold a public hearing, conducted by an administrative law judge, on a site or route permit application as required under Minnesota Statutes, section 216E.04. Notice of the hearing shall be given in accordance with Minnesota Statutes, section 216E.03, subdivision 6.~~ At least a portion of the hearing shall must be held in a each county where the proposed large electric power generating plant or high voltage transmission line would be located.

Subp. 2. **Public hearing notice.** The commission must give notice of the hearing at least ten days, but not more than 45 days,²⁶ before the hearing. The notice must include the following:

A. the time, date, and location of each hearing; and

B. a statement notifying landowners that the applicant could exercise the power of eminent domain under Minnesota Statutes, 216E.12, to acquire land necessary for the project, along with the phrase, “your property could be in the final route selected.”

Subp. 3. **Notice recipients.** The notice must be sent to the following:

A. the project contact list;

B. the public agency contact list;

C. the landowner list; and

D. the local and tribal government contact list, by certified mail.

Subp. 2 4. **Hearing examiner.** ~~The commission shall appoint a person to act as the hearing examiner at the public hearing. The hearing examiner may be an employee of the PUC. The hearing examiner shall set the date and place for the hearing and provide notice to the public. The hearing examiner may make such rulings as are required to conduct the hearing in a fair, impartial, and expeditious manner, including the authority to maintain decorum at the hearing, to exclude repetitious or irrelevant testimony, to limit the amount of time for oral testimony, and to continue the hearing from time to time as needed. Persons may testify at the hearing without being first sworn under oath. The hearing examiner shall ensure that the record created at the hearing is preserved and transmitted to the commission. An audio recording of the hearing must be made, unless the commission determines that a court reporter is appropriate.~~²⁷ The hearing examiner shall must not prepare a report or make any recommendation to the commission unless the commission requests the hearing examiner administrative law judge to do so.

Subp. 3 5. **Hearing procedure.** The hearing must be conducted in the following manner,

²⁶ Should be at least 20 days, rather than at least 10.

²⁷ Restore highlighted sentence of existing rule language. Holding a hearing with no record and no report is not meaningful public participation and will create a poor quality administrative record.

although the ~~hearing examiner~~ administrative law judge may vary the order in which the hearing proceeds:

A. the staff ~~shall~~ must make a brief presentation to describe the project, explain the process to be followed, and introduce documents to be included in the record, including the application, the environmental assessment, and various procedural documents;

B. ~~the applicant shall introduce its evidence by way of testimony and exhibits the department shall~~ must introduce information for developing the record and offer the project's environmental assessment for inclusion in the record;

C. the public must be afforded an opportunity to make an oral presentation, present documentary evidence, and ask questions of the applicant and agency staff;

D. ~~the hearing examiner administrative law judge shall~~ must provide a period of not less than ten days for the submission of written comments into the record after the close of the hearing; and

E. the ~~hearing examiner administrative law judge shall~~ must transmit the complete record created at the hearing, including all written comments, to the commission within five days of the close of the record, unless the ~~hearing examiner~~ administrative law judge has been requested by the commission to prepare a report.

Subp. 4 6. **Issues.** Once the Public Utilities Commission has determined questions of need, including size, type, and timing; questions of system configurations; and questions of voltage, those issues must not be addressed in the public hearing.

Subp. 57. **Environmental assessment.** Interested persons may comment upon the environmental assessment at the public hearing. Comments on the environmental assessment ~~shall~~ must become part of the record in the proceeding but the commission ~~shall~~ must not be required to revise or supplement the environmental assessment document.

Subp. 8. **Public comment.** Public comments must be filed within ten days after the close of the public hearing.

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

Published Electronically: *September 18, 2009*

7850.3900 FINAL DECISION.

Subpart 1. **Timing.** The commission ~~shall~~ must make a final decision on a site permit or a route permit application within 60 days after receipt of the record from the ~~hearing examiner administrative law judge~~. A final decision must be made within six months after the commission's determination that an application is complete. The commission may extend this time limit for up to three months for just cause or upon agreement of the applicant.

Subp. 2. **Completeness of environmental assessment.** ~~At the time the commission~~

~~makes~~ Before making a final decision on the permit application, the commission ~~shall~~ must determine whether the environmental assessment and the record created at the public hearing address the issues identified in the scoping decision.

Subp. 3. **Certificate of need decision.** The PUC ~~commission shall~~ must not make a final decision on a permit for a project that requires a certificate of need from the ~~Public Utilities~~ Commission until the applicant has obtained the necessary approval from the ~~Public Utilities~~ Commission.

Subp. 4. **Notice.** The PUC ~~commission shall~~ must publish notice of its final permit decision in the State Register within 30 days of the day the commission makes the decision. The PUC ~~commission shall~~ must also publish notice in the EQB Monitor. The PUC ~~commission shall~~ must mail notice of its final permit decision to those persons whose names are on the project contact list. The PUC ~~commission shall~~ must post notice of the final decision on the agency's Web page, ~~if possible.~~

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

Published Electronically: *September 18, 2009*

FACTORS FOR COMMISSION CONSIDERATION

~~7850.4000 STANDARDS AND CRITERIA~~

~~No site permit or route permit shall be issued in violation of the site selection standards and criteria established in Minnesota Statutes, sections 216E.03 and 216E.04, and in rules adopted by the commission. The commission shall issue a permit for a proposed facility when the commission finds, in keeping with the requirements of the Minnesota Environmental Policy Act, Minnesota Statutes, chapter 116D, and the Minnesota Environmental Rights Act, Minnesota Statutes, chapter 116B, that the facility is consistent with state goals to conserve resources, minimize environmental impacts, and minimize human settlement and other land use conflicts and ensures the state's electric energy security through efficient, cost-effective power supply and electric transmission infrastructure.~~²⁸

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

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7850.4100 FACTORS CONSIDERED.

~~In determining whether to issue a permit for a large electric power generating plant or a high-~~

²⁸ Restore highlighted sentence of existing rule language (potentially excluding the first sentence, which is a direct duplication of statutory provisions). A standard is necessary to organize the record and frame the reason for consideration of factors in the section (7850.4100) below.

~~voltage transmission line, the commission shall consider the following~~ In determining whether to issue a site or route permit under this chapter, the commission must consider the factors set forth in Minnesota Statutes, section 216E.03, subd. 7, as well as the following:

- A. effects on human settlement, including, but not limited to, displacement, noise, aesthetics, cultural values, recreation, and public services²⁹;
- B. effects on public health and safety;
- C. effects on land-based economies, including, but not limited to, agriculture, forestry, tourism, and mining;
- D. effects on archaeological and historic resources;
- E. effects on the natural environment, including effects on air and water quality resources and flora and fauna;
- F. effects on rare and unique natural resources;
- G. application of design options that maximize energy efficiencies, mitigate adverse environmental effects, and could accommodate expansion of transmission or generating capacity;
- H. use or paralleling of existing rights-of-way, survey lines, natural division lines, and agricultural field boundaries;
- I. use of existing large electric power generating plant sites;
- J. use of existing transportation, pipeline, and electrical transmission systems or rights-of-way;
- K. electrical system reliability;
- L. costs of constructing, operating, and maintaining the facility which are dependent on design and route;
- M. adverse human and natural environmental effects which cannot be avoided; and
- N. irreversible and irretrievable commitments of resources.

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

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~~7850.4200 FACTORS EXCLUDED.~~

²⁹ Add “electric and magnetic fields.”

~~When the Public Utilities Commission has issued a Certificate of Need for a large electric power generating plant or a high voltage transmission line or placed a high voltage transmission line on the certified HVTL list maintained by the commission, questions of need, including size, type, and timing, questions of alternative system configurations, and questions of voltage shall not be factors considered by the commission in deciding whether to issue a permit for a proposed facility.~~

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

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7850.4300 PROHIBITED ROUTES.

Subpart 1. **Wilderness areas.** No high voltage transmission line may be routed through state or national wilderness areas.

Subp. 2. **Parks and natural areas.** No high voltage transmission line may be routed through state or national parks or state scientific and natural areas unless the transmission line would not materially damage or impair the purpose for which the area was designated and no feasible and prudent alternative exists. Economic considerations alone do not justify use of these areas for a high voltage transmission line.

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295*

Published Electronically: *September 18, 2009*

7850.4400 PROHIBITED SITES.

Subpart 1. **Prohibited sites.** No large electric power generating plant may be located in any of the following areas:

- a. national parks;
- b. national historic sites and landmarks;
- c. national historic districts;
- d. national wildlife refuges;
- e. national monuments;
- f. national wild, scenic, and recreational riverways;
- g. state wild, scenic, and recreational rivers and their land use districts;
- h. state parks;
- i. nature conservancy preserves;
- j. state scientific and natural areas; and
- k. state and national wilderness areas.

Subp. 2. **Water use.** The areas identified in subpart 1 must not be permitted as a site for

a large electric power generating plant except for use for water intake or discharge facilities. If the commission includes any of these areas within a site for use for water intake or discharge facilities, it may impose appropriate conditions in the site permit to protect these areas for the purposes for which they were designated. The commission ~~shall~~ must also consider the adverse effects of proposed sites on these areas which are located wholly outside of the boundaries of these areas.

Subp. 3. **Site exclusions when alternative sites exist.** No large electric power generating plant may be located in any of the following areas unless there is no feasible and prudent alternative. Economic considerations alone do not justify approval of these areas. These areas are:

- A. state registered historic sites;
- B. state historic districts;
- C. state wildlife management areas, except in cases where the plant cooling water is to be used for wildlife management purposes;
- D. county parks;
- E. metropolitan parks;
- F. designated state and federal recreational trails;
- G. designated trout streams; and
- H. the rivers identified in Minnesota Statutes, section 85.32, subdivision 1.

Subp. 4. **Prime farmland exclusion.** Use of prime farmland is subject to the following restrictions.

A. Except as set forth in B below, ~~No~~ large electric power generating plant site may be permitted where the developed portion of the plant site, excluding water storage reservoirs and cooling ponds, includes more than 0.5 acres of prime farmland per megawatt of net generating capacity, or where makeup water storage reservoir or cooling pond facilities include more than 0.5 acres of prime farmland per megawatt of net generating capacity, unless there is no feasible and prudent alternative. Economic considerations alone do not justify the use of more prime farmland. "Prime farmland" means those soils that meet the specifications of Code of Federal Regulations 1980, title 7, section 657.5, paragraph (a). These provisions do not apply to areas located within home rule charter or statutory cities; areas located within two miles of home rule charter or statutory cities of the first, second, and third class; or areas designated for orderly annexation under Minnesota Statutes, section 414.0325.

B. A solar-powered LEPPG is prohibited on prime farmland unless:

(1) the commission approves a farmland mitigation plan developed in consultation with the Minnesota department of agriculture; and

(2) at the time of the application, there is no local zoning ordinance prohibiting the construction of a solar-powered LEPPG on prime farmland.

Subp. 5. **Sufficient water supply required.** No site may be designated that does not have reasonable access to a proven water supply sufficient for plant operation. No use of

groundwater may be permitted where removal of groundwater results in material adverse effects on groundwater, groundwater dependent natural resources, or higher priority users in and adjacent to the area, as determined in each case.

The use of groundwater for high consumption purposes, such as cooling, must be avoided if a feasible and prudent alternative exists.

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

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7850.4500 PERMIT APPLICATION REJECTION.

The commission ~~shall~~ must reject a permit application at the time it is submitted if the application is for a facility to be located on a prohibited site or within a prohibited route or if the applicant fails to address in the application why no feasible and prudent alternative exists for sites or routes that may be authorized in such a situation.

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

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PERMIT ADMINISTRATION AND LOCAL REVIEW

7850.4600 PERMIT CONDITIONS.

Subpart 1. **Generally.** The commission ~~shall~~ must impose in any site permit for a large electric power generating plant or route permit for a high voltage transmission line such conditions as the commission deems appropriate and are supported by the record.

Subp. 2. **HVTL permits.** When the commission issues a permit for a route for a high voltage transmission line, the commission ~~shall~~ must specify the design, route, right-of-way preparation, and facility construction and operation it deems necessary. The commission may impose a condition in the permit requiring the permittee to construct a high voltage transmission line that is capable of expansion in transmission capacity through multiple circuiting or design modifications.

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

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7850.4650 COMPLIANCE FILING.

Subpart. 1. **Plan and profile.** At least 30 days prior to construction, the applicant must file a preliminary design plan for the project. The plan must include a profile of the project, including details on the location of the project, the location of the right-of-way showing its compliance with the route permit, and schemata and drawings showing the right-of-way preparation, construction, clean-up, and restoration for the project.

Subp. 2. **Commission decision.** The executive secretary must determine whether the plan and profile is consistent with the permit conditions for the project and notify the permittee in writing of the determination. The commission may request that the department provide technical compliance review and a recommendation. The commission delegates to its executive secretary the authority to make the determination and notify the permittee. Any subsequent changes to the plan and profile made by the permittee must be filed with the commission.

7850.4700 DELAY IN ROUTE OR SITE CONSTRUCTION.

If construction and improvement of a route or site have not commenced four years after the permit has been issued by the commission, the commission ~~shall~~ must suspend the permit. If at that time, or at a time subsequent, the permittee decides to construct the proposed large electric power generating facility or high voltage transmission line, the permittee ~~shall~~ must certify to the commission that there have been no significant changes in any material aspects of the conditions or circumstances existing when the permit was issued. The commission ~~shall~~ must mail notice of receipt of the certification request and notice of the commission meeting date to ~~those persons on the general list, at least seven days before the commission's consideration of the matter, and the same notice to those persons on the project contact list, if such a list exists, the public agency contact list, and the local and tribal government contact list.~~ The applicant must mail notice of its request to the landowner list. If the commission determines that there are no significant changes, it ~~shall~~ must reinstate the permit. If the commission determines that there is a significant change, it may order a new hearing and consider the matter further, or it may require the permittee to file a new application.

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

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

Subpart 1. **Applicability.** ~~No person may make a minor alteration in a large electric power generating plant or high voltage transmission line without approval from the commission.~~ Changes to existing or permitted LEPGP and HVTL facilities or their locations must be approved by the commission, unless the action is exempt from review under part 7850.1500. A ~~minor alteration is a change in~~ subject to commission approval includes a minor alteration in the location of a large electric power generating plant or high voltage transmission line or an amendment to a permit condition in a permit issued by the commission. ~~that does~~ The change must not result in significant changes in the human or environmental impact of the facility. The requirements of this part apply to those facilities that have been permitted by the PUC commission and to those facilities that were not permitted by the PUC commission but meet the definition of a large electric power generating plant or high voltage transmission line under applicable law. Changes to a permit issued by the commission for facilities not yet constructed is subject to review under this part. For those large electric power generating plants or high voltage transmission lines for which no permit has been issued by the PUC commission, this part applies to minor alterations in the facility as it exists on February 18, 2003.

Subp. 2. **Application for minor alternation of a site or route.** A ~~person~~ permittee

seeking authorization to make a minor alteration in a large electric power generating plant or high voltage transmission line ~~shall~~ must apply to the commission. The application ~~shall~~ must be in writing and ~~shall~~ must describe the alteration in the large electric power generating plant or high voltage transmission line to be made and the explanation why the alteration is minor. The applicant must mail its proposal to landowners reasonably likely to be affected by the alteration, to the project contact list, to the public agency contact list, and to the local and tribal units of government with jurisdiction over the area where the minor alteration is proposed. The commission ~~shall~~ must mail notice of receipt of the application to ~~those persons on the general list and to those persons on the project contact list if such a list exists~~ landowners along the route of the proposed alteration or adjacent to the site of the proposed alteration. The commission ~~shall~~ must provide at least a ten-day period for interested persons to submit comments on the application ~~or to request that the matter be brought to the commission for consideration.~~

Subp. 3. ~~**Commission decision**~~ ~~The commission shall decide within ten days after close of the public comment period whether to authorize the minor alteration, bring the matter to the commission for consideration, or determine that the alteration is not minor and requires a full permitting decision. The commission may authorize the minor alteration but impose reasonable conditions on the approval. The commission shall notify the applicant in writing of the commission's decision and send a copy of the decision to any person who requested notification or filed comments on the application.~~

Subp. 4. **Local review.** For those large electric power generating plants or high voltage transmission lines for which no permit has been issued by the PUC commission, the owner or operator of such unpermitted facilities may elect to seek approval of a minor alteration from the local unit of government if the facility qualifies for local review under Minnesota Statutes, section 216E.05.

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

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7850.4900 AMENDMENT OF PERMIT CONDITIONS.³⁰

Subpart 1. **Authority.** The commission may amend any of the conditions in a site permit for a large electric power generating plant or in a route permit for a high voltage transmission line issued by the PUC commission upon request of any person who claims to be affected by a permit condition.

Subp. 2. **Process.** The person requesting an amendment of a condition in a site permit or a route permit ~~shall~~ must ~~submit an application to the commission in writing describing~~ file with the commission a description of the amendment sought and the reasons for the amendment. The commission ~~shall~~ must mail notice of receipt of the application to landowners reasonably likely to

³⁰ This provision should preclude permit changes that would result in significant increases in the human or environmental impact of the facility. As written, there is no guidance for decisions. See 7850.4800.

~~be affected by the proposed change in the permit condition, those persons on to the general list, to those persons on the project contact list, and to the public agency contact list, and to the local and tribal units of government with jurisdiction over the affected area if such a list exists. The commission shall must provide at least a ten-day period for interested persons to submit comments on the application or to request that the matter be brought to the commission for consideration.~~

~~Subp. 3. **Decision.** The commission shall decide within ten days after close of the public comment period whether to approve the amendment request or to bring the matter to the commission for consideration.~~

~~The commission shall notify the applicant in writing of the commission's decision and send a copy of the decision to any person who requested notification or filed comments on the application.~~

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

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7850.4925 COMPLAINT PROCEDURES.

Subp. 1. **Filing.** A person affected by an alleged permit violation, or a local unit of government on behalf of a complainant, may file a complaint with the permittee or with the commission. A complaint filed with either the permittee or the commission must include the following:

A. the complainant's contact information, including name, address, telephone number, and e-mail address if available;

B. the date of the complaint;

C. the facts giving rise to the dispute, including any permit condition at issue; and

D. the tract, parcel number, or description of any property affected;

Subp. 2. **Permittee complaint handling.** The permittee must provide a copy or description of the complaint to the commission within one business day of receiving the complaint. The permittee must attempt to informally resolve the complaint through correspondence, negotiation, or mediation.

Subp. 3. **Commission complaint handling.** Upon receiving a complaint, commission staff must provide a copy or description of the complaint to the permittee, and request a response from the permittee within 15 days. Commission staff must notify the complainant of the permittee's response and request the complainant's reply within 15 days. If commission staff determines that the complaint cannot be resolved informally through correspondence, negotiation, or mediation, staff must notify the permittee that the complaint has not been resolved. Anyone seeking formal commission action on a complaint must follow the procedures of Minnesota Rules, Chapter 7829.

7850.4950 REPORTS.

By the 15th day of each month, a permittee must file with the commission a report of all complaints received during the preceding calendar month. The permittee must file monthly reports from the time the permit is issued until twelve months after project has been completed and notice of completion of the project has been filed with the commission. The report filed must include the following:

A. a description of the basis or subject of the complaint;

B. whether the complaint has been resolved, and if so, the outcome and whether the complainant is satisfied with the outcome; and

C. if no complaints were received, a statement notifying the commission that no complaints were received during the preceding month.

7850.5000 PERMIT TRANSFER.

Subpart 1. **Application.** A permittee holding a large electric power generating plant site permit or a high voltage transmission line route permit may request the PUC commission to transfer its permit. The permittee ~~shall~~ must provide the name of the existing permittee, the name and description of the entity to which the permit is to be transferred, the reasons for the transfer, a description of the facilities affected, and the proposed effective date of the transfer. The person to whom the permit is to be transferred ~~shall~~ must provide the PUC commission with such information as the PUC commission ~~shall~~ must require to determine whether the new permittee can comply with the conditions of the permit. The commission ~~shall~~ must mail notice of receipt of the application to those persons on the general list at least seven days in advance of the commission's consideration of the matter. The commission ~~shall~~ must provide the same notice to persons on the project contact list if such a list exists.

Subp. 2. Approval of transfer. The commission ~~shall~~ must approve the transfer if the commission determines that the new permittee will comply with the conditions of the permit. The commission, in approving the transfer of a permit, may impose reasonable additional conditions in the permit as part of the approval. ~~The commission may decide to hold a public meeting to provide the public with an opportunity to comment on the request for the transfer prior to making a decision. A permittee must inform the commission of any ownership changes within ten days of the change.~~³¹

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

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7850.5100 PERMIT REVOCATION OR SUSPENSION.

³¹ Should be revised to require the permittee to provide notice and the commission approval *prior* to ownership change and to retain existing rule language informing permittees that commission may hold a hearing and take comments prior to its decision. New owners may not be able to meet conditions, such as demonstrating financial resources for long-term safe operation.

Subpart 1. **Initiation of action to revoke or suspend.** The commission may initiate action to consider revocation or suspension of a permit on its own motion or upon the request of any person who has made a prima facie showing by affidavit and documentation that a violation of the ~~a~~Act, parts 7850.1000 to 7850.5600, or the permit has occurred.

Subp. 2. **Hearing.** If the commission initiates action to consider revocation or suspension of a permit, the commission ~~shall~~ must provide the permittee with an opportunity ~~for a contested case hearing conducted by an administrative law judge from the Office of Administrative Hearings to provide written comment and to appear at a commission meeting where the commission will consider the comments received and will consider whether any other steps, consistent with the commission's rules of practice and procedure under Chapter 7829, are necessary to decide the matter.~~

Subp. 3. **Finding of violation.** If the commission finds that a violation of the act, parts 7850.1000 to 7850.5600, or the permit has occurred, it may revoke or suspend the permit, require the utility to undertake corrective or ameliorative measures as a condition to avoid revocation or suspension, or require corrective measures and suspend the permit. In determining the appropriate sanction, the commission ~~shall~~ must consider the following:

- A. whether the violation will result in any significant additional adverse environmental effects;
- B. whether the results of the violation can be corrected or ameliorated; and
- C. whether a suspension or revocation of a permit or certificate will impair the utility's electrical power system reliability.

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

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7850.5200 EMERGENCY PERMIT.

Subpart 1. **Application for emergency permit.** Any utility whose electric power system requires the immediate construction of a large electric power generating plant or high voltage transmission line due to a major unforeseen event may apply to the commission for an emergency permit. The application must contain the following information:

- A. a description of the proposed large electric power generating plant or high voltage transmission line;
- B. an explanation of the major unforeseen event causing the emergency situation;
- C. a discussion of the anticipated impacts on the electric system if the proposed facility is not approved within 195 days;
- D. a copy of the written notification to the ~~Public Utilities~~ Commission of the major unforeseen event and the need for immediate construction; and
- E. as much of the information required under part 7850.1900 as the utility has available.

Subp. 2. **Public hearing.** The ~~PUC~~ commission ~~shall~~ must hold a public hearing on the application for an emergency permit. The hearing must be held within 90 days after the application is submitted. The hearing must be held in accordance with part 7850.3800.

Subp. 3. **Final decision.** The commission ~~shall~~ must make a final decision on an emergency permit within 195 days after the commission's acceptance of the application. The ~~board~~ commission ~~shall~~ must grant the emergency permit if it finds the following:

- A. a demonstrable emergency exists;
- B. the emergency requires immediate construction;
- C. adherence to the procedures and time schedules specified in Minnesota Statutes, section 216E.03, would jeopardize the utility's electric power system or the utility's ability to meet the electric needs of its customers in an orderly and timely manner;
- D. the utility will implement mitigating measures to minimize the human and environmental impacts of the facility; and
- E. the utility will carry out the project in an expeditious manner consistent with the emergency.

Subp. 4. **Permit conditions.** The commission may impose reasonable conditions in an emergency permit.

Subp. 5. **Permit fee.** The applicant for an emergency permit ~~shall~~ must pay the same fee as would be required for a regular permit for the same project.

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

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7850.5300 LOCAL REVIEW OF PROPOSED FACILITIES.

Subpart 1. **Local review.** An applicant who seeks a site or route permit for one of the projects identified in subpart 2 has the option of applying to those local units of government that have jurisdiction over the site or route for approval to build the project. If local approval is granted, a site or route permit is not required from the commission. If the applicant files an application with the ~~PUC~~ commission, the applicant ~~shall~~ must be deemed to have waived its right to seek local approval of the project.

Subp. 2. **Eligible projects.** An applicant may seek approval from a local unit of government to construct the following projects:

- A. a large electric power generating plant with a capacity of less than 80 megawatts;
- B. a large electric power generating plant of any size that burns natural gas and is intended to be a peaking plant;
- C. a high voltage transmission line of between 100 and 200 kilovolts;
- D. ~~a substation with a voltage designed for and capable of operation at a nominal~~

~~voltage of 100 kilovolts or more;~~

E. a high voltage transmission line service extension to a single customer between 200 and 300 kilovolts and less than ten miles in length; and

F. a high voltage transmission line rerouting to serve the demand of a single customer when at least 80 percent of the rerouted line will be located on property owned or controlled by the customer or the owner of the transmission line.

Subp. 3. **Notice to PUC commission.** Within ten days of submission of an application to a local unit of government for approval of an eligible project, the applicant ~~shall~~ must notify the commission in writing that the applicant has elected to seek local approval of the proposed project. Within the same ten-day period, the applicant ~~shall~~ must mail notice to those persons on the general notification list that a permit has been applied for from the local unit of government for the project and ~~shall~~ must provide a description of the project and the name of a person with the local unit of government to contact for more information.

Subp. 4. **Referral to PUC commission.** A local unit of government with jurisdiction over a project identified in this section to whom an applicant has applied for approval to build the project may request the PUC commission to assume jurisdiction and make a decision on a site or route permit. A local unit of government ~~shall~~ must file the request with the commission within 60 days after an application for the project has been filed with any one local unit of government. If one of the local units of government with jurisdiction over the project requests the commission to assume jurisdiction, jurisdiction over the project transfers to the commission and the applicant ~~shall~~ must file under the applicable provisions of parts 7850.1000 to 7850.5600 for a permit from the commission.

Subp. 5. **Environmental review.** A local unit of government that maintains jurisdiction over a qualifying project ~~shall~~ must prepare an environmental assessment on the project. The local unit of government ~~shall~~ must afford the public an opportunity to participate in the development of the scope of the environmental assessment before it is prepared. Upon completion of the environmental assessment, the local unit of government ~~shall~~ must publish notice in the EQB Monitor that the environmental assessment is available for review, how a copy of the document may be reviewed, that the public may comment on the document, and the procedure for submitting comments to the local unit of government. The local unit of government ~~shall~~ must provide a copy of the environmental assessment to the PUC commission upon completion of the document. The local unit of government ~~shall~~ must not make a final decision on the permit until at least ten days after the notice appears in the EQB Monitor. If more than one local unit of government has jurisdiction over a project, and the local units of government cannot agree on which unit will prepare the environmental assessment, any local unit of government or the applicant may request the commission to select the appropriate local unit of government to be the responsible governmental unit to conduct an environmental review of the project.

Subp. 6. **No local authority.** In the event a local unit of government that might otherwise have jurisdiction over a proposed large electric power generating plant or high voltage transmission line determines that it has no ordinances or other provisions for reviewing and authorizing the construction of such project or has no capability of preparing an

environmental assessment on the project, the local unit of government ~~shall~~ must refer the matter to the ~~PUC~~ commission for review.

Subp. 7. **Matters excluded.** When the ~~Public Utilities~~ Commission has issued a Certificate of Need for a large electric power generating plant or high voltage transmission line or placed a high voltage transmission line on the certified HVTL list maintained by the commission, the local unit of government ~~shall~~ must not address questions of need, including size, type, and timing; questions of alternative system configurations; or questions of voltage.

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

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GENERAL ADMINISTRATION

7850.5400 ANNUAL PUBLIC HEARING.

Subpart 1. **Annual public hearing.** The commission ~~shall~~ must hold an annual public hearing in November or December in St. Paul in order to advise the public of matters relating to the siting of large electric power generating plants and routing of high voltage transmission lines. The meeting must be conducted by the ~~PUC~~ commission staff. At the meeting, the ~~PUC~~ commission ~~shall~~ must advise the public of the permits issued by the ~~PUC~~ commission in the past year. The ~~PUC~~ commission ~~shall~~ must invite representatives of other state agencies to attend the meeting and be available to answer questions by the public. An audio recording of the hearing must be maintained.

Subp. 2. **Notice.** The ~~PUC~~ commission ~~shall~~ must provide at least ten days but no more than 45 days notice of the annual hearing by mailing notice to those persons who have requested notice and by publication in the EQB Monitor. The notice must be accompanied by a tentative agenda for the hearing.

Subp. 3. **Report.** The staff ~~shall~~ must prepare a report of the annual hearing within 60 days after the hearing and submit it to the commission. No action on the report is required.

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

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7850.5500 ANNUAL ASSESSMENT ON UTILITIES.

For purposes of determining the annual assessment on a utility pursuant to the act, each utility ~~shall~~ must, on or before July 1 of each year, submit to the commission a report of its retail kilowatt-hour sales in the state and its gross revenue from kilowatt-hour sales in the state for the preceding calendar or utility reporting year. Upon receipt of these reports, the commission ~~shall~~

must bill each utility as specified in the act.

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

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7850.5600 PROGRAM ADVISORY TASK FORCE.

The commission may appoint a program advisory task force to provide advice and recommendations concerning development, revision, and enforcement of any rule or program initiated under the act or parts 7850.1000 to 7850.5600. The commission ~~shall~~ must provide guidance to the program advisory task force in the form of a charge and through specific requests. The program advisory task force must be composed of as many members as may be designated by the commission and its membership must be solicited on a statewide basis. The program advisory task force and its chair must be appointed for a one-year term.

Statutory Authority: *MS s 116C.66; 216E.16*

History: *27 SR 1295; L 2005 c 97 art 3 s 19*

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